

# FEMA Regulations relating to Investments in India & Investments outside India with Rupee Funds

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

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



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

- Intention was to bring provisions of FERA in line with emerging trends of liberalization so as to remove obstacles in the inward flow of foreign exchange and foreign investment.
- Accordingly, on June 1, 2000, the Foreign Exchange Management Act, 1999 (FEMA) brought in force to replace the then existing FERA.
- It is an act to manage the foreign exchange of India as opposed to FERA which was enacted to regulate/control the foreign exchange.



# Structure of FEMA

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



# Current and Capital Account Transaction

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

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

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



# Current and Capital Account Transaction

- FEMA looks transaction from Balance of payment position of Country
- Examples -
  - Import of machinery on payment of cash - Current A/c transaction
  - Machinery is purchased on hire - Capital A/c transaction. There is an obligation to make future payment to the non-resident
  - Consideration for goods & Services - Current A/c transaction
  - Transaction represents a creation or acquisition of wealth shares, loans or immovable properties - Capital A/c transaction



# Capital Account Transaction

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



# Residential Status under FEMA

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- Under FEMA residential status is of two types:
  - Person resident in India
  - Person resident outside India
- Under FERA, citizenship was considered as deciding factor
- FEMA lays emphasis on 'residing' which denotes permanency





# Residential Status under FEMA

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

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

- going out of India or staying outside India

- for taking up employment

- for carrying business or vocation

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

- coming to India or staying in India otherwise than

- for taking up employment

- for carrying business or vocation

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

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



# Residential Status under FEMA

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



# Residential Status under FEMA – Indian Students Studying Abroad

- A.P. (DIR Series) Circular No. 45 dated December 8, 2003
  - While taking up studies, students may have to take up job or seek scholarships to supplement their income. As a result their stay gets prolonged than what is intended while leaving India.
  - They are not dependent for a dominant part of their expenses on remittances from their households in India.

Hence, their stay will be for more than 182 days and intention will also be to stay outside India for uncertain period. Thus they can be treated as Non Resident Indians (NRI).



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

- FEMA Notification No. 13 – Foreign Exchange Management (Remittance of Assets) Regulations, 2000

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

- He at any time held India Passport, or*
- 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 Citizenship Act, 1955 or*
- The person is a spouse of an Indian citizen or a person referred to in sub clause (a) or (b).*



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

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

*Person of Indian Origin (PIO) means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who*

- at any time held India Passport, or*
- Who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1955) or*



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

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

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

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



# Repatriation to India

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

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

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



# Repatriation outside India

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



# Snapshot of Investment Opportunities under FEMA

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

# Investment Opportunities under FEMA

Investment opportunities	Non-Resident Indian	Non-Resident	Repatriation basis	Non-repatriation basis
Deposits under FCNR /NRE /NRO Account	✓		✓	✓
Investment in Immovable Properties	✓			✓*
Investment in Portfolio Scheme	✓	✓ (RFPI)	✓	✓
Investment under FDI scheme (Schedule 1)	✓	✓	✓	✓
Domestic Investment under Schedule 4	✓		✓	✓
Investment in Limited Liability Partnership (LLP) (Schedule 9)	✓	✓	✓	



## Interest-free loan to 'close relatives'

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

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

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



## Lending in the form of ECB having at least 25% stake in Indian Company

- ECB up to USD 5 million:
  - minimum equity of 25% held by the lender
- ECB more than USD 5 million;
  - Minimum equity of 25% held 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)
- Ceiling on all-in-cost (i.e. rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee and fees payable in Indian Rupees)

Average maturity period	All-in-cost ceiling
3-5 years	300 bps + 6 months LIBOR
More than 5 years	500 bps + 6 months LIBOR



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

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



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

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



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

- Schedule 7 – FEMA Notification No. 5 – Acceptance of Deposit Regulations
  - Investment in deposits by NRIs will be on non repatriation basis.
  - The maturity period of deposit shall not exceed 3 years
  - The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account. (substituted by FEM (Deposit)(Amendment) Regulations, 2004.)



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

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





# Investment by NRI in partnership firm or proprietary concern in India

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



# Deposits under FCNR /NRE /NRO account

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

# Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Who can open an account	Person resident outside India (Individuals / entities of Bangladesh / Pakistan nationality / ownership requires RBI approval)	NRI (Individuals / entities of Bangladesh / Pakistan nationality / ownership requires RBI approval)	NRI (Individuals / entities of Bangladesh / Pakistan nationality / ownership requires RBI approval)
Repatriable / Non-Repatriable	Non-Repatriable (Except under USD 1 million per F.Y. scheme)	Repatriable	Repatriable
Type of account	Current, Savings, Recurring or Fixed Deposit Accounts	Current, Savings, Recurring or Fixed Deposit Accounts	Term deposits
Joint accounts	Jointly with residents	Two or more NRI of Indian nationality or origin	Same as NRE account

# Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
<b>Major Permissible Credits</b>	Remittance in permitted foreign currency, Deposit by account holder during temporary visit to India, Transfer from rupee account of non-resident banks, Dues in India of account holder	Remittance in permitted foreign currency, proceeds of foreign currency / bank notes tendered during temporary visit to India, transfer from other NRE / FCNR account etc.	Same as NRE account
<b>Major Permissible Debits</b>	Local rupee payments, Remittance outside India of current income in India (net of taxes)	Local disbursements, remittance outside India, transfer to other NRE / FCNR account etc.	Same as NRE account

# Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Loan - to account holders	<ul style="list-style-type: none"> <li>▪ Rupee loan against security of fixed deposits for personal purpose or business purpose except for relending or agricultural / plantation activity or for investment in real estate business</li> <li>▪ Overdraft</li> </ul>	<ul style="list-style-type: none"> <li>• For personal purpose or business purpose except for relending or agricultural / plantation activity or for investment in real estate business</li> <li>• For direct investment in India in firms / companies on non-repatriation basis</li> <li>• For purchase of flat in India for own residential purpose</li> </ul>	Same as NRE account

# Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Loan - to third parties	Loans / overdrafts to R / firms / Indian companies against security of FD in NRO account subject to conditions	Fund based / non-fund bases to R / firms / India companies against security of FD in NRE account subject to conditions	Same as NRE account
Loan - outside India	Not allowed	Fund based or non-fund based to or in favour of NRI or to third parties	Same as NRE account

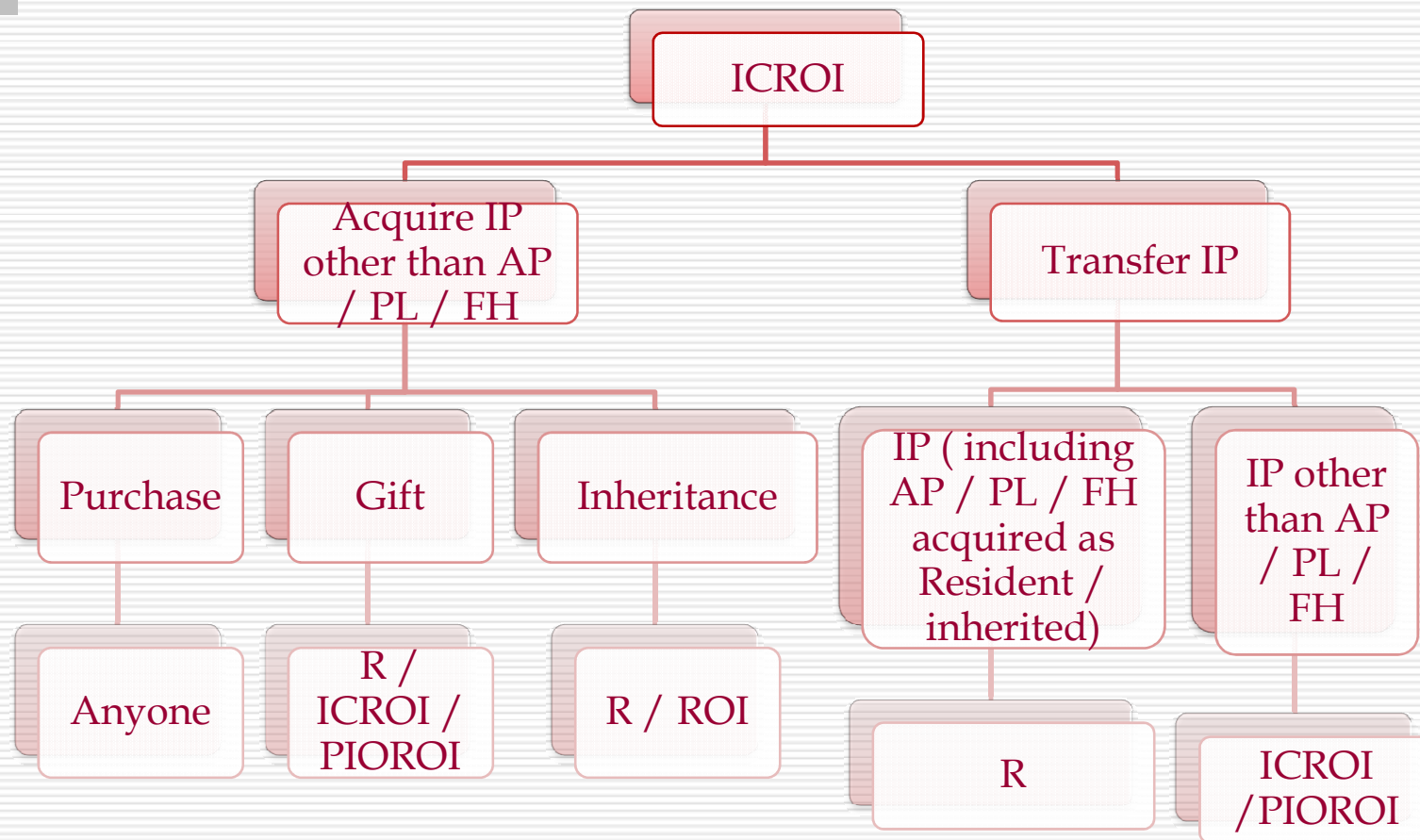


# Investment in Immovable Properties

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- Immovable Property (IP) is neither defined in FEMA nor in Notification No.21
- Investment in Agricultural Property (AP), Plantation (PL) and Farm House (FH) not permitted
- PIO has to sell property to Resident Indian only. Sale to other NRI or PIO would require prior RBI approval.
- Transactions involving acquisition of immovable property under these regulations shall be subject to the applicable tax laws in India.-A.P. (DIR Series) Circular No. 38 dated November 20, 2014
- Regulation 6(a) of FEMA 21 - Prior approval of RBI is required to repatriate sale proceeds of immovable property outside India for persons who had acquired such property when he was resident in India or inherited from a person resident in India {Section 6(5)}.

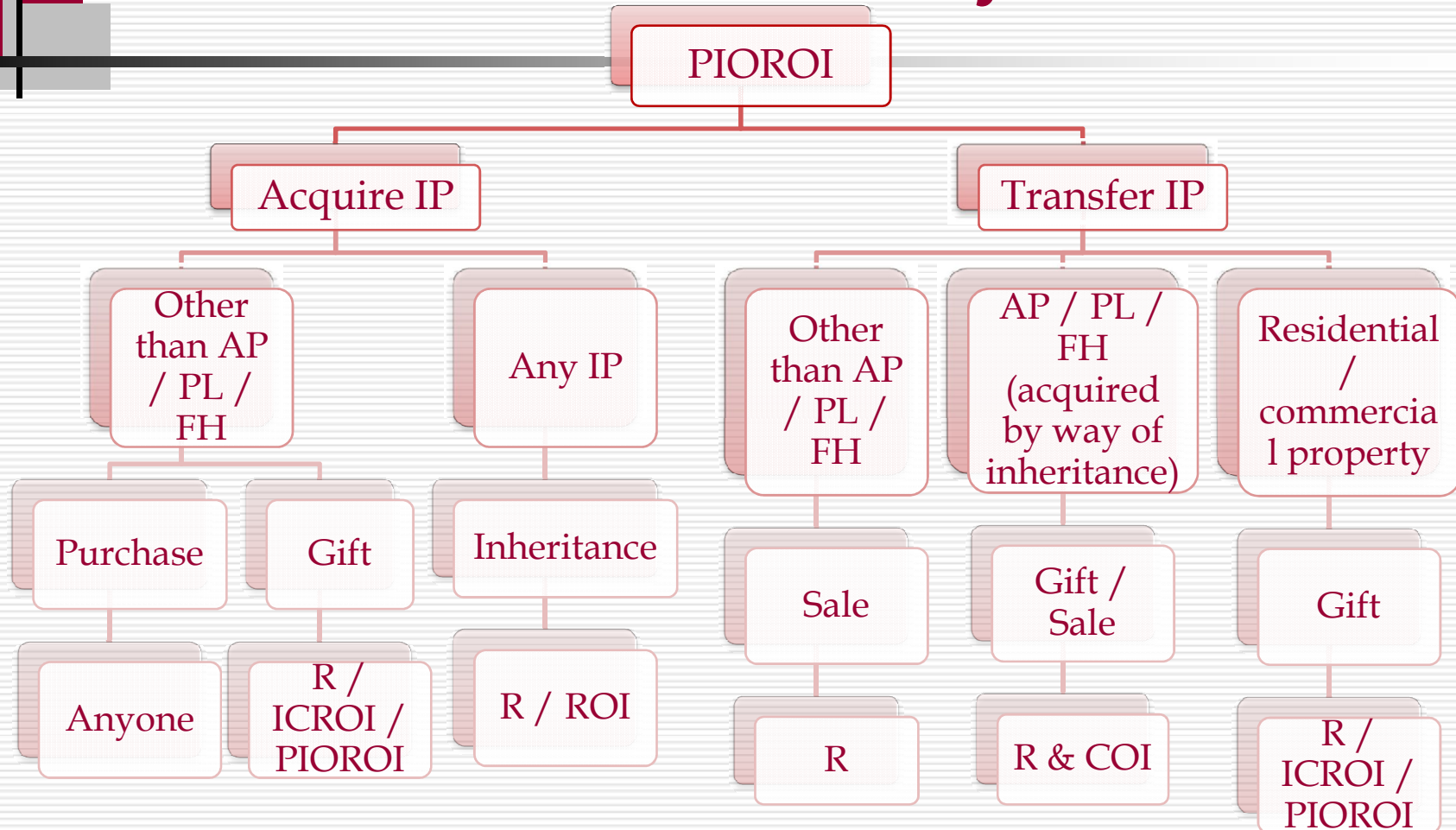
# Acquisition / Transfer of property in India by an ICROI



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



# Acquisition / Transfer of property in India by an PIOROI



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



# Investment in Immovable Properties

## Repatriation under USD 1 millions scheme:

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

## Refund in case of non-allotment of flat / plot / cancellation of bookings / contracts (Master Circular on Acquisition and Transfer of Immovable Property in India by NRIs/PIOs/Foreign Nationals of Non Indian Origin):

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



# Availing loan against security of immovable property

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



# Availing loan for purchase of immovable property

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



# Foreign Direct Investment Policy

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



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

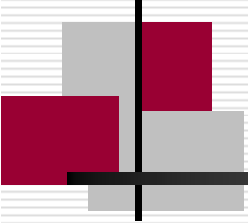
- NRIs can invest under FDI scheme in sectors / activities at Annex B of Schedule 1 of FEMA 20 subject to applicable laws, regulations and conditionalities.
- In sectors/activities not listed in Annex B, 100 % FDI is permitted under automatic route.
- However, FDI in following sectors / activities is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



## Transfer of Shares by NRI to NR

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





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

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





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

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

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



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

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



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

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



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

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



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

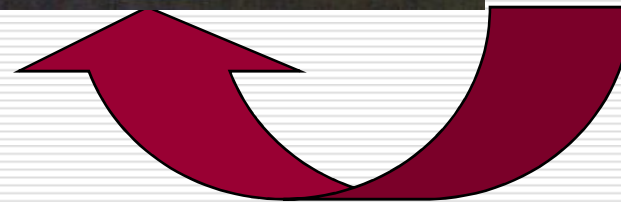
- The receipt of consideration shall be reported by LLP in Form FDI LLP I within 30 days of the receipt of consideration along with KYC report of NR investor and valuation report.
- LLPs are not permitted to raise ECBs.



## Transfer from NRO to NRE A/c

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

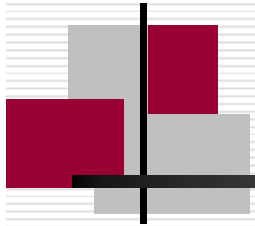
# Overseas Direct Investments (ODI)



*Shah & Modi*

CHARTERED ACCOUNTANTS

# Liberalized Remittance Scheme (LRS)







# LRS for Resident Individuals

- A resident individual (including minors) is allowed to remit up to USD 2,50,000 (w.e.f June 1, 2015) per financial year (April-March) for any permitted current or capital account transactions or a combination of both.
- With effect from July 7, 2013, the scheme is available for remittances for acquisition of immovable property directly or indirectly outside India.
- The permissible transactions under this scheme include acquisition of shares- both listed and unlisted of an overseas company/ debt instrument/ mutual funds/ any other asset outside India, etc.
- For undertaking transactions under this Scheme, resident individuals may use the prescribed application-cum-declaration form. PAN number is mandatory to make remittances under the Scheme.



# LRS for Resident Individuals

- The limit of USD 2,50,000 under the Scheme also includes remittances towards gift and donation by a resident individual.
- A resident individual is permitted to **gift in rupee to his NRI/PIO close relative** under the LRS and credit the same to his NRO A/c. [A.P.(DIR Series) Circular No.17 dated September 16, 2011]
- A.P. (DIR Series) Circular No. 90 dated March 06, 2012:
  - Remittances under the facility can be consolidated in respect of family members subject to individual family members complying with the terms and conditions of the scheme;
  - Remittances under the scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.



# Meaning of ODI

- Investment by an Indian party, either under Automatic or Approval route, by way of contribution to capital or subscription to the MOA of foreign entity or by way of purchase of existing shares of foreign entity either by
  - *Investment through stock exchange; or*
  - *Private placement; or*
  - *Market purchase; or*
  - *Investment in a Joint Venture or Wholly Owned Subsidiary abroad.*
- But does not include Portfolio Investment.



# Overseas Investment – Resident Individuals

- ODI route introduced by FEMA 263 dated 05.08.2013 for resident individuals (Regulation 20A and Schedule V of FEMA 120)
  - JV/WOS to be engaged in bonafide business activities except real estate / banking / financial services
  - ODI in “non-co-operative countries and territories” as per FATF not permitted.
  - Resident individual not to be on RBI cautions list/defaulters list



# Overseas Investment – Resident Individuals (Contd...)

- Limit of investment in JV/WOS as per LRS limit (currently USD 2,50,000 per annum).
- Investment made by EEFC/RFC account also included in prescribed LRS limit
- JV/WOS to be operating company – No step down subsidiary to be acquired or set up by JV/WOS
- Valuation as applicable to ODI by companies.
- Reporting and Post investment conditions – write off not permitted in cases of disinvestments.



# ESOP Purchases

- A person resident in India who is an individual can purchase equity shares offered by a foreign company under its ESOP schemes if he is an employee or director of an Indian office or branch or subsidiary of foreign company. ( Regulation 22 (2) of Notification No. 120)
- A person resident in India may transfer by way of sale the shares acquired as stated above.
- Proceeds to be repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.

# Questions ...



FIRST DESERVE

AND THEN

DESIRE

THANK YOU

