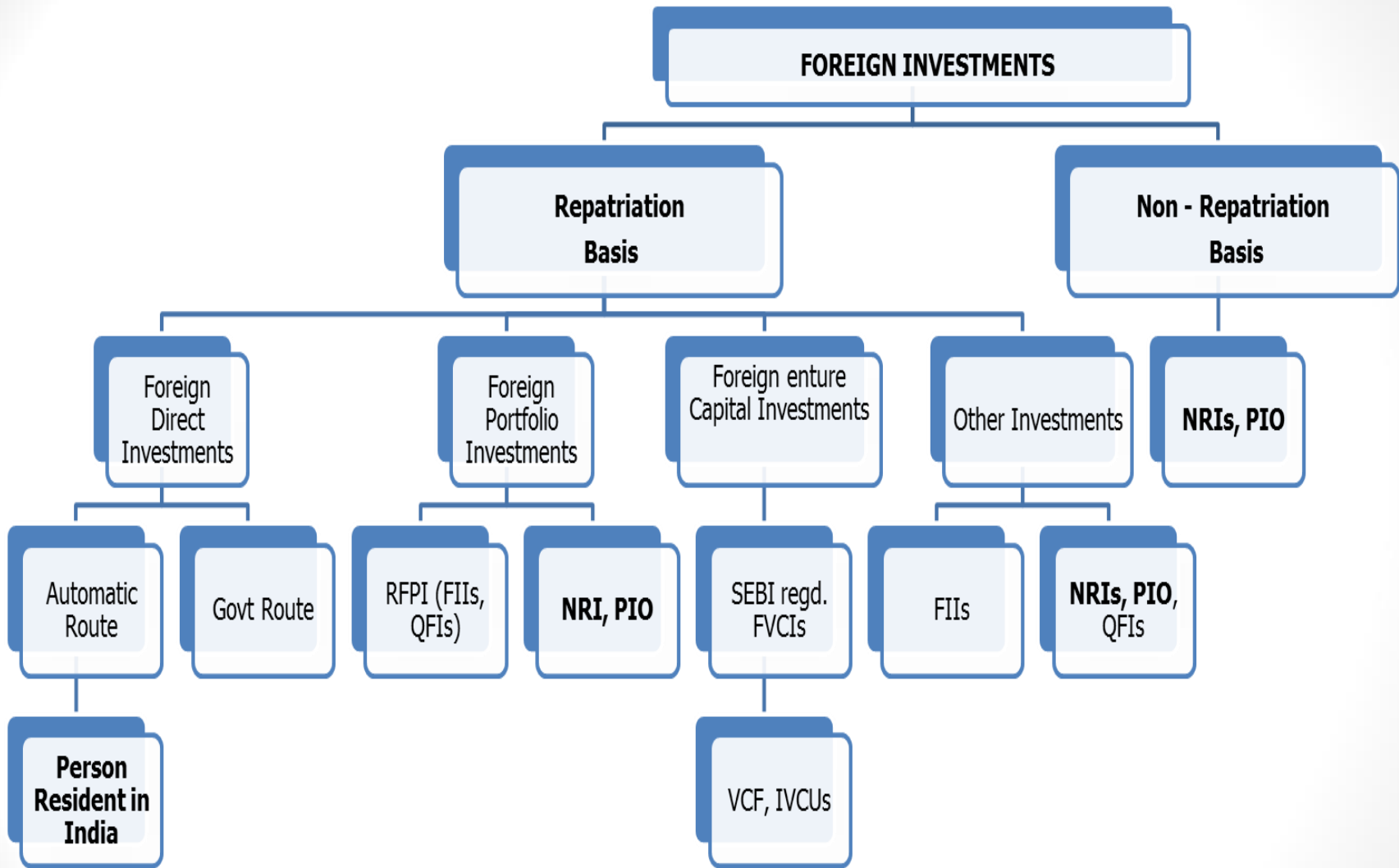


Investment in India by NRI – Regulatory Framework

Rajesh P Shah
Partner

M/s. Jayantilal Thakkar Associates



Avenues available for NRIs

- **Investment in Shares / Securities**
- Repatriable investment
 - Foreign Direct Investments
 - FPI
- Non repatriable investment
- **Investment in Immovable Property**
- **Investment in Partnership firms / LLP**
- **Gift / Loan**

Foreign Direct Investment

- **'FDI'** means investment by non-resident entity/person resident outside India in the capital of an Indian company under **Schedule 1** of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000
- Investment under **Schedule 1** is **repatriable** on exit in **convertible foreign exchange**.

FDI

- NRIs resident as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies 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.

FDI

- Sectoral caps, Pricing guidelines applicable to such investments
- Entry and exit conditions to certain sectors
- Downstream regulations also applicable if original investments made by NRI
- Reporting requirements on investment and exit.

FDI - Prohibitions

- Lottery Business including Government /private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit Funds (Note 1)
- Nidhi company
- Trading in Transferable Development Rights (TDRs)

FDI - Prohibitions

- Real Estate Business or Construction of Farm Houses (Note 2)
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities / sectors not opened to private sector investment including Atomic Energy and Railway operations (other than permitted activities)

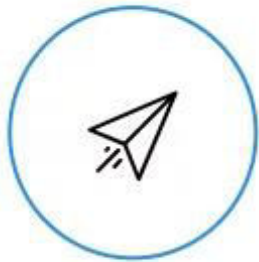
Cont...

- **Notes:**
- **1. NRIs are eligible to subscribe** to chit funds on non-repatriation basis subject to specified conditions
- **2. “Real estate business”** means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

Cont...

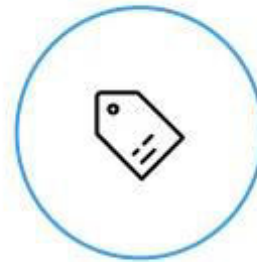
- Further, earning of rent/income on lease of property, not amounting to transfer, will not amount to real estate business.

FDI Reporting flow



Within 30 days, the company must report to FDI about the FDI received.

Advance Reporting

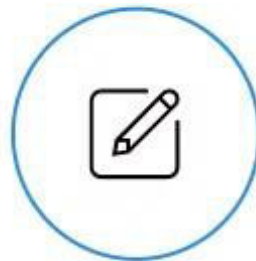


Within 30 days of issuing shares, Form FC-GPR must be filed with the RBI.

FC-GPR

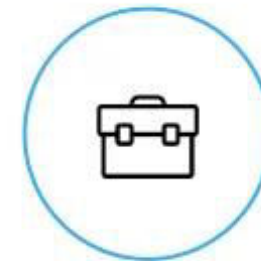
Receipt of FDI

Money is received by the Company from the Foreign Director Investment for subscribing to shares of the Company.



Issue of Shares

Within 180 days of receiving the money, the company must allot shares to the Foreign Direct Investor.



Reporting on transfer of shares



- Liability casted on person Resident in India to file FC-TRS

Filing website : ebiz

- <https://services.ebiz.gov.in/app/services>

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Foreign Portfolio Investment

- The portfolio investor registered in accordance with SEBI guidelines shall be called 'Registered Foreign Portfolio Investor (RFPI)'
- The existing portfolio investor class, namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be subsumed under RFPI

Foreign Portfolio Investment

- No control on ultimate investment made in India
- Similar to pooling of investments made by Mutual funds
- RFPI may purchase/sell Shares / Convertible Debentures or warrants of Indian company through registered broker on recognised stock exchange as well as FPOs/ IPOs offered to general public.

Investment under Schedule 4

- Investment made by NRI under Schedule 4 is similar to investment made by resident Indian
- Sectoral caps, Pricing guidelines not applicable
- Exit conditions as required under Schedule 1 not applicable
- No reporting requirement on investment
- Transfer to another resident will not require RBI permission or any reporting under FEMA

Investment in Immovable Property in India

- No definition of Immovable Property in FEMA
- It includes all kinds – Residential, Commercial, Industrial or agricultural
- **Regulation Governing Investment:**
 - S.6(3)(i) of FEMA / Notification 21 – Acquisition or Transfer by NRI / PIO (it excludes lease for a period not exceeding 5 years)

Investment in Immovable Property in India

- Notification 20 – FDI in Real Estate / Construction – Development projects in India
- Thrust on Residential Status important not citizenship

Cont...

- **General Exemption – Sec 6(4) & (5) of FEMA**

“(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.”

“(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.”

Provisions for NRIs

- NRIs can **PURCHASE** any immovable property (other than agricultural land/ plantation property/ farm house) in India.
- An NRI may **TRANSFER** any immovable property in India **to a person resident** in India;
- An NRI may **TRANSFER** any immovable property (other than agricultural land or plantation property or farm house) **to an NRI or a PIO resident outside** India.

Provisions for NRIs

- Payment to be made - through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE/ FCNR (B)/ NRO account;
- Payments **cannot** be made either by traveller's cheque or by foreign currency notes or by other mode

Cont..

- **Restrictions on Citizens of 10 Countries:**
 - Pakistan, Bangladesh, Sri Lanka, Afghanistan, China , Iran, Hong Kong, Macau, Nepal or Bhutan
- **GIFT :**
 - General permission for acquisition through purchase of immovable property in India by:
 - Non- Resident Indian (NRI)
 - Person of Indian Origin (PIO)

GIFT Cont..

- Foreign nationals of non-Indian origin who are resident in India (except 10 listed countries)
- NRIs and PIOs can freely acquire immovable property by way of gift either from –
 - a person resident in India; or
 - an NRI; or
 - a PIO.

Cont..

- Agricultural land / plantation property/ farm house in India cannot be acquired by way of purchase / gift.
- A foreign national of non-Indian origin who is not a resident of India cannot acquire any immovable property in India by way of purchase or gift.

INHERITANCE:

- NRI/ PIO/ Foreign national of non-Indian origin can inherit immovable property from
 - (a) a person resident in India
 - (b) a person resident outside India
- However, the person from whom the property is inherited should have acquired the same in accordance with FEMA regulations or earlier laws, applicable at the time of acquisition of the property.

Transfer by NRI / PIO

- NRI can sell/ gift property in India (other than agricultural land/ Plantation/ farm house) to
 - a person resident in India; or
 - an NRI; or
 - a PIO
- PIO can sell / gift property in India
 - other than agricultural land/ Plantation/ farm house to a person resident in India; or

Transfer Cont..

- agricultural land/ farm house/ plantation property in India, to a person resident in India who is a citizen of India ; or
- residential or commercial property in India, to a person resident in India or to an NRI or to a PIO resident outside India
- NRI / PIO can sell/ gift agricultural land/ plantation property/ farm house in India **only to a person resident** in India who is a citizen of India.

Transfer Cont..

- Foreign national of non-Indian origin and Citizens of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan or Macau or Hongkong can sell/ gift property in India **with prior approval of the Reserve Bank** only.

Repatriation

- **Repatriation of sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) :-**
 - Property should have been acquired in accordance with FEMA/ earlier foreign exchange laws
 - Amount to be repatriated not to exceed original amount paid in foreign currency
 - Residential Property – repatriation is restricted to two properties.

Repatriation Cont..

- A person referred to in S.6(5) or his successor requires prior RBI approval for repatriation of sale proceeds.

- AP Dir Circular 46 Dated 12.11.2002

NRIs / PIOs allowed credit of refund of application / earnest money / purchase consideration on account of non-allotment / cancellation of bookings for purchase of residential / commercial property,

Repatriation Cont..

- together with interest, if any, (net of income tax) to NRE/FCNR account if originally paid out of NRE/FCNR account/ Remittance from outside India provided AD is satisfied about the genuineness of the transaction.

Other Aspects

- **Renting of residential / commercial property purchased out of foreign exchange / rupee funds**
 - NRI/ PIO can rent out the property without approval of the RBI
 - Rent can be credited to NRO Account or credited to NRE Account / Directly remitted abroad subject to payment of appropriate taxes

Other Aspects

- **Holding of immovable property bought before becoming an NRI/ PIO**
 - A person who has bought residential/ commercial property/ agricultural land/ plantation property/ farm house in India when he was a resident, can continue to hold the immovable property without RBI approval even after becoming an NRI/PIO

Investment in Partnership firm

- **NRI / PIO can invest in Capital of Partnership firm / Proprietary concern on Non repatriable basis provided:**
 - Investment by inward remittance or out of NRE / FCNR(B) / NRO account
 - Firm or proprietary concern is not engaged in any agricultural / plantation or real estate business

Investment in Partnership firm

- NRIs / PIO may seek **prior permission** of Reserve Bank for investment in sole proprietorship concerns / partnership firms **with repatriation benefits**

Investment in LLPs

- **Following persons shall not be eligible to invest in LLPs:**
 - a citizen/entity of Pakistan and Bangladesh or
 - a SEBI registered Foreign Institutional Investor (FII) or
 - a SEBI registered Foreign Venture Capital Investor (FVCI) or
 - a SEBI registered Qualified Foreign Investor (QFI) or

Investment in LLPs Cont..

- a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India(Foreign Portfolio Investors) Regulations, 2014 (RFPI).

Sectors under 100% automatic route are eligible for LLP Investment

- **Following investment not permitted in LLPs**
 - Sectors under 100% automatic but subject to FDI linked conditions

Investment in LLPs Cont..

- Sectors eligible less than 100% under automatic route
- Sectors eligible to accept FDI under Government Approval route
- Agricultural/plantation activity and print media
- Sectors not eligible to accept FDI (Prohibited)

- Only **INDIVIDUAL & BODY CORPORATE** can be a partner in LLP (Sec 5 of LLP Act, 2008)

Investment in LLPs Cont..

- **PRICING Provisions**

- FDI in an LLP either by way of **capital contribution** or by way of acquisition / **transfer of 'profit shares'**
- Has to be **more than or equal to the fair price**
- **Valuation certificate** required (Chartered Accountant / Cost Accountant / Govt panel approved Valuer)

Investment in LLPs Cont..

- Transfer provisions – Similar to FDI
- **Mode of Payment**
 - through normal banking channels
 - debit to NRE/FCNR(B) account with an AD Category - I bank.
- **Reporting**
 - To RBI the details of the receipt of the amount in 30 days

Investment in LLPs Cont..

- In Form FOREIGN DIRECT INVESTMENT-LLP(I)
Copy/ies of the FIRC/s
- The KYC report on the non-resident investor
- Valuation certificate

- **Disinvestment / transfer of capital contribution or profit share**
 - to be reported within 60 days
 - in Form FOREIGN DIRECT INVESTMENT-LLP(II)

Investment in LLPs Cont..

- **An LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.**

Borrowings from NRI

- **Borrowing in INR by persons other than companies**
 - Borrowing shall be only on a **non-repatriation** basis
 - To be received by inward remittance or by debit to NRE/NRO/FCNR(B)/NRNR/NRSR account of the lender,
 - Period of loan shall **not exceed 3 years**

Borrowings from NRI

- Rate of **interest** on the loan shall **not be more than two per cent** above Bank Rate prevailing on the date of availment of loan
- Payment of interest and repayment of principal shall be made only to the **NRO account** of the lender.

Gift from NRIs

- Any person resident outside India may transfer share/ fully and mandatorily convertible debentures to a person resident in India by way of gift.
- a NRI may transfer by way of gift, the shares/convertible debentures held by him to another NRI.
- A NRI can gift in the form of money / cash transfer / bank transfer to a relative / non relative resident in India irrespective of any amount.

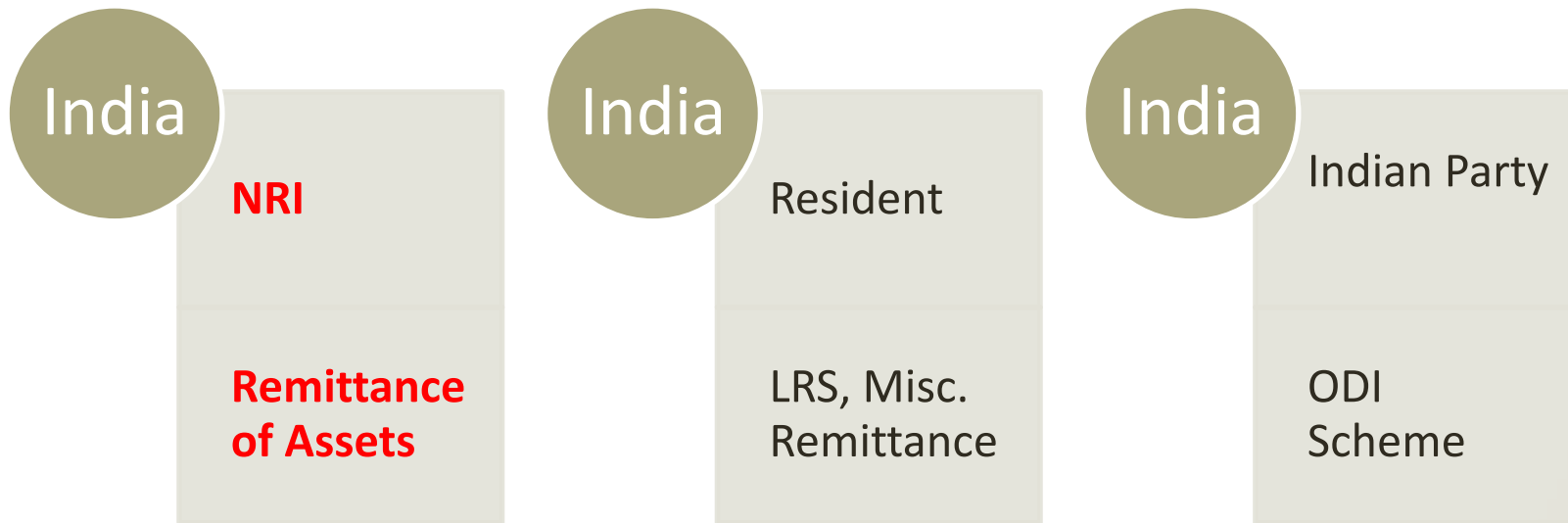
Investments Outside India with Rupee funds for NRI – Regulatory Framework

Rajesh P Shah

Partner

M/s. Jayantilal Thakkar Associates

Forex flow from India



Regulatory framework for NRIs

- Foreign Exchange Management Act, 1999 (Remittance of Assets) Regulations, 2000. Notification No.13/2000-RB dated May 3, 2000.
- Foreign Exchange Management Act, 1999 (Deposit) Regulations, 2000. Notification No.5/2000-RB dated May 3, 2000.

1 Million USD Scheme

Remit an amount up to **USD 1 million per financial year, out of the balances held in his NRO account/sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement)** for all bona fide purposes, to the satisfaction of the AD bank,

Remit **sale proceeds of immovable property purchased out of Rupee funds** (as a person resident in India) without any lock in period subject to-

- submit documentary evidence in support of purchase, inheritance or legacy of assets
- An undertaking by the remitter
- Certificate by CA in the prescribed format

1 Million USD Scheme

- **A foreign national of non-Indian origin (other than Nepal / Bhutan / PIO)**
- If retired from employment in India
- If inherited assets in India from person outside India
- If inherited from deceased spouse, who was an Indian national resident in India (remittance through same AD if in tranches)

1 Million USD Scheme

- Remittance of balances held on bank by a Foreign student who as completed his/her studies. (funds received from abroad / stipend / scholarship in India)
- **May remit upto USD 1 mn in a FY**

Remittance of Assets outside India

- Remittance of Rent, Dividend, Pension, Interest etc. of NRI/PIO (even those who do not maintain an NRO account) is freely allowed on the basis of
 - appropriate certification by a CA that the amount proposed to be remitted is eligible for remittance
 - and that applicable taxes have been paid/provided for.
- NRI/PIO have the option to credit the current income to their NRE (rupee) account provided
 - the AD 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 outside India

- The remittance facility in respect of sale proceeds 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

Remittance of Assets outside India

- Remittance of sale proceeds of residential house property – acquired out of inward foreign exchange remittance
- Up-to two residential house
- Limited to the extent of cost of acquisition only
- Balance proceeds can be remitted under USD 1 million scheme
- Residential accommodation acquired by loan

Remittance requiring RBI approval

- **Prior approval** of the Reserve Bank is necessary for remittance of assets where:
- a) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year
 - (i) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;
 - (ii) by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

Remittance requiring RBI approval

- b) Hardship will be caused to a person if remittance from India is not made to such a person.
- Remittance of funds from the sale of assets in India held by a person, whether resident in or outside India, not covered under the directions stipulated will require approval of the Reserve Bank.

Loan provisions for NRIs

- Authorised Dealers/ banks in India can grant loans against the security of the funds held in NRE accounts to the account holder/ third party in India
 - The loan **cannot be repatriated outside** India
 - It shall be **used for** the following purposes:
 - **personal** purposes or for carrying on **business activities** except
 - relending
 - carrying on agricultural/ plantation activities

Loan provisions Cont...

- Investment in real estate business;
- Capital market investment (including margin trading and derivatives)
- **making direct investment in India on non-repatriation** basis by way of contribution to the capital of Indian firms/ companies subject to the provisions of the relevant Regulations made under the Act;

Loan provisions Cont...

- **acquiring flat/ house in India** for his own residential use subject to the provisions of the relevant Regulations made under the Act
- These loans can be **repaid by relatives** (as defined under Companies Act) of NRI

INR Loans by Resident Individual to NRI

- The loan is free of interest
- Minimum maturity of the loan is one year;

Loan provisions Cont...

- The loan amount should be within the overall limit under the Liberalised Remittance Scheme per financial year available for a resident individual
- The utilisation of loans shall meet the provisions;
- The loan amount shall not be remitted outside India but shall be credited to the NRO account of the borrower;

Loan provisions Cont...

- Repayment by way of inward remittances from outside India or by debit to the NRO/NRE/FCNR(B) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

Gift to NRIs

- A person resident in India who proposes to transfer security by way of gift to a person resident outside India [other than an erstwhile OCBs] will have to take RBI permission for the same.
- Remittance of gift by a resident Indian falls under Liberalised remittance scheme and consequently it falls within the cap of USD 250000 per financial year.

Gift to NRIs

- The amount gifted under the LRS should be the own funds of such resident and should not be borrowed funds.

Case Studies

THANK YOU

