



DAY 03 || Comprehensive Course on
Foreign Exchange Management, 1999

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Non-Resident Indian

- Non-resident Indian (NRI) is not defined under the FEMA Act.
- Under Notification 5(R)- **Deposits** – Regulation 2(vi) – NRI is defined as under-
 - vi) 'Non-Resident Indian (NRI)' means a Person resident outside India who is a citizen of India.
 - Old definition - “An NRI is a Person resident outside India who is a citizen of India or is a Person of Indian Origin”.
- Under **Foreign Exchange Management (Non-Debt Instruments) Rules, 2019** - Regulation 2(aj), the term is defined as under-
 - (aj) ‘NRI’ or ‘Non-Resident Indian means an individual resident outside India who is a citizen of India;
- Therefore, now there is uniform definition of NRI under FEMA Notifications, all of which **exclude** PIO or Overseas Citizen Of India (OCI).
- Therefore the nomenclature NRI should be used only for a Citizen of India who is a resident abroad.

Person of Indian Origin (PIO)

- Person of Indian Origin “PIO” is not defined under the FEMA Act.
- However, **Notification- 5 (R)- Deposits** – issued by RBI vide Regulation 2 (x) defines the term PIO as under-
- A PIO is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:
 - a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
 - b) Who belonged to a territory that became part of India after the 15th day of August 1947; or
 - c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
 - d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: For this regulation, PIO includes an ‘Overseas Citizen of India’ cardholder within the meaning of

Section 7(A) of the Citizenship Act, 1955.

PIO concept is gradually being replaced by the concept of OCI. Therefore, PIOs should be advised to obtain OCI Cards at the earliest to avoid operational difficulties.

Overseas Citizen of India (OCI)

▪ Definition provided under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 – Para 2(ak)

Overseas Citizen of India “OCI” means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955 (57 of 1955);

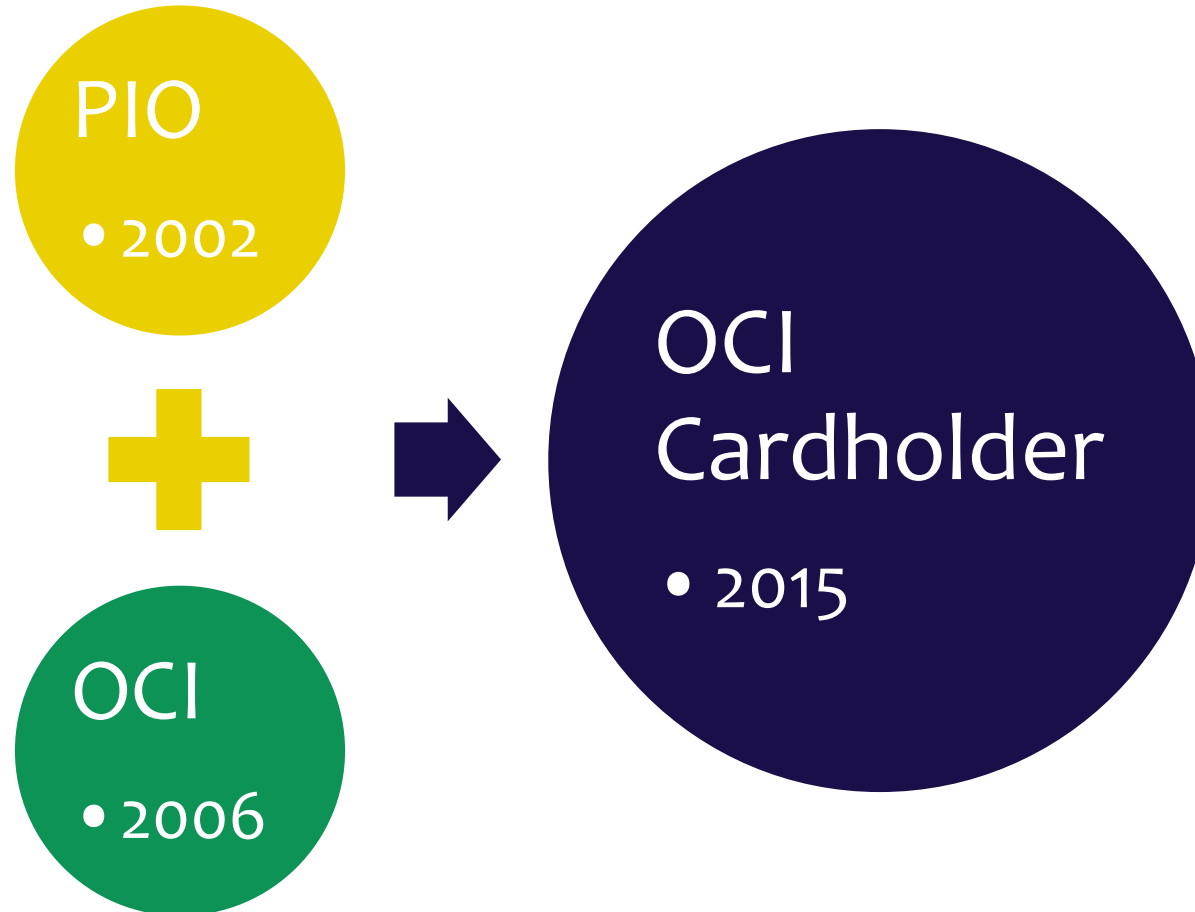
▪ Following categories of foreign nationals are eligible for registration as OCI Cardholder:

- Who was a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or
- who was eligible to become a citizen of India on 26.01.1950; or
- who belonged to a territory that became part of India after 15.08.1947; or
- who is a child or a grandchild or a great grandchild of such a citizen; or
- who is a minor child of such persons mentioned above; or
- who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or
- spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

Overseas Citizen of India (OCI)

No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.

Citizenship (Amendment) Act, 2015 || 6 January 2015





Accounts || Accounts || Accounts

By Residents and Non residents



Investment by NRI

Bank Accounts

Foreign Exchange Management (Deposit) Regulations, 2016

Investment in Immovable property

Foreign Exchange Management (Acquisition and Transfer of Immovable Property India) Regulations, 2015

Amended now

Foreign Exchange Management (Non debt instruments) Rules, 2019

Investment in Share and other securities

Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000

Amended now

Foreign Exchange Management (Non debt instruments) Rules, 2019

Borrowing and lending by NRI

Foreign Exchange Management (Borrowing and lending) 2018

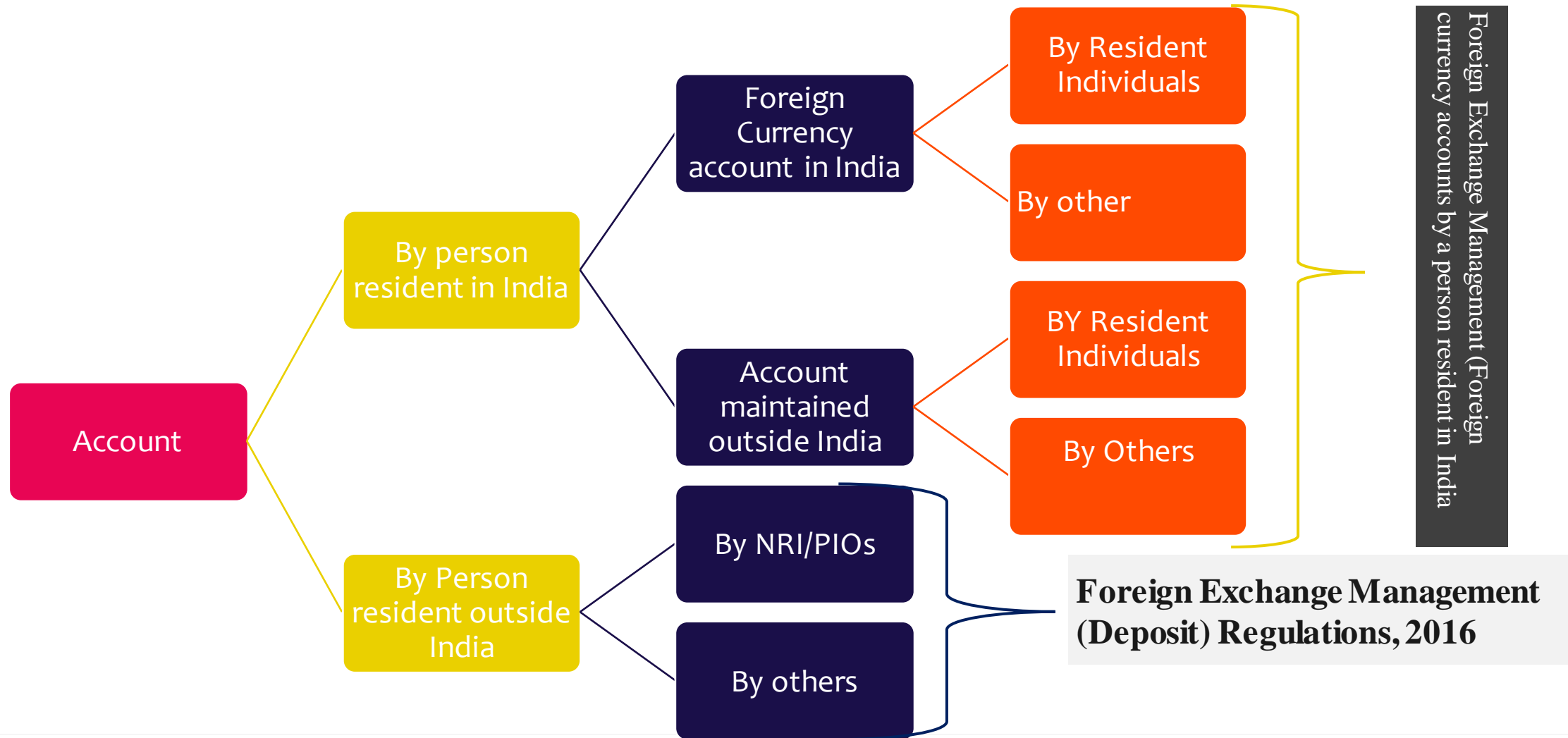
Capital contribution in any proprietary or partnership concern in India

Foreign Exchange Management (Investment in firm or proprietary concern in India) Regulations, 2000 vide Notification No. FEMA 24 /2000-RB dated 3rd May 2000

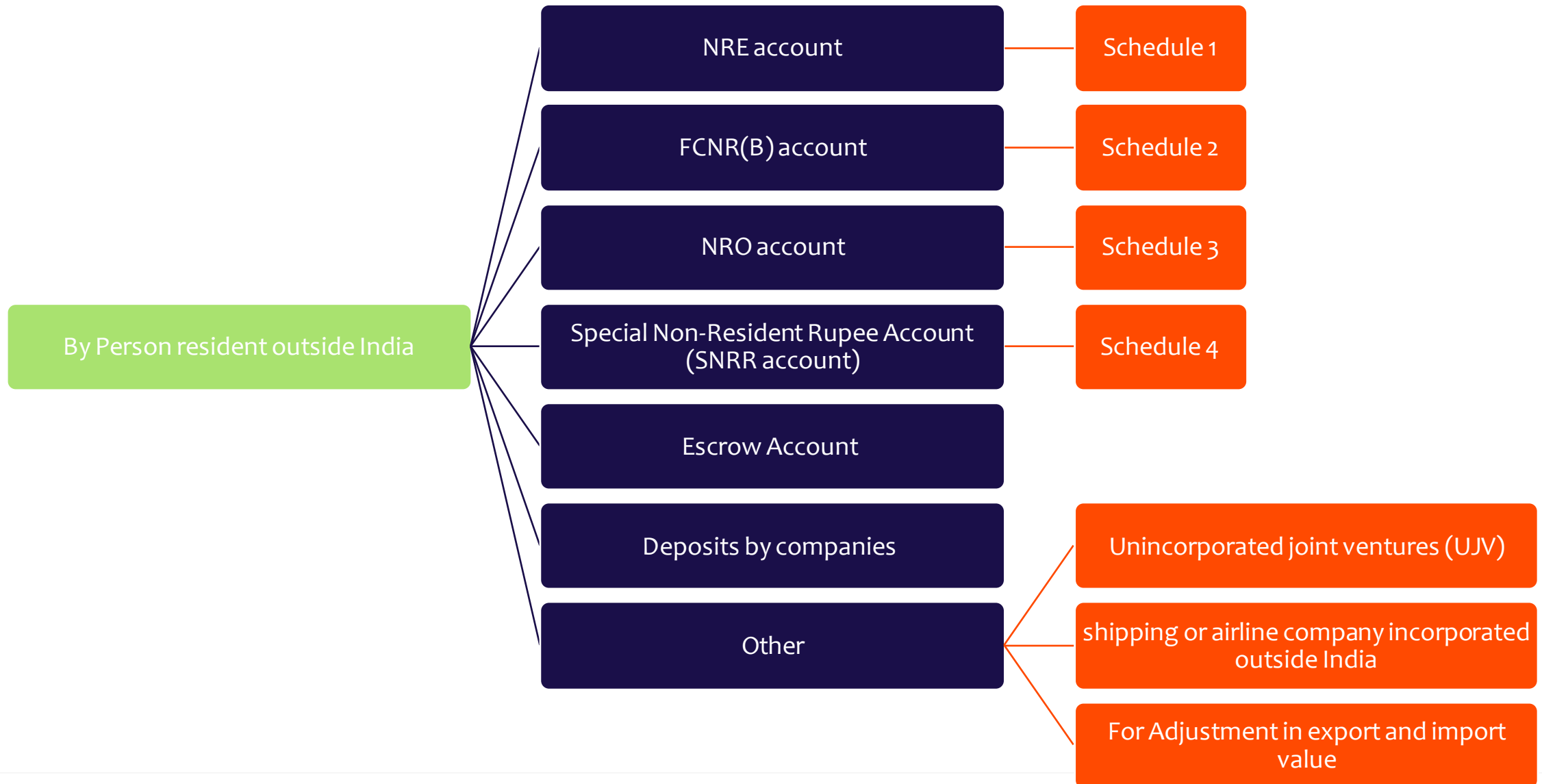
Remittance of Assets

Foreign Exchange Management (Remittance of Assets) Regulations, 2016

Accounts by Person resident outside India



Foreign Exchange Management (Deposit) Regulations, 2016



Foreign Exchange Management (Deposit) Regulations, 2016

- Regulations – FEMA 5/2000-RB on Foreign Exchange Management (Deposit) Regulations, 2016 amended from time to time.



NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
Who can open an account	<ul style="list-style-type: none"> NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI) 	<ul style="list-style-type: none"> NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI) 	<ul style="list-style-type: none"> Any person resident outside India (including NRI/PIO) (Individual/Entities of Pakistan & Bangladesh require prior approval of RBI)
Who is authorized to open	<ul style="list-style-type: none"> Authorised Dealer Authorised Banks (including co-op bank other than AD) 	<ul style="list-style-type: none"> Authorised Dealer Authorised Banks (including co-op bank) Regional Rural Bank 	<ul style="list-style-type: none"> Authorised Dealer Authorised Banks (including co-op bank other than AD)
Currency	<ul style="list-style-type: none"> INR 	<ul style="list-style-type: none"> Forex (Any foreign currency which is freely convertible) 	<ul style="list-style-type: none"> INR
Type of Account	<ul style="list-style-type: none"> Savings Current Recurring/Fixed Deposit 	<ul style="list-style-type: none"> Term Deposit only 	<ul style="list-style-type: none"> Savings Current Recurring/Fixed Deposit
Period for fixed deposits	<ul style="list-style-type: none"> From 1 to 3 years (However, banks are allowed to accept NRE deposits > 3 years from their AL point of view) 	<ul style="list-style-type: none"> Between 1 to 5 years 	<ul style="list-style-type: none"> As applicable to resident accounts (eg: even 6 months)
Rate of Interest	<ul style="list-style-type: none"> As per guidelines issued by the Department of Banking Regulations 		

NRE Account vs. FCNR(B) Account vs. NRO Account

❖ NRE & FCNR (B) account

• Permitted Credits

- a) Inward remittances from o/s India through banking channels
- b) Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during temporary visit to India
- c) Tender of foreign currency / bank notes during temporary visit to India
- d) Transfers from other NRE/ FCNR(B) accounts
- e) Interest accruing on the funds held in the account
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest)
- g) Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India thru banking channels
(FEMA Notf. 21/2000 - Sale of immovable property in India: Credit to NRE a/c restricted to 2 properties during lifetime and also restricted to the amount of investment made from NRE a/c)
- a) Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if subscription amount was paid from NRE/ FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels
- b) Refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon), was paid from NRE / FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels and AD is satisfied about the genuineness of the transaction

NRE Account vs. FCNR(B) Account vs. NRO Account

❖ NRE & FCNR (B) account

•Permitted Debits

- a) Local disbursements
- b) Remittances outside India
- c) Transfer to NRE/ FCNR(B) 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 RBI

•FCNR(B): If inward remittance is in currency other than designated currency, currency conversion costs for conversion into designated currency to be borne by remitter. Fully covered swap is permitted in such cases.

NRE Account vs. FCNR(B) Account vs. NRO Account

❖ NRO account

• Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Tender of any permitted currency during his temporary visit to India
- c) Legitimate dues in India of the account holder
- d) Transfers from other NRO accounts
- e) Rupee gift / loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS

• Permitted Debits

- a) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
- b) Remittance outside India of current income in India of the account holder net of applicable taxes
- c) Transfers to other NRO accounts
- d) Remittances abroad/ Transfer to NRE Account under USD 1 Million Scheme, subject to conditions
- e) Settlement of charges on International Credit Cards issued by AD in India to NRIs or PIOs, up to USD 1 Million per financial year

NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
Repatriability	<ul style="list-style-type: none"> • Repatriable 	<ul style="list-style-type: none"> • Repatriable 	<ul style="list-style-type: none"> • Not repatriable except for all current income. • Individual: Balances in an NRO account of NRIs/PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets. • Entities: RBI permission
Taxability	<ul style="list-style-type: none"> • Exempt 	<ul style="list-style-type: none"> • Exempt 	<ul style="list-style-type: none"> • Taxable
Joint account	<ul style="list-style-type: none"> • Jointly with two or more NRIs/PIOs • Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013) • The resident relative can operate the account as a Power of Attorney holder during the lifetime of the NRI/PIO account holder. 		

NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
Operations by resident POA holder	<p><u>Permitted</u></p> <ul style="list-style-type: none"> • Withdrawal for local payments • Make investments in India • Remittance to account holder himself thru banking channels <p><u>Prohibited</u></p> <ul style="list-style-type: none"> • Remittance outside India to other than account holder himself • Make payment by gift to resident 		<p><u>Permitted</u></p> <ul style="list-style-type: none"> • Withdrawal for local payments • Make investments in India • Remittance outside India of current income, net of taxes <p><u>Prohibited</u></p> <ul style="list-style-type: none"> • Remittance outside India to other than account holder himself • Make payment by gift to resident
Loans outside India (Secured)	<ul style="list-style-type: none"> • AD may allow their branches/ correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements. • The term “loan” shall include all types of fund based / non-fund-based facilities 		<ul style="list-style-type: none"> • Not permitted

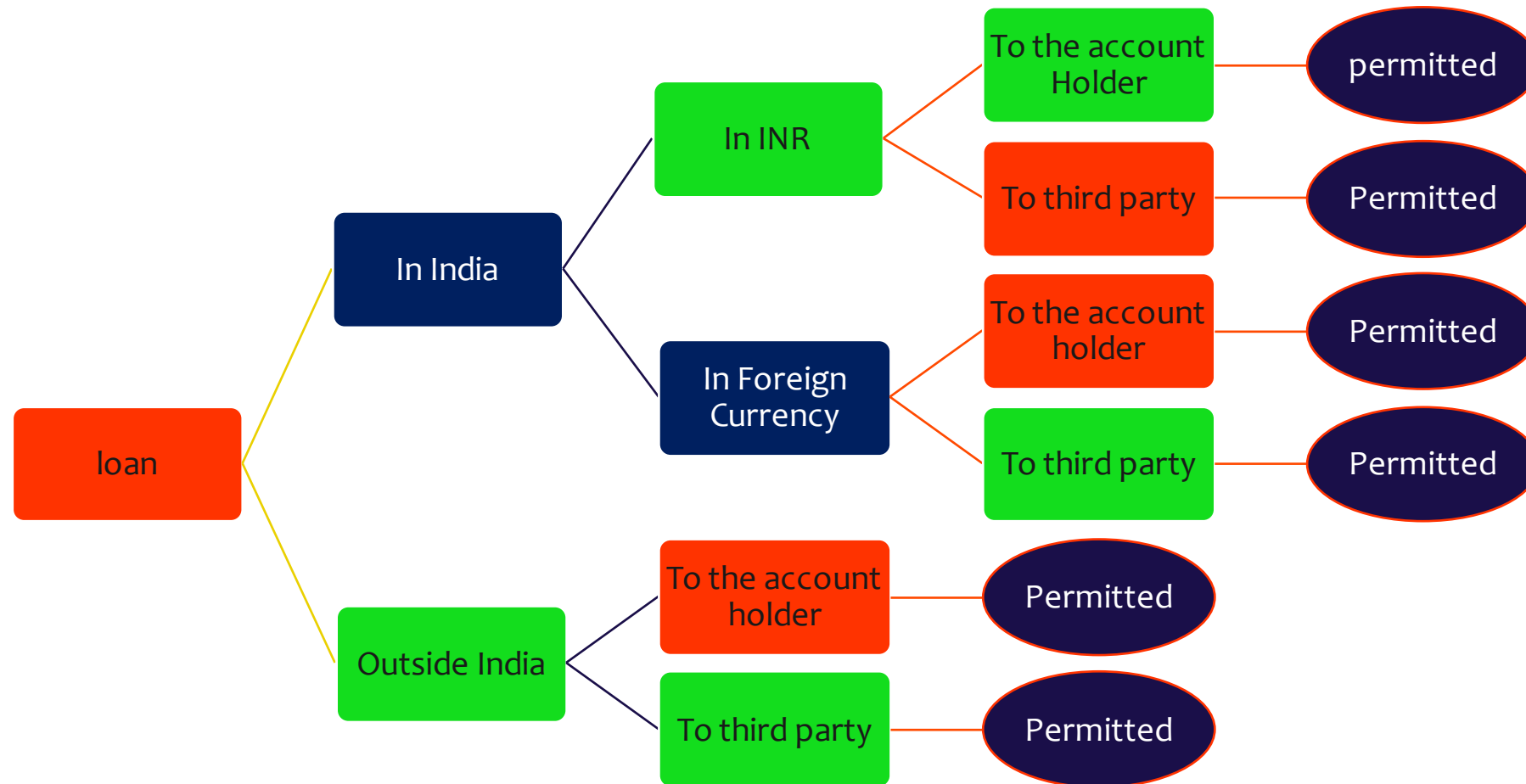
Loan Against the Deposit



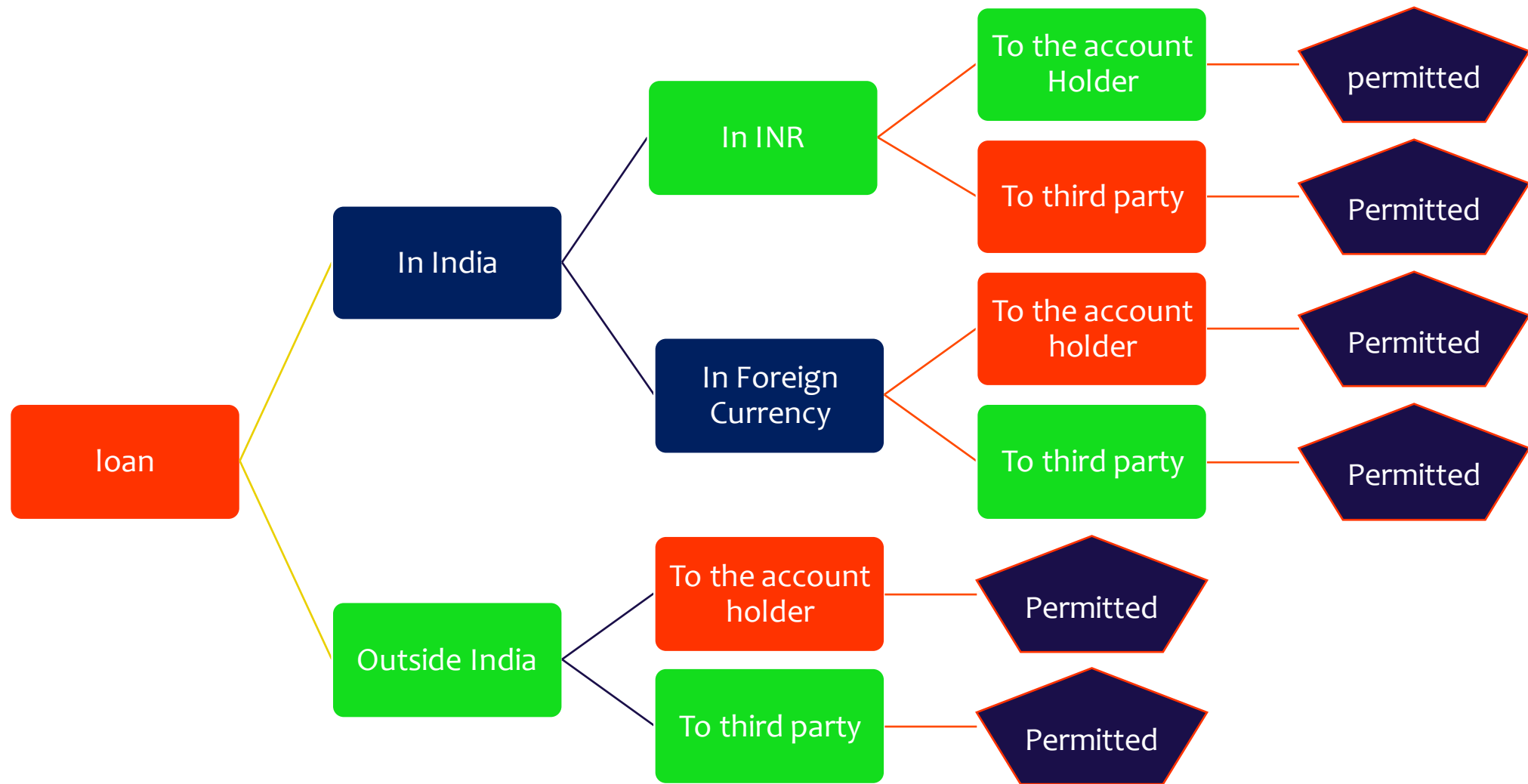
NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
Loans in India	<ul style="list-style-type: none"> AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements. The proceeds of loan cannot be repatriated outside India Should be used only for personal purposes or business purposes (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business) In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from o/s India thru banking channels or out of self NRO a/c The facility for premature withdrawal of deposits not be available in such cases The <u>term “loan” includes all types of fund based/non-fund-based facilities</u> 		<ul style="list-style-type: none"> Loans against the deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business. The <u>term “loan” includes all types of fund based/non-fund-based facilities</u>

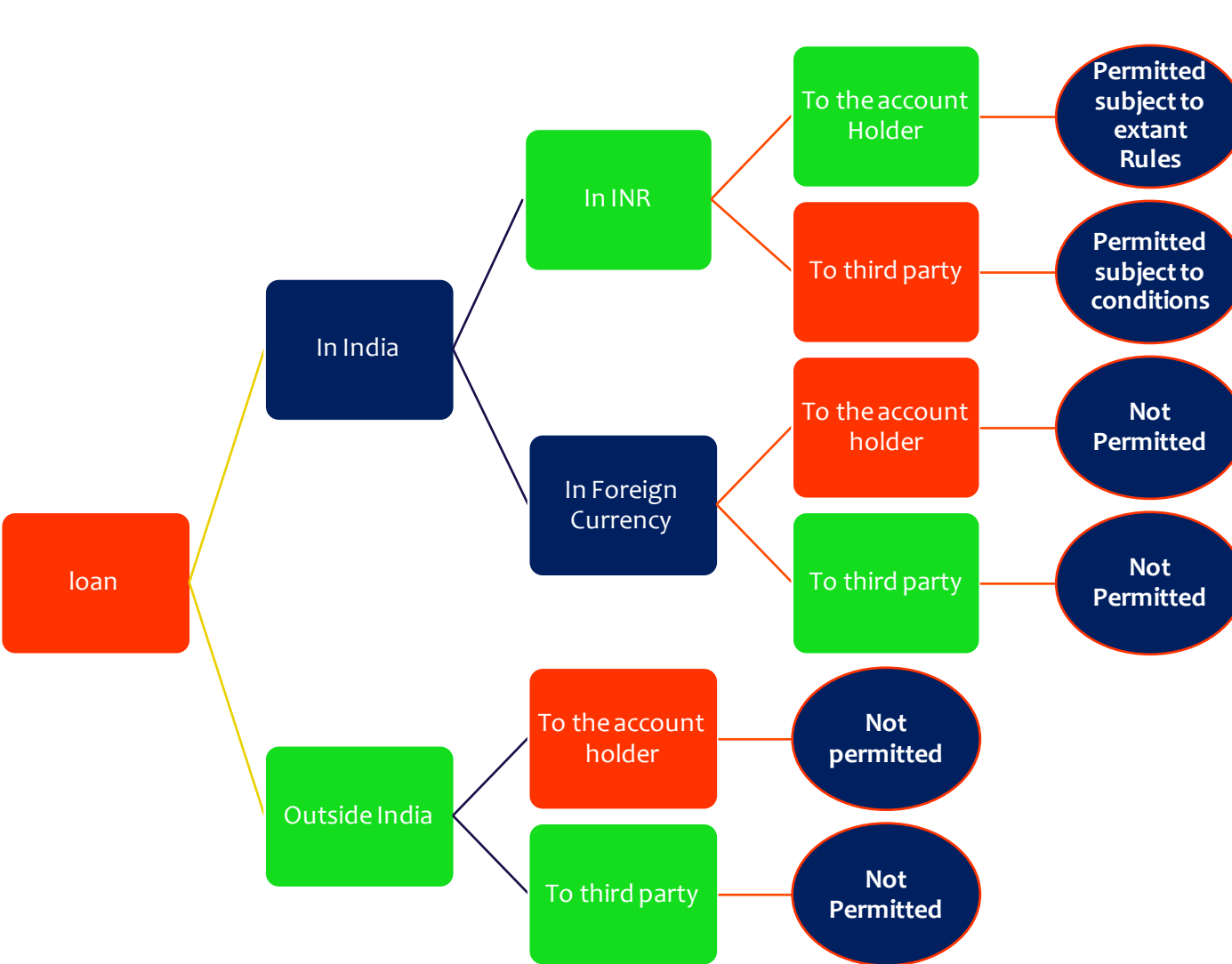
LOAN AGAINST DEPOSIT IN NRE A/C



LOAN AGAINST DEPOSIT IN FCNR (B) Account



LOAN AGAINST DEPOSIT IN NRO A/C



To the account holder

- Personal requirement and / or business purpose.*

To third party

- Personal requirement and / or business purpose*

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

Resident individual to lend to a Non-resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer.

The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;

PURPOSE OF LOAN –IN CASE OF NRE A/C AND FCNR (B) A/C

To the Account holder

- i) Personal purposes or for carrying on business activities*
- 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.

To Third Party

- Fund based and / or non-fund based facilities for personal purposes or for carrying on business activities *.

Abroad

- Fund based and / or non-fund based facilities for bonafide purposes.

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

LOAN AGAINST DEPOSIT IN NRO A/C

To the
account
holder

- Personal requirement and / or business purpose.*

To third
party

- Personal requirement and / or business purpose*

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

Resident individual to lend to a Non-resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer.

The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;

NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
Change in residential status from Non-resident to resident	<ul style="list-style-type: none"> NRE accounts should be re-designated as resident accounts or Funds held in these accounts may be transferred to the RFC accounts immediately upon change of residential status 	<ul style="list-style-type: none"> FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account 	<ul style="list-style-type: none"> <u>Change in status from PROI to PRI</u>: Immediately designated as resident accounts <u>Change in Status from PRI to PROI</u>: Immediately designated as NRO account

Change in Residential Status

Change of Residential Status

from Non resident to resident

From resident to non
resident

NRE Account
becomes RFC
Account

NRO Becomes
the regular
account

FCNR (B) can
continue
maturity- then
RFC Account

Regular account
becomes NRO
account

RFC Account
becomes NRE
Account

Case Study 1- Change in Residential Status

- Mr. XG is an Indian Resident.
- In April 2019 he takes up employment in USA
- As on date, he maintains the following Bank Accounts / Deposits in Bank of Baroda in India
- The account is held jointly with his close relatives:

Nature of Deposit	Type of Holding	Amount
Fixed Deposit	First Name	Rs. 20,00,000
Current Account	First Name	Rs. 50,00,000
Resident Foreign Currency Account – RFC(D)	First Name	US \$ 150,000

- Kindly advise Mr. XG about action required by him upon change in his residential status

Case Study 1- Change in Residential Status

Nature of Deposit	Type of Holding	Action	Remarks
Fixed Deposit	First Name	Designate as NRO	Joint name with relative resident on 'former or survivor basis permissible'
Current Account	First Name	Designate as NRO	Joint name with relative resident on 'former or survivor basis permissible'
Resident Foreign Currency Account – RFC(D)	First Name	Can be credited to NRE/FCNR(B)	Joint name with resident relative on 'former or survivor basis permissible'

Case Study 2- Change in Residential Status

- Mr. XG served in USA for 10 years
- Now he wants to return to India permanently.
- He currently operates following Bank Accounts / Deposits jointly with close relatives:

Nature of Deposit	Amount
FCNR (B)	US \$. 30,00,000
NRE Fixed Deposit	Rs. 280,00,000
NRO Savings Account	Rs. 35,00,000

- Kindly advise Mr. XG about the actions required by him upon change in his residential status

Case Study 2- Change in Residential Status

- Mr. XG can take following actions

Nature of Deposit	Amount	Action
FCNR (B)	US \$. 30,00,000	Can continue the deposit up to maturity.
NRE Fixed Deposit	Rs. 280,00,000	Convert into Ordinary Account/ RFC Account immediately
NRO Savings Account	Rs. 35,00,000	Close immediately/Convert in to Resident Account



Returning/ Emigrating Indians



Case Study

- Mr. Hari Ram ji had gone out of India for employment to Ireland. He was an NRI all this while
- He was there working in a big MNC company for his entire professional life.
- Now, After retirement he wants to settle in India.
- Since he was working outside India. He is earning pension from Ireland only.
- He is still receiving the pension from outside India

Section 4 of FEMA, 1999

- 4. Holding of foreign exchange, etc.—Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Returning Indians

❖ Assets abroad: Sec 6(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.

Returning Indians

❖ Assets abroad: Sec 6(4)

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Bank Accounts

- Re-designation of NRO/NRE/FCNR a/c
- Continuation of Foreign bank accounts covered under Sec 6(4)
- Can take benefit of RFC a/c

Shares and Securities abroad– Covered u/s 6(4)-

- Can continue to hold/transfer

Immovable property abroad– Covered u/s 6(4)-

- Can continue to hold/transfer

Partner in firm or proprietor of concern-

- Can continue

Emigrating Indians

❖ Assets in India: Sec 6(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.



ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

Acquisition and transfer of property in India by a NRI or an OCI

A NRI or an OCI may -

- acquire immovable property in India other than an agricultural land or farm house or plantation property following consideration, if any, for transfer, shall be made out of :
 - funds received in India through banking channels in form of inward remittance from any place outside India ; or
 - funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder. Further, no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
- acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;
- acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-
 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - from a person resident in India;
- transfer any immovable property in India to a person resident in India;
- transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.

Acquisition and transfer property in India by NRI or an OCI

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- acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-
 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - from a person resident in India;
- transfer any immovable property in India to a person resident in India;
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 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
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- acquire any immovable property in India other than agricultural land or farm house or plantation property **by way of gift from a person resident in India or from an NRI or from an OCI, who is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;**
- acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-
 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - from a person resident in India;
- transfer any immovable property in India to a person resident in India;
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- acquire any immovable property in India **by way of inheritance from a person resident outside India** who had acquired such property:-
 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - from a person resident in India;
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- ❑ acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-
 - in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - from a person resident in India;
- ❑ **transfer any immovable property in India to a person resident in India;**
- ❑ **transfer any immovable property** other than agricultural land or farm house or plantation property **to an NRI or an OCI.**

Joint acquisition by the spouse of a NRI or an OCI

A person resident outside India, not being an NRI or an OCI, who is a spouse of an NRI or an OCI **may acquire one immovable property** (other than agricultural land or farm house or plantation property), jointly with his or her NRI or OCI spouse :

- Provided that –
- consideration for transfer, shall be made out of –
 - ✓ funds received in India through banking channels by way of inward remittance from any place outside India; or
 - ✓ funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.
- the non-resident spouse is not otherwise prohibited from such acquisition.

Repatriation of sale proceeds

- ❑ A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

- ❑ In the event of sale of immovable property other than agricultural land or farm house or plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:-
 - 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 or the provisions of these rules;
 - the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External Account;
 - in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Repatriation of sale proceeds

- ❑ In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

Prohibition on transfer of immovable property in India

- ❑ Save as otherwise provided in the Act or rules, no person resident outside India shall transfer any immovable property in India: Provided that:-
 - the Reserve Bank may, for sufficient reasons, permit the transfer subject to such conditions as may be considered necessary;
 - a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000;
 - an authorised dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender : Provided further that :-
 - the funds shall be used by the borrowing company only for its core business purposes overseas;
 - in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- ❑ A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition.

Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

- ❑ No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease not exceeding five years :
 - Provided that this prohibition shall not apply to an OCI.

Explanation: For the purpose of this rule, the term “citizen” shall include natural persons and legal entities.

- A Builder company has taken advance against flat booking from NRI in foreign exchange now the NRI customer wants to cancel the flat booking, can the builder refund the booking amount in Foreign Exchange?

Investment in Real Estate by NRIs/OCI (Other than FDI)

(under Chapter IX- Foreign Exchange Management (Non-debt Instruments) Rules, 2019)

Transaction Type	Rule	NRIs/OCIs
Repatriation for property acquired in accordance with the foreign exchange law	29	Investment in FC in property other than agricultural land or farmhouse or plantation property in India (Residential Property- Maximum for 2 houses) Inherited Property - under US \$ 1 Million Scheme
Repatriation of purchase consideration on account of non-allotment of flat/ plot/ cancellation of bookings / deals for purchase of residential/ commercial property, when property is not allotted, or booking / contract is cancelled	Schedule-1/ Notification 5 (R) – Deposits	Refund of application/ earnest money/ purchase consideration, 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 account holder or remittance from outside India through banking channels and the AD is satisfied about the genuineness of the transaction.

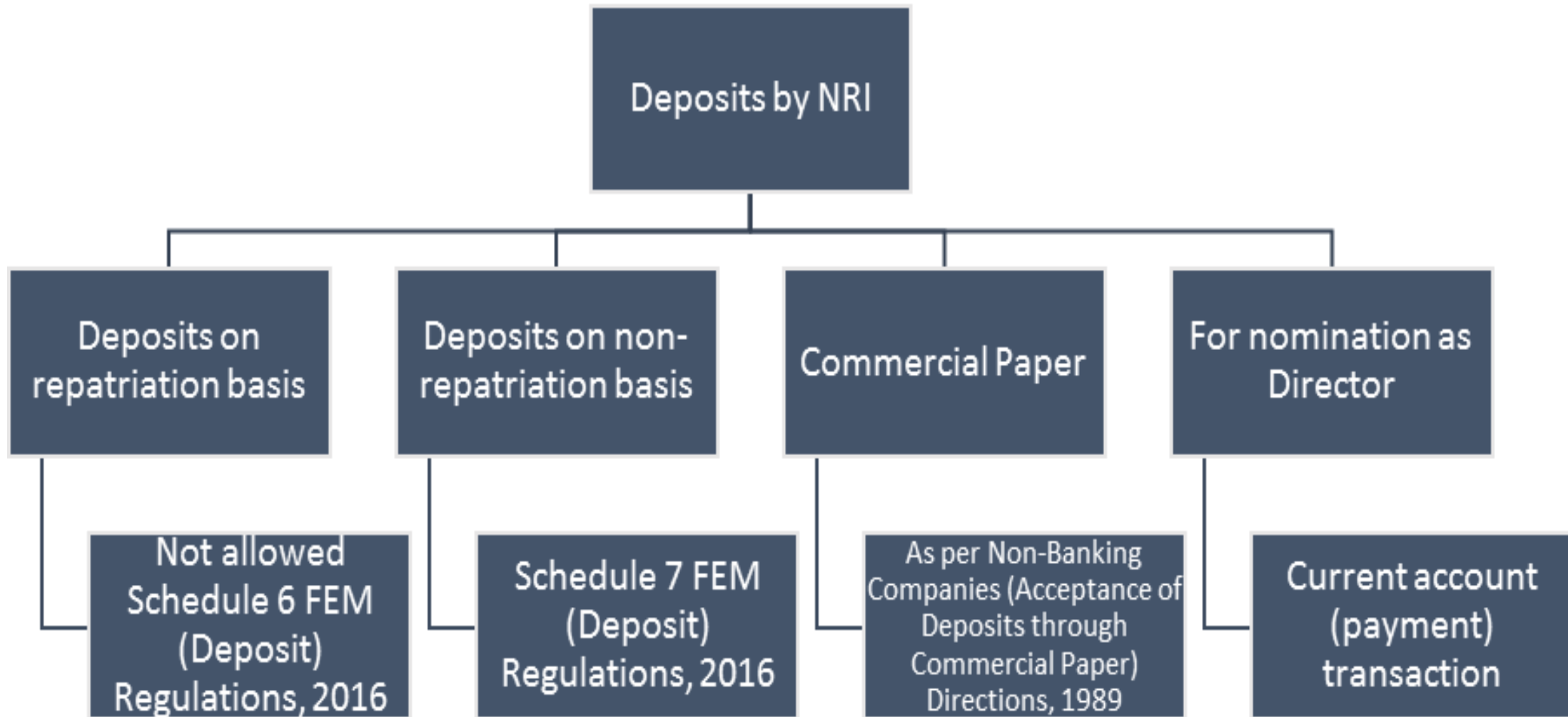
- **A Builder company has taken advance against flat bookin from NRI in foreign exchange now the NRI customer wants to cancel the flat booking, can the builder refund the booking amount in Foreign Exchange?**
- Refund of application//earnest money//purchase consideration made by the house building agencies//seller on account of non-allotment of flat//plot//cancellation of bookings//deals for purchase of residential//commercial property, together with interest, if any (net of income tax payable thereon) may be allowed by the Authorised Dealers by way of credit to NRE/FCNR(B) account, provided the original payment was made out of NRE//FCNR(B) account of the account holder or remittance from outside India through normal banking channels and the Authorised Dealer is satisfied about the bona fides of the transaction.



BORROWING & LENDING



Deposits by NRI



Deposits from NRI / PIO

❖ Deposit from NRI/PIO on repatriation basis:

An Indian company including NBFC registered with the Reserve Bank **cannot accept fresh deposits on repatriation basis**. It can, however, renew the deposits it had accepted in accordance with the terms and conditions mentioned in Schedule 6 of the Foreign Exchange Management (Deposit) Regulations, 2016.

❖ Deposit from NR towards Directorship:

Keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from the Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.

Deposits from NRI/PIOs on Non-repatriation basis

❖ Deposit from NRI/PIO on non-repatriation basis:

Particulars	Deposit on non-repatriation basis
Who can accept the deposit	Proprietorship concern, firm, Indian company (including NBFC)
Mode	Private arrangement or public deposit scheme
Credit rating	If NBFC, then credit rating is required
Maturity	< 3 years
Interest	As prescribed under Companies (Acceptance of Deposits) Rules, 2014 → 12.5 %
Investment	Debit to NRO a/c only. Inward remittance and transfer from NRE/FCNR(B) a/c prohibited.
End use restriction	Amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate or investment in any other entity engaged in above
Repatriability	Not allowed

❖ Indian companies can also accept deposits from NRIs or PIOs by issue of a commercial paper subject to conditions.

Borrowings & Lending (Notification 3R)

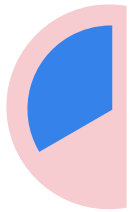
Provisions applicable to Individuals:

- An individual resident in India can borrow up to USD 250,000/- or its equivalent from his/her non-resident relatives outside India and subject to such terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India.
- An individual resident in India studying abroad is allowed to raise loan outside India not exceeding USD 250,000/- or its equivalent for payment of education fees abroad and maintenance subject to terms and conditions as specified by the RBI from time to time in consultation with the GOI.
- A person resident in India, not being a company incorporated in India, is allowed to borrow in Indian Rupees from his NRI/Relatives who are OCI Cardholders outside India, subject to such terms and conditions as may be specified by the Reserve Bank from time to time in consultation with the Government of India. The borrower should ensure that the borrowed funds are not used for restricted end uses. RBI has so far not specified any terms and conditions for this purpose.

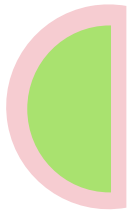
Foreign Exchange Transactions



Definition



Characterisation



Allowability

- **Definition:** - What is meaning of both the terms i.e. Current Account Transaction and Capital Account transaction under FEMA and how is it defined in the Act.
- **Characterisation:** What is the character of transaction. Does it fall under the Current Account or does it fall under the capital Account transaction?
- **Allowability :** - Whether the transaction is allowed to be undertaken? Is yes, Whether the transaction is allowed to be undertaken with or without restrictions.

Foreign Exchange Transactions

All the foreign exchange Transactions are divided into two categories:

- (1) Current Account Transactions
- (2) Capital Account Transactions

Concept of Cap A/c & Cur A/c was not there in Foreign Exchange regulation Act, 1973

The drawal of foreign exchange was regulated without any difference between Capital or current account

It was introduced in FEMA, 1999 which replaced FERA, 1973

Capital and current a/c are Economic concept and not an Accounting concept

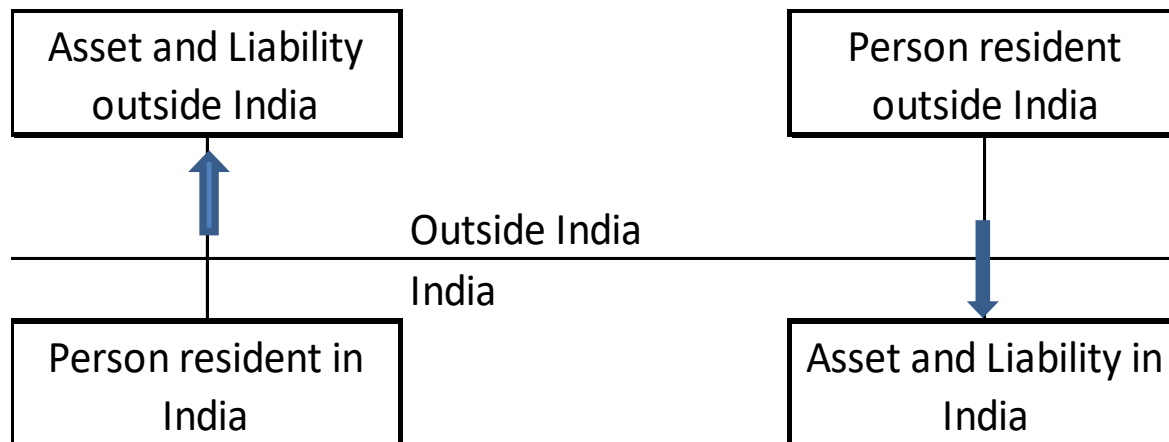
Capital Account Transactions



Capital Account Transactions

As per s 2(e) of FEMA:

‘Capital account transaction’ means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;



Assets or liabilities of resident person outside India;

Assets or liabilities in India of non-resident person.

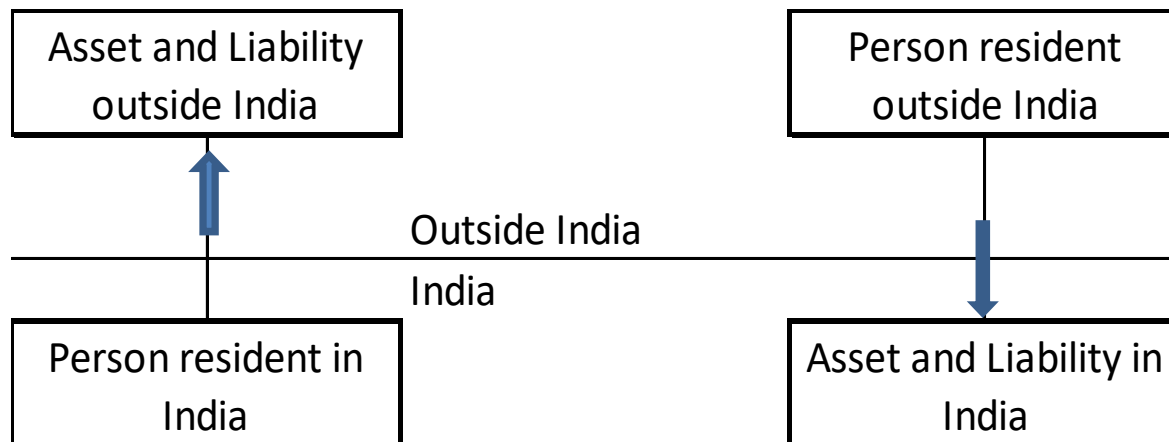
including contingent liabilities

includes transactions referred to in s 6(3)

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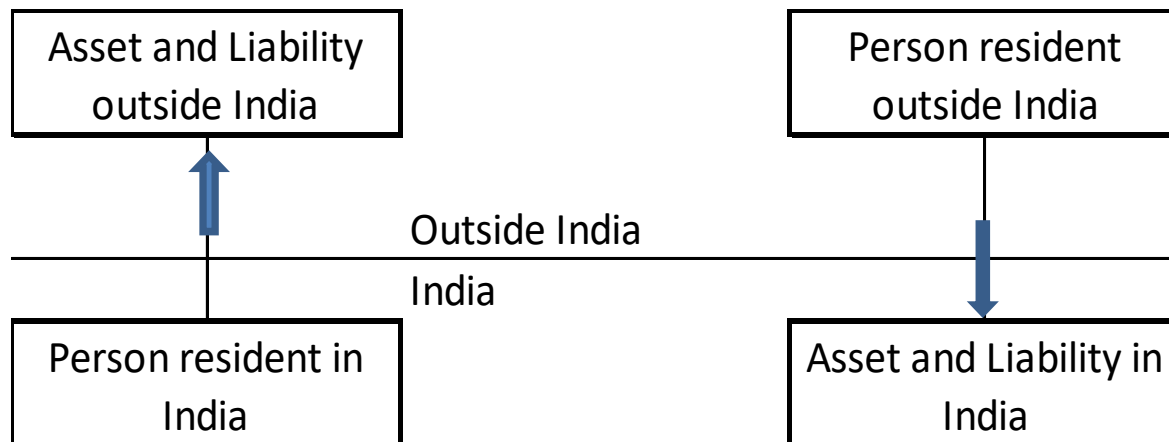
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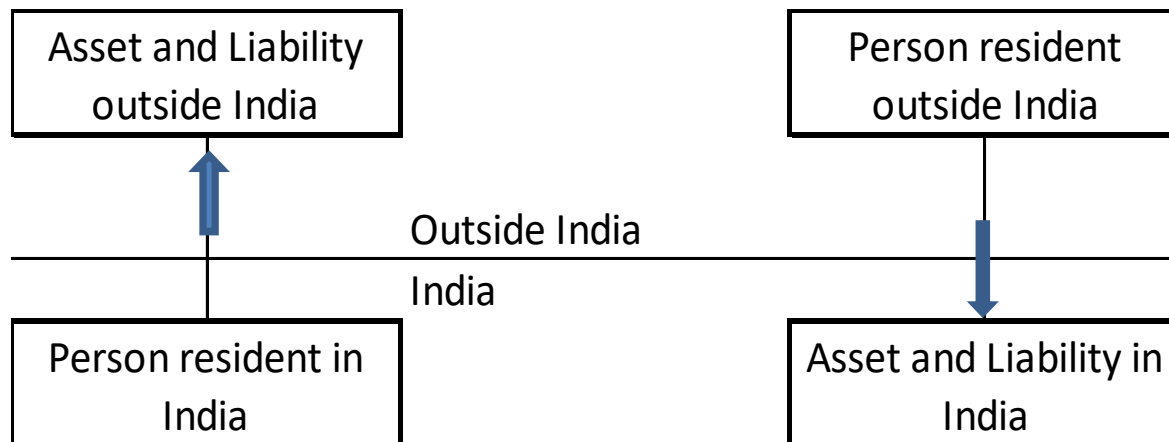
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Assets or liabilities of resident person outside India;

Assets or liabilities in India of non-resident person.

including contingent liabilities

includes transactions referred to in s 6(3)

Capital Account Transactions || Contingent Liability

Contingent liability by Person Resident Outside India:

- Not specifically included in the definition
- The definition of Capital account Transactions does not include contingent liability of a person resident outside India. However, Schedule II (c) to Notification 1 includes in the list of capital account transaction guarantee given by a person outside India to any person resident in India.
- There is no reporting as such for guarantee given by non- resident in respect of borrowing in rupees by resident Indian where lender is also another resident Indian
- In case of invocation of guarantee where liability is paid by non- resident, the principal debtor (i.e. Indian borrower). Can make payment to such non – resident guarantor under general permission.

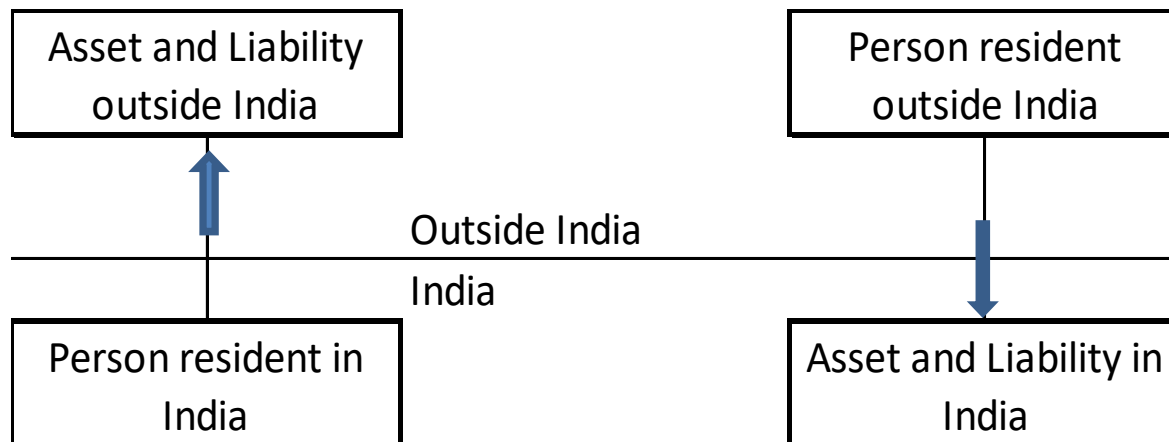
Contingent liability by Person Resident in India

- Specifically included
- The person resident in India can give guarantee on behalf of person resident outside India.
- An Indian entity can give guarantee upto 400% of its net worth

Capital Account Transactions

As per s 2(e) of FEMA:

*‘Capital account transaction’ means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, **and includes transactions referred to in sub-section (3) of section 6;***



Assets or liabilities of resident person outside India;

Assets or liabilities in India of non-resident person.

including contingent liabilities

includes transactions referred to in s 6(3)

Case Study

- 1) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.
- 2) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.
- 3) As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction, "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction.

What if the credit period is 12 months?

Under Master Directions for imports, payment has to be made within 6 months. If the credit period is in excess of 6 months, then it is a loan. There are separate rules TUI Tuan. I tre uansa UUNIS TANS WILTIT te luar Tures, then IL TS permeu. Short term loan by and large means 6 months. For exports, the period for realisation of proceeds, is 9 months.

Case Study

An Indian resident transfers US\$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York. Under accounts and income-tax law, gift is a "capital receipt". However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transactions is over. Hence it is a Current Account Transaction.

If however the resident gives him a gift in India in Indian currency, for the NRI it is funds lying in India (alteration of Indian asset). For Indian resident, there is no asset or a liability. As this transaction creates an Indian asset for the NRI, it is a Capital Account transaction. (Under separate rules, giving a gift in India to an NRI is permitted subject to certain rules.)

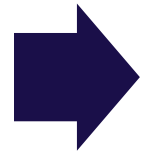
Case Study

What happens if an NRI gives a gift to an Indian resident by remitting Funds in India ?

- ✓ If an NRI gives a gift to an Indian resident by remitting funds in India, there is no restriction.
- ✓ However, if the NRI gives the funds abroad, the resident cannot keep it abroad. He has to bring it to India.

Capital Account Transactions

Any person can sell or draw foreign exchange for capital account transaction subject to conditions and prohibitions



RBI/CG to specify the transactions which are permitted, limits upto which drawal can be made and conditions



RBI/CG to make Regulations for such transactions which are permitted

Permissibility || Section 6

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.



(2) The Reserve Bank may, in consultation with the Central Government, specify—
(a) any class or classes of capital account transactions, **involving debt instruments**, which are permissible;]
(b) the limit up to which foreign exchange shall be admissible for such transactions;
(c) any conditions which may be placed on such transactions;



Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange

- for payment due on account of amortisation of loans or
- for depreciation of direct investments in the ordinary course of business.

Many sell or draw subject to Sub section 2

Sub Section 2 - RBI

Sub Section 2A - Central Government

Power shifted from RBI to Central Government

Permissibility || Section 6

(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

- (a) any class or classes of capital account transactions, **not involving debt instruments**, which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions; and
- (c) any conditions which may be placed on such transactions.



Many sell or draw subject to Sub section 2

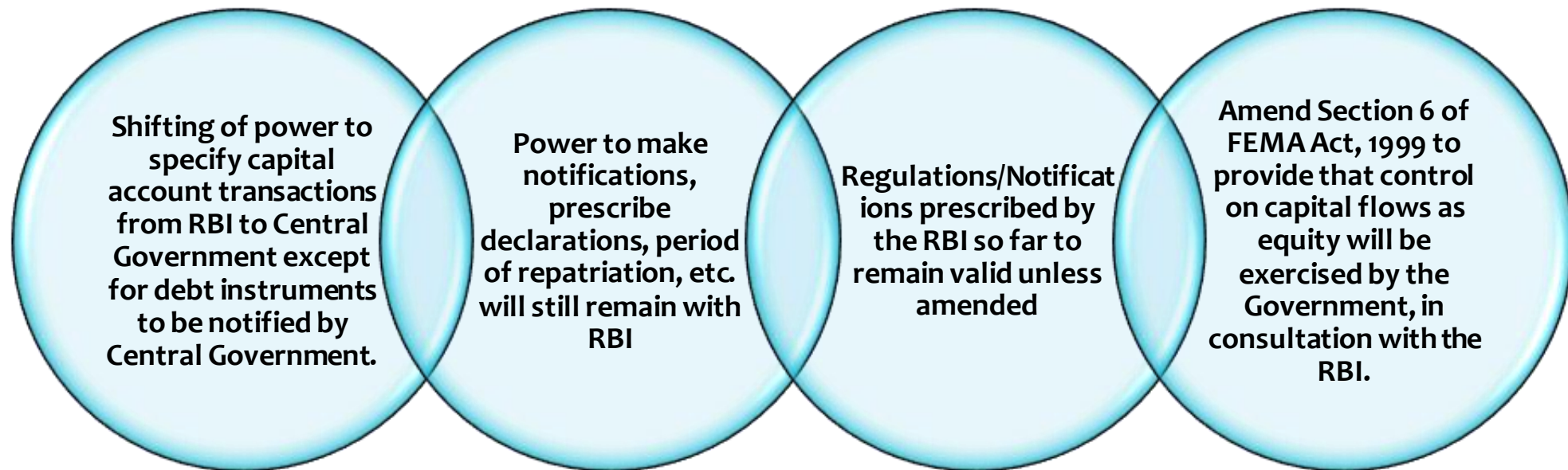
Sub Section 2 - RBI

Sub Section 2A – Central Government

Power shifted from RBI to Central Government

Amendment by Finance Bill, 2015

FM Mr. Arun Jaitley said “Capital Account Controls is a policy, rather than a regulatory, matter. I, therefore, propose to amend, through the Finance Bill, Section-6 of FEMA to clearly provide that control on capital flows as equity will be exercised by the Government, in consultation with the RBI”



Amendment by Finance Act, 2015 || Section 6(3) (*erstwhile*)

Section 6 (3) “Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations prohibit, restrict or regulate the following, —

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred,—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.”

Section 47 of FEMA Act, 1999 which empowered RBI to make regulations has been amended to the extent that all regulations made by RBI till date under Section 6 and Section 47 on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government

Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000

- In exercise of the powers conferred by sub-s (2) of s 6, and sub-s (2) of s 47 of the Foreign Exchange Management Act, 1999, the RBI has in consultation with the Central Government made the following regulations relating to capital account transactions, namely the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.
- As per the regulations, the capital account transactions are divided into two categories:
 - Transactions permissible for person resident in India specified in Schedule I; and
 - Transactions permissible for person resident outside India as specified in Schedule II.



Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000



Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000 || Schedule I

Following class of capital account transactions are permitted for persons resident in India (Schedule I, Regulation 3(1)(A))

- a) Investment by a person resident in India in foreign securities
- b) Foreign currency loans raised in India and abroad by a person resident in India
- c) Transfer of immovable property outside India by a person resident in India
- d) Guarantees issued by a person resident in India in favour of a person resident outside India
- e) Export, import and holding of currency/currency notes
- f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India
- g) Maintenance of foreign currency accounts in India and outside India by a person resident in India
- h) Taking out of insurance policy by a person resident in India from an insurance company outside India
- i) Loans and overdrafts by a person resident in India to a person resident outside India
- j) Remittance outside India of capital assets of a person resident in India
- k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000 || Schedule II

Following class of capital account transactions are permitted for persons resident outside India (Schedule II, Regulation 3(1)(B))

- a) Investment in India by a person resident outside India, that is to say,
- b) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
- c) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- d) Acquisition and transfer of immovable property in India by a person resident outside India.
- e) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- f) Import and export of currency/currency notes into/from India by a person resident outside India.
- g) Deposits between a person resident in India and a person resident outside India.
- h) Foreign currency accounts in India of a person resident outside India.
- i) Remittance outside India of capital assets in India of a person resident outside India.

Section 6

Section 6(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.**

Section 6(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.**

Section 6(4)

Section 6(4) of FEMA, 1999 covers the following transactions:

- ✓ Foreign currency accounts opened and maintained by such a person when he was resident outside India;
 - ✓ Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
 - ✓ Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India;
 - ✓ A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.
- Clarification issued Vide A.P. (DIR Series) Circular No. 90 dated January 9, 2014.

Section 6(4)

- A person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

Whether other Movable Assets like Jewellery, Paintings, Precious Stones etc., or Other Assets like interest in LLP or Partnership Firm outside India can also be continued in terms of Section 6(4)?

- ✓ 6(4) only refers to specific assets viz. currency, securities and immovable property.
- ✓ However intention seems to permit resident to own all assets outside which he was owning prior to turning resident.

Section 6

Section 6(6)

- The section empowers the RBI to regulate the setting up of branch, office or other place of business in India by non-resident. The RBI has framed regulation to prohibit restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Section 6(7)

- The sub-section specifies that the meaning of the term 'debt instrument' for this section shall be determined by the Central Government in consultation with the RBI.
- ✓ *Notified by Ministry of Finance, CG, vide notification vide 16th Oct 2019 as instruments other than Non debt instruments.*

Your Questions ??



**Thanks
Queries Please**

Sudha@taxpertpro.com || 09769033172

