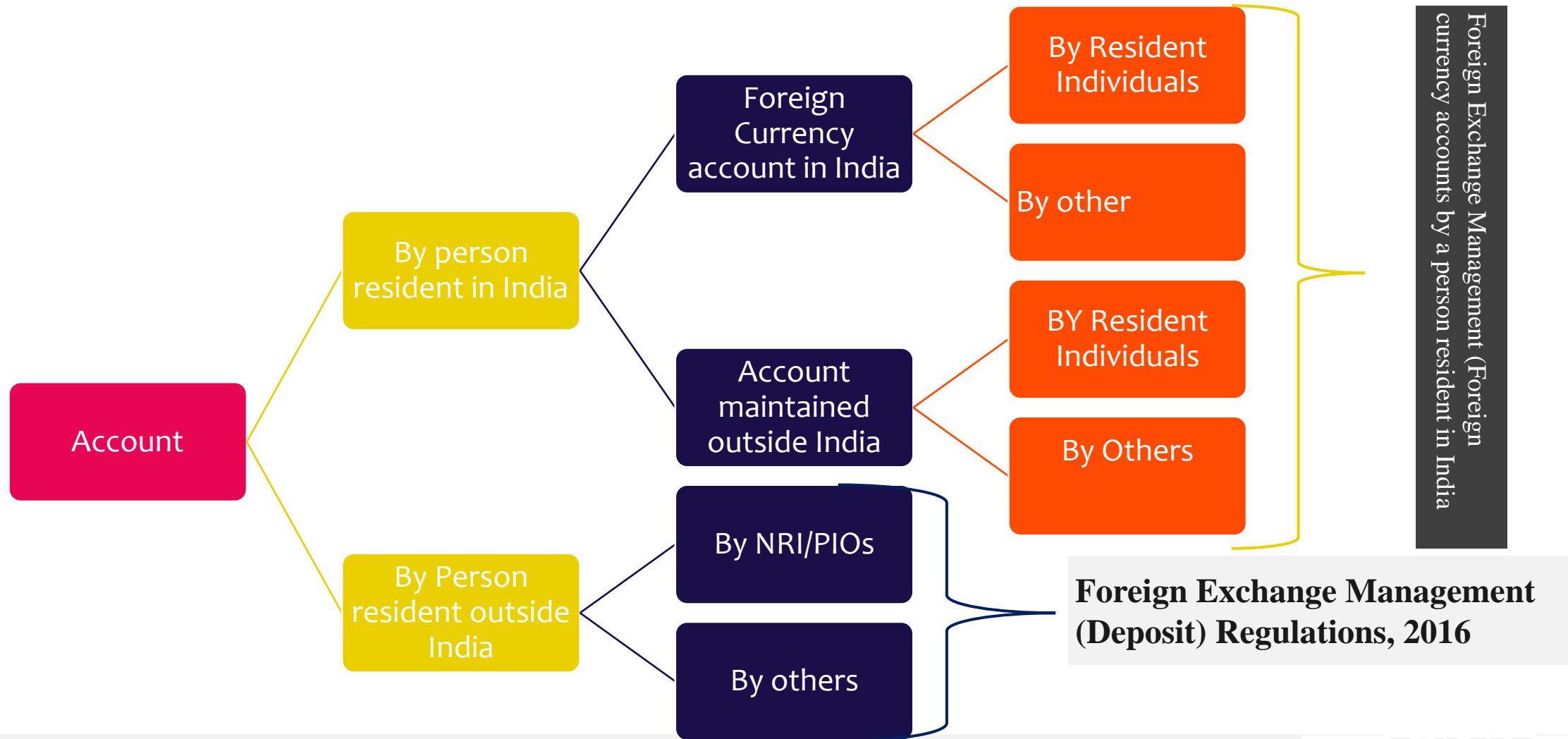


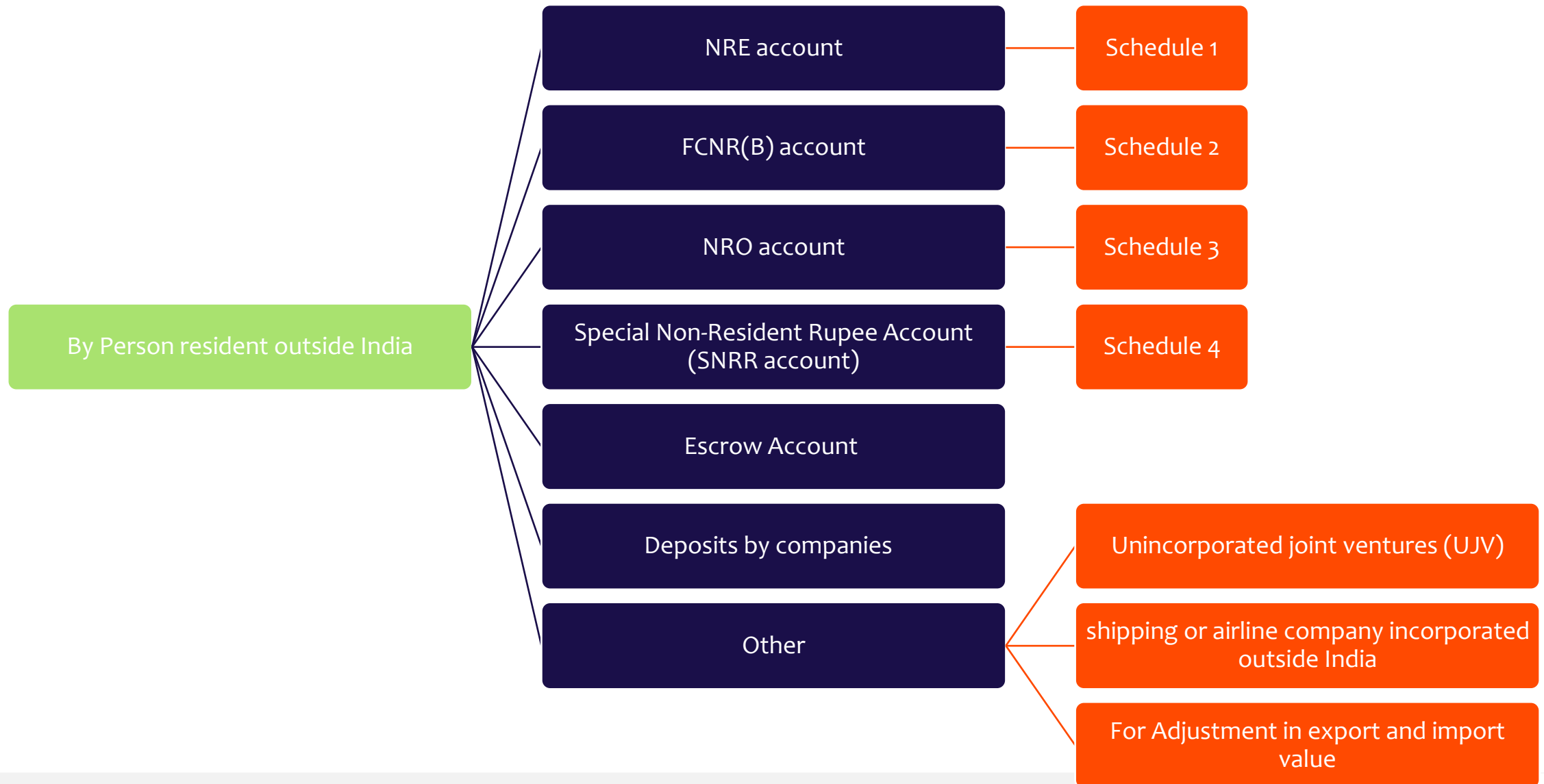


Comprehensive Course on FEMA
By CA. Sudha G. Bhushan
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Accounts by Person resident outside India

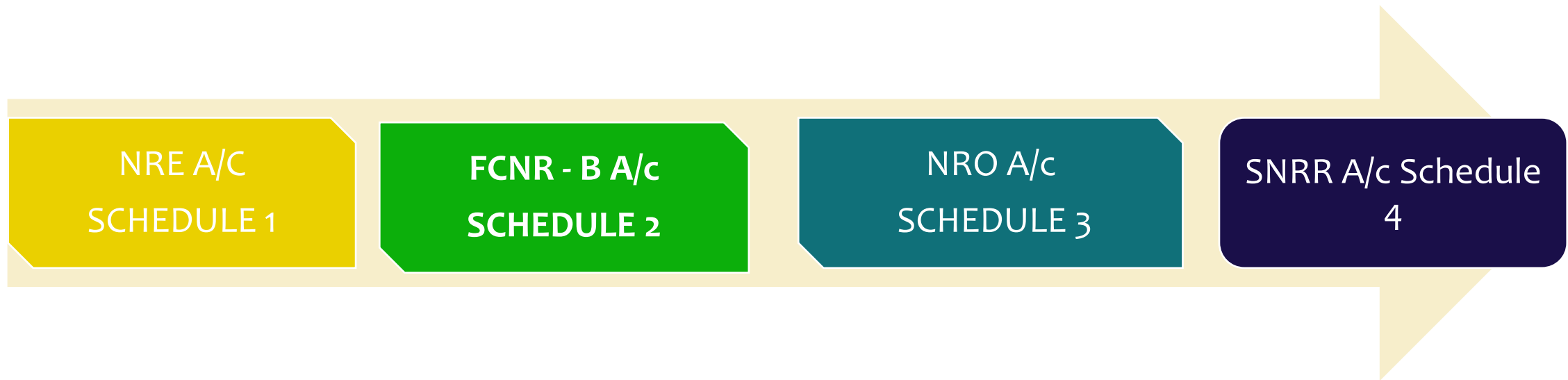


Foreign Exchange Management (Deposit) Regulations, 2016



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

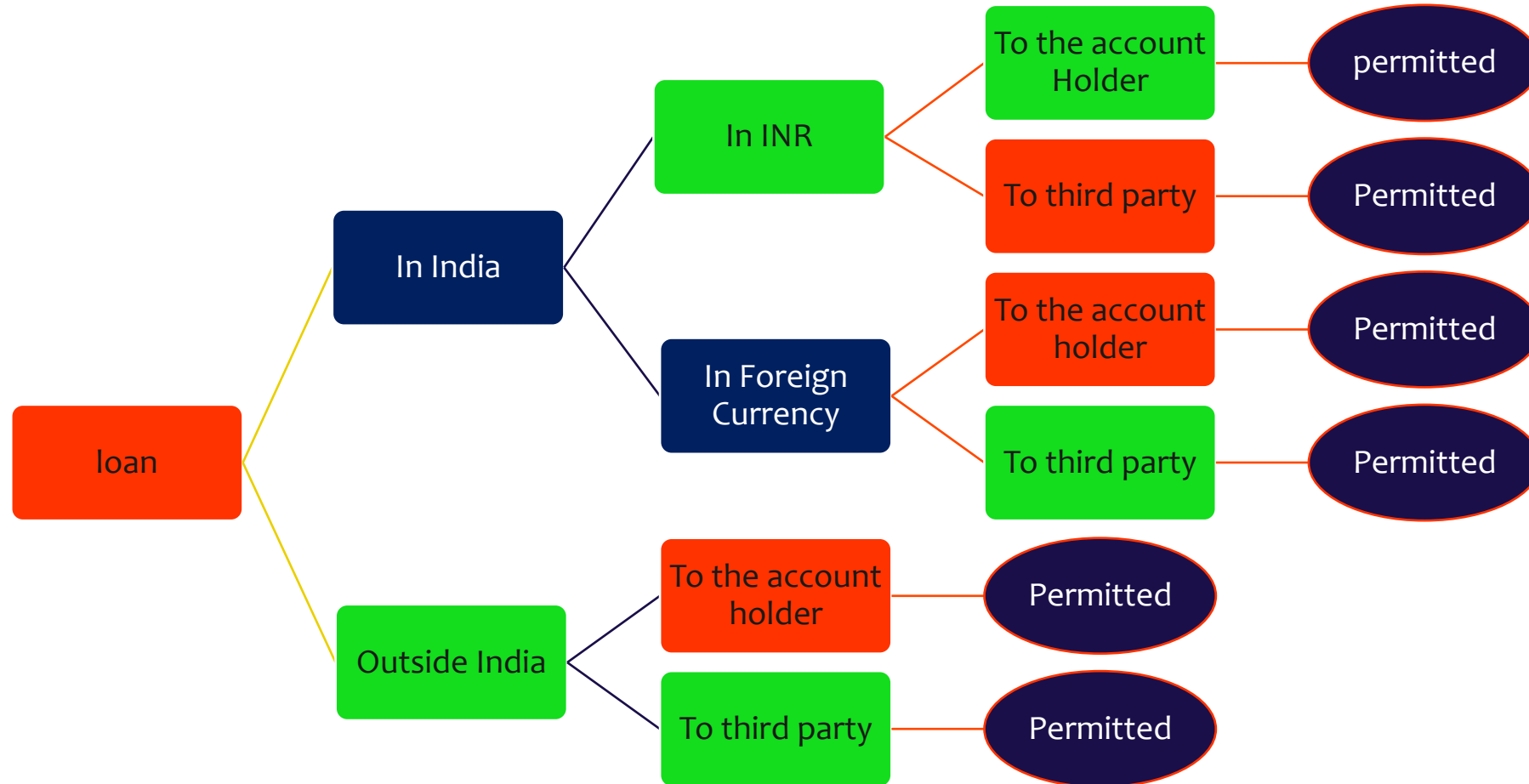
Loan Against the Deposit



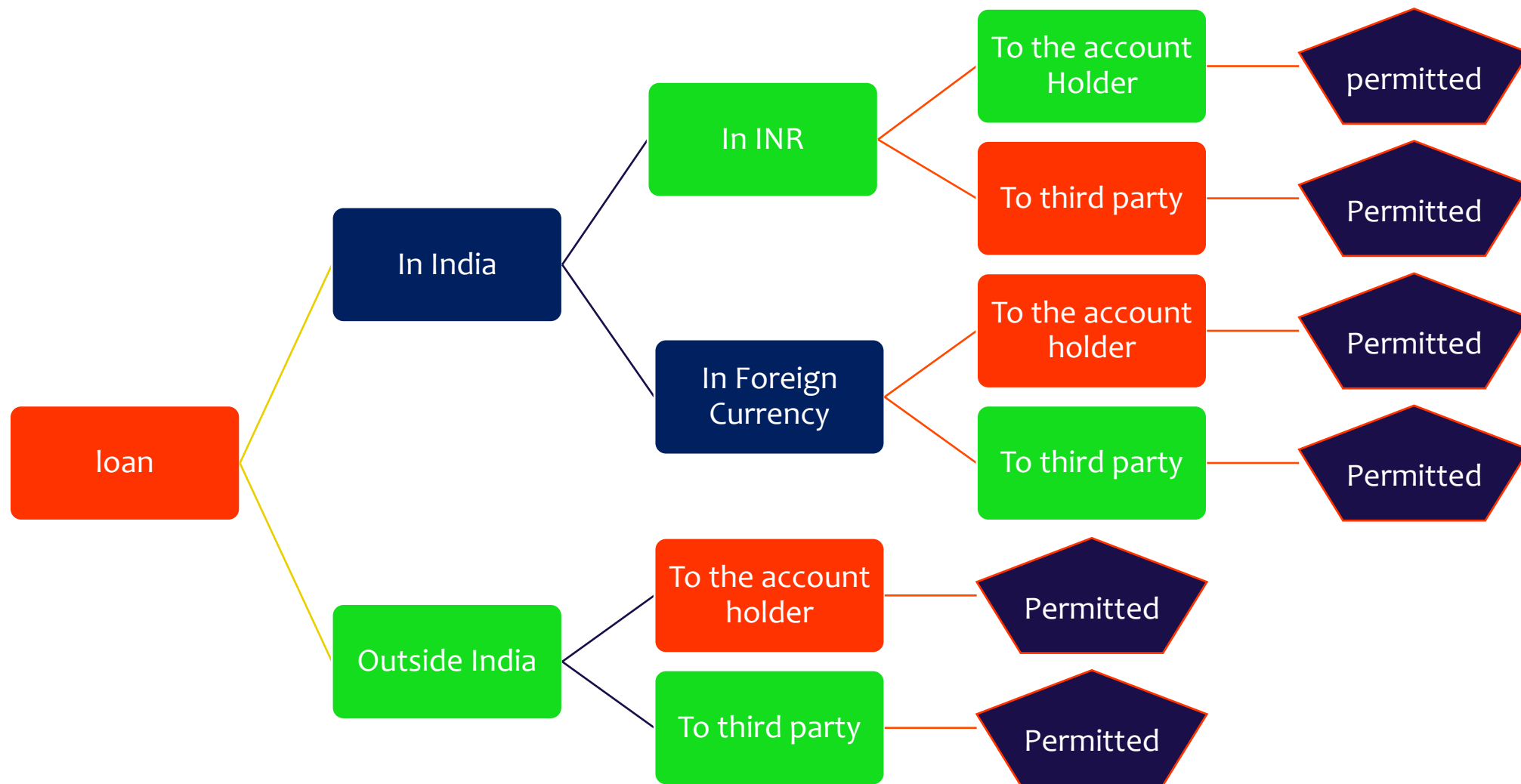
NRE Account vs. FCNR(B) Account vs. NRO Account

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 term “loan” includes all types of fund based/non-fund-based facilities 		<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 term “loan” includes all types of fund based/ non-fund-based facilities

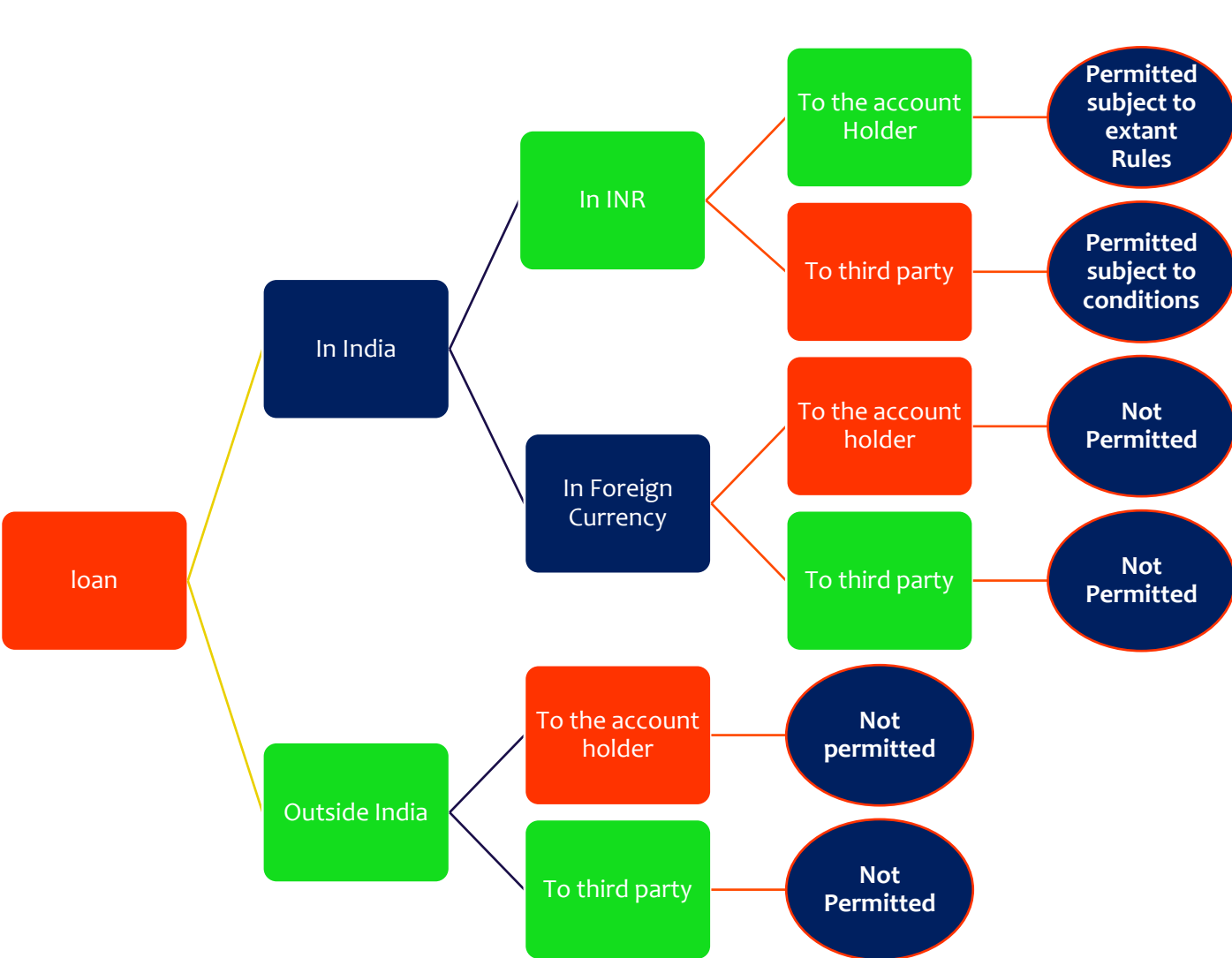
LOAN AGAINST DEPOSIT IN NRE A/C



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.*

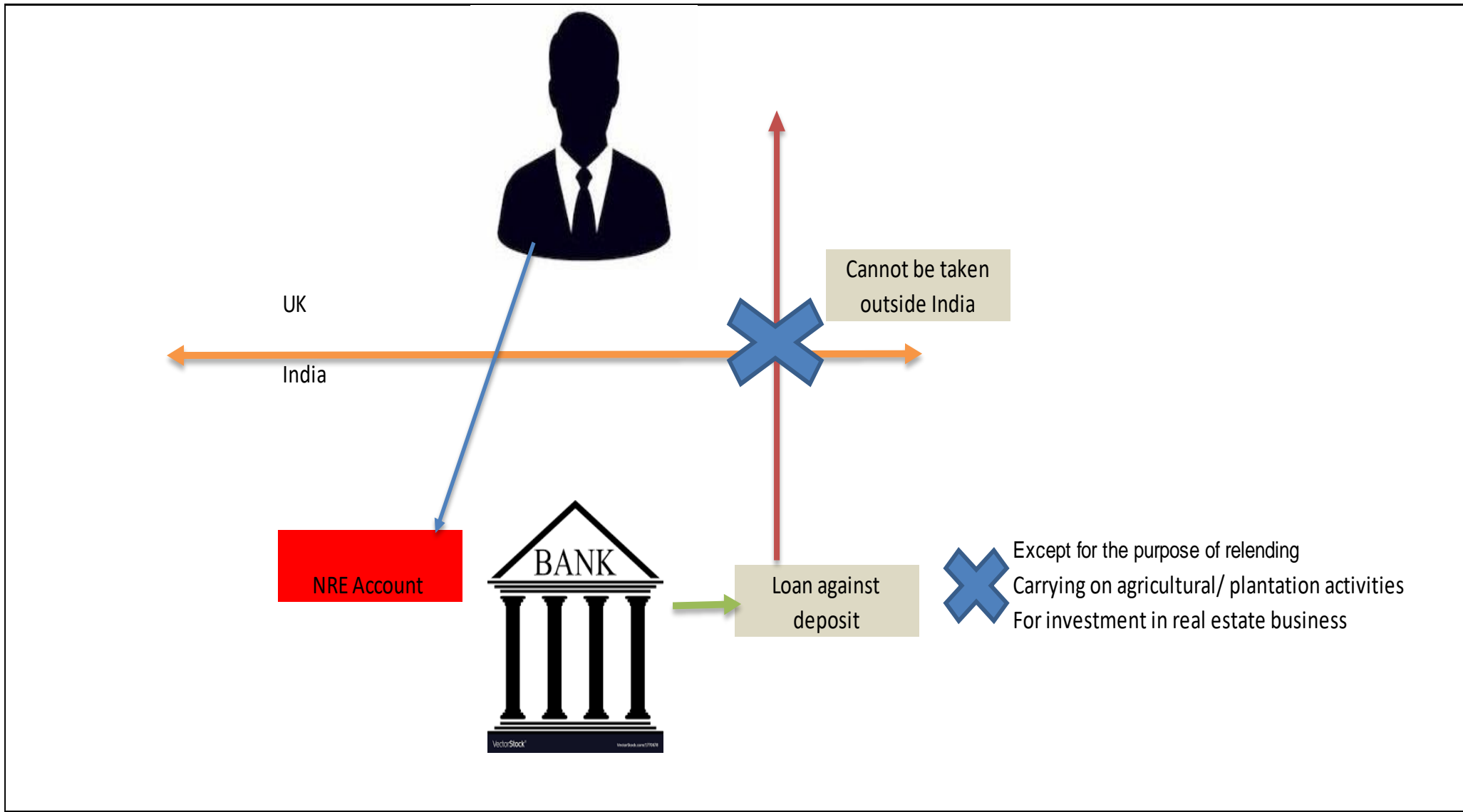
To third
party

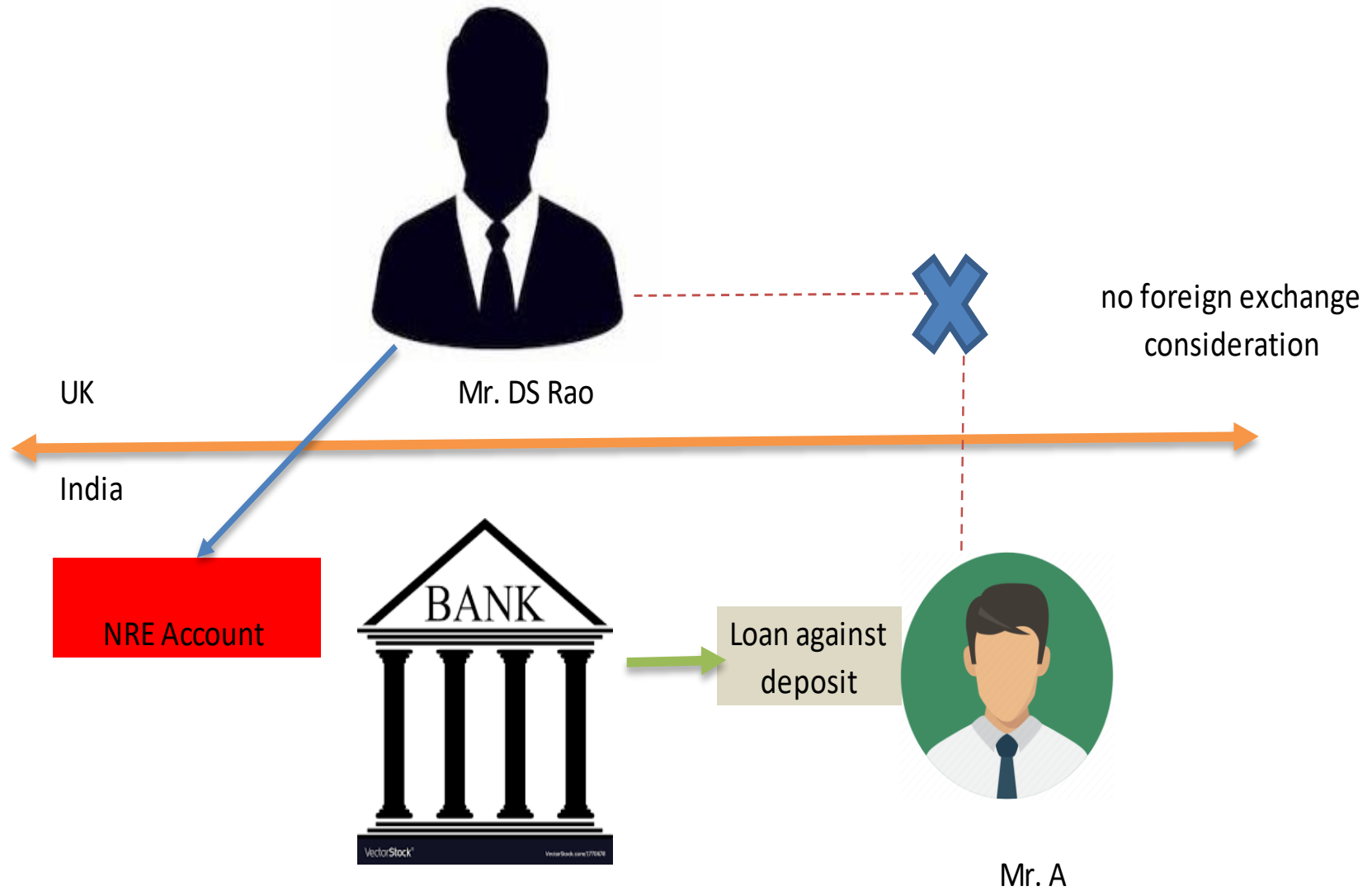
- Personal requirement and / or business purpose*

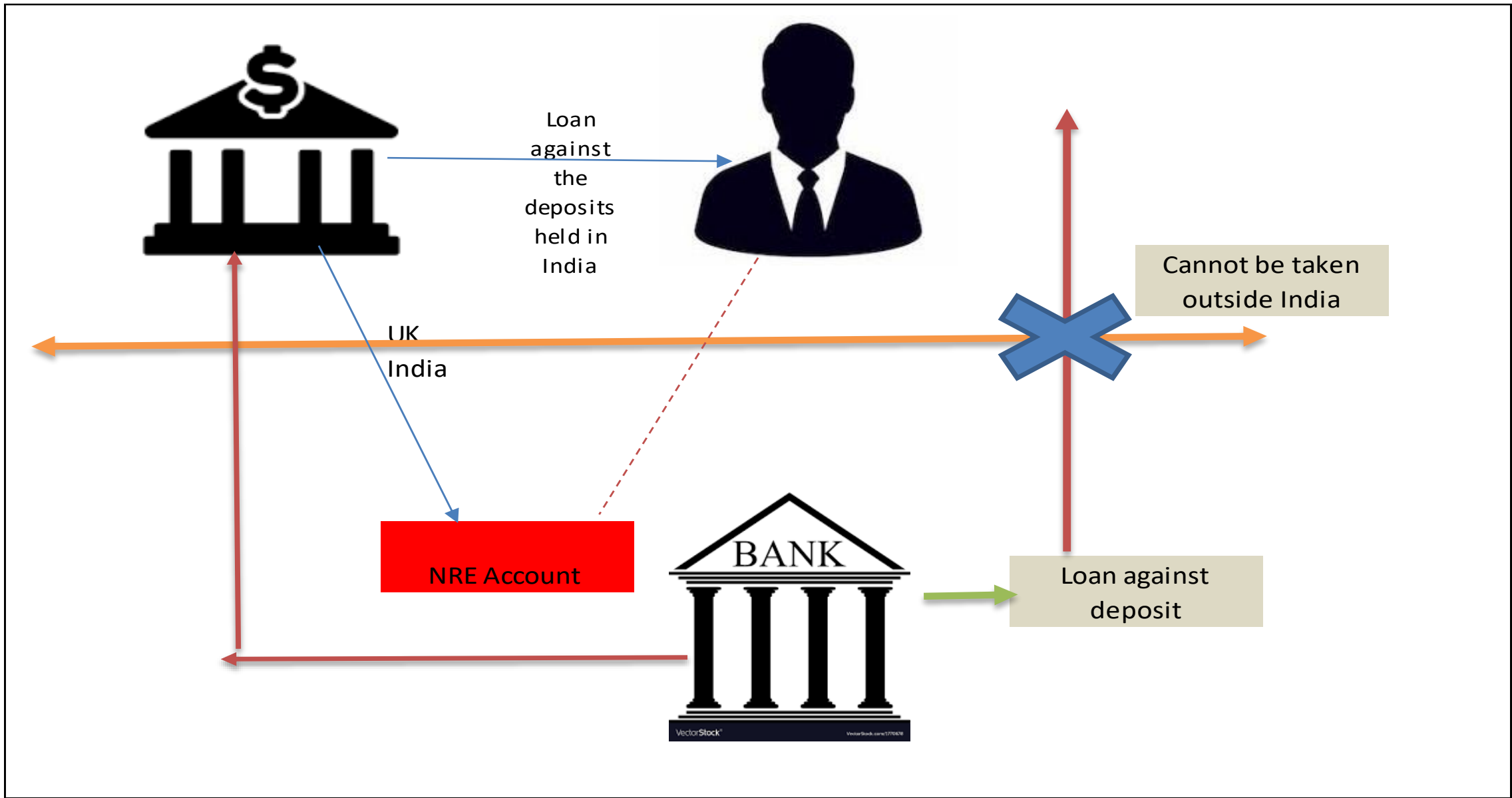
** The loans cannot be utilised for the purpose of on-lending or for carrying on agriculture or plantation activities or for investment in real estate business.*

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
- 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
Savings Account	Second Name	Rs. 45,00,000

- 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'
Savings Account	Second Name		As second holder, Joint names on 'either or survivor basis permissible' - Notification No. FEMA 5(R)/2016-RB dated April 01, 2016,

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



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)

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.

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

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.

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

❖ Insurance policy

- ✓ Can continue to hold life/general insurance policy o/s India.
- ✓ No permission required for payment of premium.
- ✓ However, maturity proceeds to be repatriated within 7 days.

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.

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.

Bank Accounts

- Convert Resident a/c into NRO a/c

Shares and Securities

- Immediately intimate company, registrar, broker, depository of change in residential status.

Borrowings and lending

- Continue till maturity

Immovable property

- Covered u/s 6(5) – Can continue to hold

Partner in firm or proprietor of concern

- Can continue to remain partner/proprietor.

❖ Insurance policy

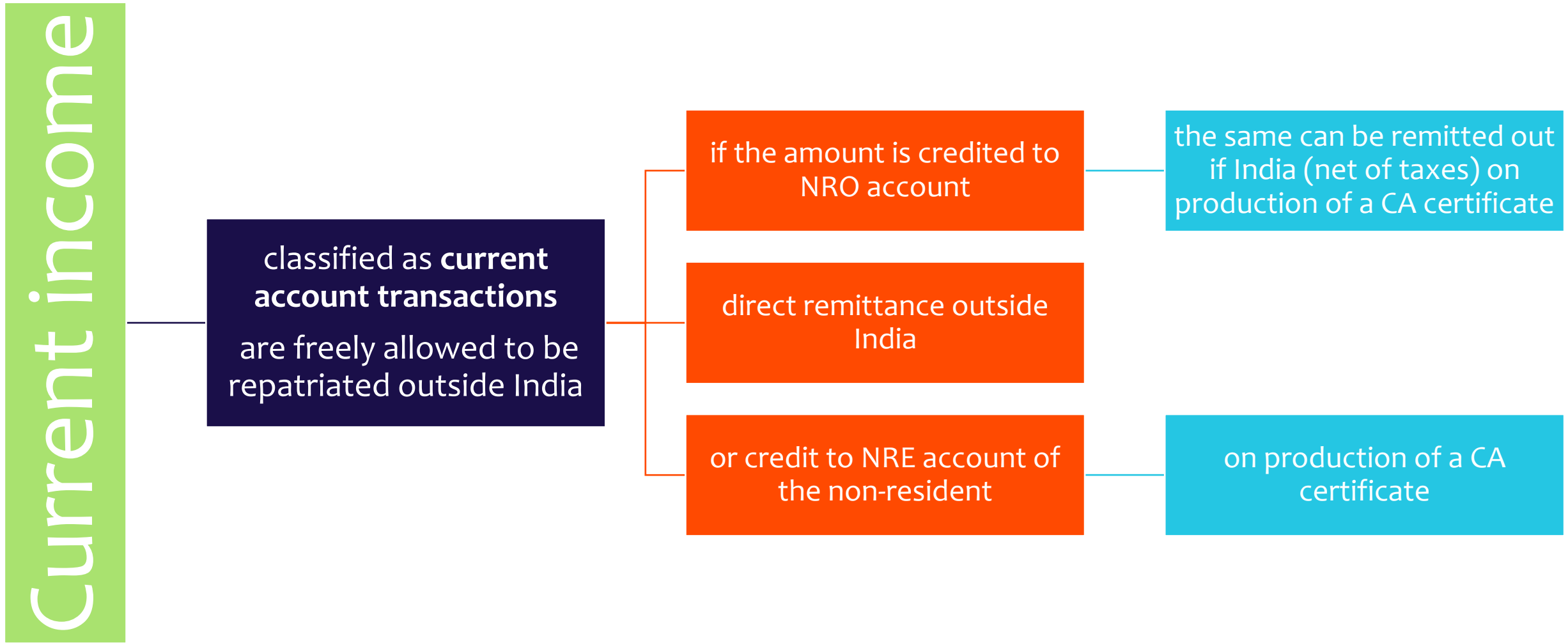
- Can continue to hold life/general insurance policy in India.
- No permission required for payment of premium



Remittance of Assets



Remittance of Current Income || like rent, dividend, pension, etc.



Person who is Resident but not Permanently Resident in India

- and who is on deputation to an office or a branch of a foreign company or subsidiary or joint venture in India of such foreign company, is allowed to remit net salary (after deduction of taxes, contribution to provident fund and other statutory deductions)

Foreign nationals

- who came to India for employment and became resident are permitted to re-designate their existing resident account as NRO account on leaving the country after their employment to receive their legitimate dues in India subject to certain conditions.

Remittance of Assets

- Repatriation of sale proceeds of residential property purchased by NRIs / PIO out of foreign exchange
 - Permitted for immovable property acquired in foreign currency remitted from abroad and received through normal banking channels or out of funds raised by them by way of loans from authorized dealer banks / housing finance institutions to the extent such loan/s are repaid by them out of foreign inward remittances or from their NRE / FCNR(B) accounts
 - The repatriation facility in respective foreign currency is restricted to not more than two house properties.
- Repatriation of amount paid for booking of flat upon cancellation of flat allowed

Remittance under \$ 1 Million per Financial Year

Remittance of Assets – Notification No. 13(R)

\$ 1 million per year

- balances in NRO
- sale proceeds of assets held in India in accordance with the provisions of FEMA
- assets acquired in India by way of inheritance/ legacy; or a deed of settlement made by either of his/ her parents or a relative as defined in Companies Act, 2013 to be effected on death of the settler;
- in respect of assets acquired under a deed of settlement made by either of his / her parents or a relative as defined in Companies Act, 2013- The settlement should take effect after death of the settler

NRI/PIO to provide declaration to the AD Bank confirming that -

- Remittance is out of balances held in NRO account arising from his / her legitimate receivables in India
- Remittance is not out of borrowing from any other person
- Remittance is not out of funds transferred from NRO account of any other person



ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

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

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

A NRI or an OCI may -

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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.

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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
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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.

Acquisition and transfer property in India by 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;
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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
 - from a person resident in India;
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- 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.**

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.

Acquisition of immovable property for carrying on a permitted activity

- ❑ A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a Branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may –
- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity: Provided that,-
- all applicable laws, rules, regulations, for the time being in force are duly complied with; and
 - the person files with the Reserve Bank a declaration in the Form IPI as specified by the Reserve Bank from time to time, not later than ninety days from the date of such acquisition;
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) of rule 26:

Provided that no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

Acquisition by a long-term visa holder

- ❑ A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions, namely :-
- the property shall not be located in and around restricted or protected areas so notified by the Central Government and cantonment areas;
 - the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he or she is residing in India on LTV;
 - the registration documents of the property shall mention the nationality and the fact that such person is on LTV;
 - the property of such person may be attached or confiscated in the event of his or her indulgence in anti-India activities;
 - a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP) or Foreigners Registration Office (FRO) or Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
 - such person shall be eligible to sell the property only after acquiring Indian citizenship, however, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP or FRO or FRRO concerned.

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.

Miscellaneous and Saving

Miscellaneous

- ❑ Any transaction involving acquisition or transfer of immovable property under these rules shall be undertaken:-
 - through banking channels in India;
 - subject to payment of applicable taxes and other duties or levies in India.

Savings

- ❑ Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these rules.

- **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?**

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- 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.

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

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

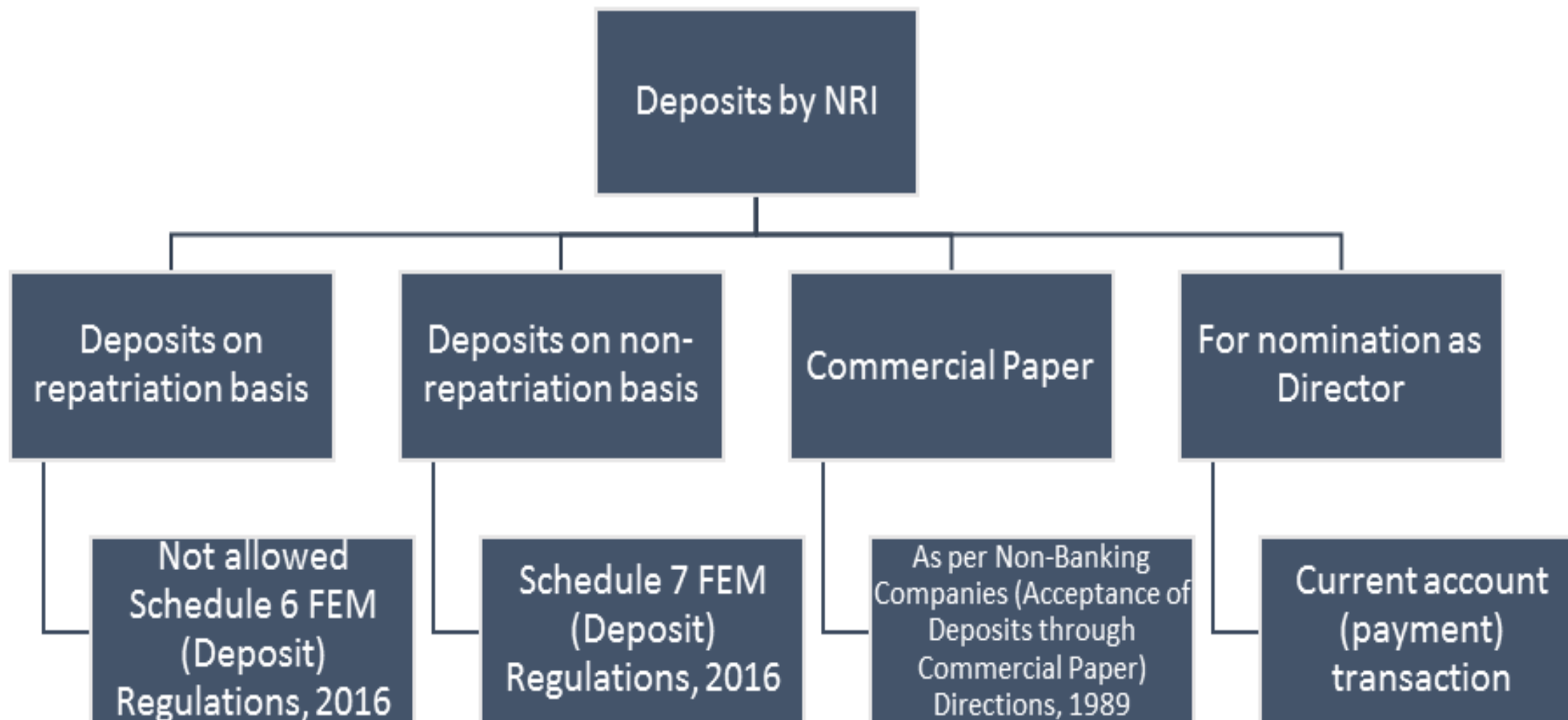
Transaction Type	Rule	NRIs/OCIs
Repatriation for property acquired in accordance with the foreign exchange law	29	Investment in FC in property other than agricultural land or farmhouse or plantation property in India (Residential Property- Maximum for 2 houses) Inherited Property - under US \$ 1 Million 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.



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.

Borrowings & Lending (Notification 3R)

❖ 'Relative' means a 'relative' as defined under the Companies Act, 1956 / 2013

Act of 1956 (schedule IA)		Act of 2013 (As prescribed)
Father	Son's daughter	Father (including step-father)
Mother (including step-mother)	Son's daughter's husband	Mother (including step-mother)
Son (including step-son)	Daughter's husband	Son (including step-son)
Son's wife	Daughter's son	Son's wife
Daughter (including step-daughter)	Daughter's son's wife	Daughter
Father's father	Daughter's daughter	Daughter's husband
Father's mother	Daughter's daughter's husband	Brother (including step-brother)
Mother's mother	Brother (including step-brother)	Sister (including step-sister)
Mother's father	Brother's wife	
Son's son	Sister (including step-sister)	
Son's son's wife	Sister's husband	

Borrowings & Lending (Notification 3R)

- Restrictions on on-lending of borrowed funds will apply to only following activities
 - Real estate activities.
 - Investment in capital market.
 - Equity investment.
 - Working capital purposes {except from foreign equity holder}.
 - General corporate purposes {except from foreign equity holder}
 - Repayment of Rupee loans {except from foreign equity holder}



Thankyou !!
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