

# Best Practices in Foreign Exchange Transactions

## 1. Opening of FCNR and SB (NRE) Accounts - Need for Adherence to KYC Norms /Guidelines

- KYC guidelines go beyond merely establishing the identity of persons & satisfying about his credentials by obtaining an introductory reference from a known person
- The due diligence expected under KYC involves going into the purpose and reasons for opening the account, status of the account holder like employed/professional/business anticipated turn over in the account, source of wealth(networth) of the person opening the account and source of funds flowing into the account
- Standing of the person & desirability of entertaining the person for transacting banking business
- Due diligence under KYC does not merely stop with the opening of an account

As per the extant instructions, in case of NRE/FCNRD/other accounts of Non Resident Indians, introduction may be obtained from

- i. an existing account holder
- ii. a Foreign correspondent/Branch
- iii. Notary Public
- iv. Foreign embassy/consulate officials

Passport can also be accepted for the purpose of identifying the prospective Non Resident customer. Proper identification of the customer before opening the account as per KYC norms will minimize occurrence of frauds and to check misappropriations.

For the ready reference of branches, some of the additional precautions are reproduced below:

- a. Branches should avoid accommodating unknown parties/brokers/agents who approach them with promises to mobilise deposits/business for the bank. The Branches may also ensure that the following additional precautions are taken while accepting deposits from NRIs through agents/middlemen

- b. ***The deposit receipt should invariably be sent by registered post to the NRI depositor at the address given in the application/account opening form.***
- c. ***The deposit receipt should not be handed over to agents/middlemen/third party.***
- d. The branch should ensure that the complete postal address of the NRI depositor has been furnished in the account opening form. The branch should exercise special care if the address is incomplete or only a post box number has been furnished.
- e. Branches should take utmost care when non-resident accounts are sought to be opened/loans sanctioned against such deposits in remote branches/places where the depositors may not have any interest or the branches may not be having adequate expertise in dealing with such accounts.
- f. If such a deposit is being solicited by the branch and its officers as part of their deposit mobilisation efforts, ***the concerned Branch Manager will have to take responsibility for having identified the depositor and the genuineness of the documents produced.***
- g. In addition to the usual precautions, wherever such accounts are opened through a Power of Attorney, Branches may consider introducing their own methods of verifying the identity of the depositor. These may include, contacting the depositor over telephone and e-mail at the number and address mentioned in the application, verifying address through internet, etc.

## **2. Remittance Facilities for Resident Indians**

***Following Forex Remittance Facilities can be availed by Residents from Banks on self-declaration basis and without prior approval of Reserve Bank of India.***

- Gift remittance upto USD 5000 per remitter / donor per annum.
- Donations upto USD 5000 per remitter / donor per annum.
- Exchange for employment abroad - Upto 100,000/-
- Exchange for emigration – Upto USD 100,000/-
- Exchange for maintenance of close relative abroad – Upto USD 100,000/-
- Exchange upto USD 25000 to a person going abroad for business visit / attending a conference or specialised training.
- Exchange for Medical Treatment abroad – Upto USD 100,000/-. Additional USD 25000 per person can be taken for meeting boarding / lodging / travel expenses of the patient and also for the accompanying attendant.
- Exchange for studies abroad – Upto USD 100,000 per academic year.
- Commission to agents abroad for sale of flats / commercial plots in India, upto 5% of the inward remittance or USD 25,000 whichever is higher.
- Foreign exchange in the form of foreign currency notes and coins upto USD 2000 or its equivalent can be released out of the overall foreign exchange released for travel purposes.

### ***Foreign Exchange Eligibility for Travel Abroad***

- Private Travel to any country except Nepal and Bhutan – USD 10000 or its equivalent in any calendar year.
- For foreign exchange above this limit, application to be submitted to concerned Regional Office of RBI.
- International credit cards, ATM cards, Debit Cards, etc. can be used while on visit to any country for meeting any expenses within the overall ceiling of USD 10000 in a calendar year.
- For travel to Nepal and Bhutan – Any amount of Indian currency except currency notes of denomination of Rs. 500 and above.
- No endorsement in passport is required when foreign exchange is sold for travel abroad on private visit.
- Foreign exchange may be released on the basis of a declaration from the traveller regarding the amount of foreign exchange availed during a calendar year.
- International credit card can also be used outside India for purchase of any item, the import of which is permitted in India.
- A person going out of India can take with him Indian currency notes upto Rs.5000 to any country other than Nepal and Bhutan.
- A person coming to India from abroad can bring along with him Indian currency notes upto Rs.5000 from any country other than Nepal and Bhutan.

### ***Time Limit for purchase & surrender of foreign exchange***

- Foreign exchange can be bought 60 days ahead of the journey date. If it is not possible to use the foreign exchange within the period of 60 days, it should be surrendered to the Bank.
- Unspent foreign exchange brought back to India by a traveller should be surrendered to an authorised person within 90 days from the date of return of the traveller if the foreign exchange is in the form of currency notes.
- If it is in the form of travellers cheques, it should be surrendered within 180 days from the date of return.
- Any amount of foreign exchange in the form of TCs / Bank drafts / Currency notes can be brought in by NRIs / Residents while returning to India.
- If the value of Foreign exchange exceeds USD 10000 or value of currency exceeds USD 5000, they have to be declared to customs in the Currency Declaration Form (CDF) during entry to India.
- Exchange so brought back can be utilised by the traveller for his subsequent visit abroad during the above specified period.

- A returning traveller is permitted to retain with him, foreign currency travellers cheques and Notes upto an aggregate amount of USD 2000 and foreign coins without any ceiling.
- Residents can carry any amount of Indian currency while travelling to or while coming from Nepal and Bhutan except currency notes of denomination Rs.500 and above. (No foreign exchange can be bought for visit to these countries).

#### ***Other Current Account Transactions***

Foreign Exchange can be freely drawn for all other bonafide current account transactions (other than those, which are restricted or are subject to specific limits) on production of documentary evidence to the satisfaction of the Bank.

#### ***International Credit Cards***

International Credit Cards (ICCs) can be used for –

- a) meeting expenses / making purchases while abroad upto the credit limit fixed by the card issuing authority;
- b) making payment in foreign exchange for purchase of books and other items through internet.

Residents holding foreign currency account in India or with a bank overseas are also free to obtain ICCs issued by overseas banks and other reputed agencies.

#### ***ESOP Scheme***

Resident individual, who is an employee or a director, of an Office or branch in India of a foreign company or a subsidiary in India of a foreign company or of an Indian Company in which foreign equity holding is not less than 51 per cent, is permitted to remit upto USD 20000 in a calendar year for purchase of equity shares offered by the said foreign company under Employees Stock Option (ESOP) Scheme, provided the shares are offered at concessional price.

### **3. Frequently Asked Questions**

#### **Introduction**

The legal framework for administration of exchange control in India is provided by the Foreign Exchange Management Act, 1999. Under the Act, freedom has been granted for buying and selling of foreign exchange for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions. Accordingly, the Government has issued Notifications GSR.381(E) dated May 3, 2000, and S.O. 301(E) dated March 30, 2001, imposing certain restrictions on current account transactions in public interest.

These details are available on the Bank's website besides with the authorised dealers and regional offices of the Foreign Exchange Department. Our experience so far has been that the residents like to get information on several matters relating to various current account transactions and other incidental issues. This pamphlet attempts to answer to all such questions in simple language. While preparing replies to questions, special care has been taken to ensure that the replies are drafted in simple words and reference to technical details are avoided.

The Foreign Exchange Management Act, 1999 (FEMA), has come into force with effect from June 1, 2000. With introduction of the new Act (in place of FERA), certain structural changes have been introduced and now all transactions involving foreign exchange have been classified either as Capital or Current Account transactions. All transactions undertaken by a resident that do not alter his assets or liabilities outside India are current account transactions. In terms of Section 5 of the FEMA, persons are free to buy or sell foreign exchange for any current account transaction except for those transactions on which Central Government has imposed restrictions, vide its Notification No.G.S.R.381(E) dated May 3, 2000 (as amended from time to time). Full text of the said Notification is available in the Official Gazette. It is also available as annexure to our Master Circular on Miscellaneous remittances available at our website [www.mastercirculars.rbi.org.in](http://www.mastercirculars.rbi.org.in).

Incidentally, no release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal and Bhutan.

Some of the commonly or frequently asked questions by residents in connection with foreign exchange facilities or restrictions have been answered in the following paragraphs.

#### **I. Guidelines on travel related matters**

##### ***1. Who is a resident?***

In terms of Section 2(v) of FEMA, 1999, a "person resident in India" means –

- i. a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –

(A) a person who has gone out of India or who stays outside India, in either case -

- a. for or on taking up employment outside India, or
  - b. for carrying on outside India a business or vocation outside India, or
  - c. for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, otherwise than –
- a. for or on taking up employment in India, or
  - b. for carrying on in India a business or vocation in India, or
  - c. for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
  - i. any person or body corporate registered or incorporated in India,
  - ii. an office, branch or agency in India owned or controlled by a person resident outside India,
  - iii. an office, branch or agency outside India owned or controlled by a person resident in India;

## ***2. From where one can buy foreign exchange?***

Foreign exchange can be purchased from any authorised dealer. Besides authorised dealers, full-fledged money changers are also permitted to release exchange for business and private visits.

## ***3. Who is an authorized dealer?***

An authorized dealer is normally a bank specifically authorized by the Reserve Bank under Section 10(1) of FEMA,1999, to deal in foreign exchange or foreign securities.

## ***4. How much exchange is available for a business trip?***

Authorized dealers can release foreign exchange up to USD 25,000 for a business trip to any country other than Nepal and Bhutan. Release of foreign exchange exceeding USD 25,000 for a travel abroad (other than Nepal and Bhutan) for business purposes, irrespective of period of stay, requires prior permission from Reserve Bank. Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits. Visit abroad for medical treatment and/or check up also falls within this category.

## ***5. Can one obtain additional foreign exchange for medical treatment outside India?***

Authorized dealers may release foreign exchange upto USD 100,000 or its equivalent to resident Indians for medical treatment abroad on self declaration basis of essential details, without insisting on any estimate from a hospital/doctor in India/abroad.

A person visiting abroad for medical treatment can obtain foreign exchange exceeding the above limit, provided the request is supported by an estimate from a hospital/doctor in India/abroad.

This exchange is to meet the expenses involved in treatment and in addition to the amount referred to in paragraph 1 above.

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

Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA. In addition, they can receive remittances upto USD 100,000 from close relatives from India on self-declaration, towards maintenance, which could include remittances towards their studies also. Educational and other loans availed of by students as resident in India can be allowed to continue. There is no dilution in the existing remittance facilities to students in regard to their academic pursuits.

**7. *How much foreign exchange can one buy when going for tourism to a country outside India?***

In connection with private visits abroad, viz., for tourism purposes, etc., foreign exchange up to USD10,000, in any one calendar year may be obtained from an authorised dealer. The ceiling of USD10,000 is applicable in aggregate and foreign exchange may be obtained for one or more than one visit provided the aggregate foreign exchange availed of in one calendar year does not exceed the prescribed ceiling of US\$10,000 {The facility was earlier called B.T.Q or F.T.S.}. This limit of USD10,000 can be availed of by a person along with foreign exchange for travel abroad for any purpose, including for employment or immigration or studies. However, no foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.

**8. *How much foreign exchange is available to a person going abroad on employment?***

Person going abroad for employment can draw foreign exchange upto USD100,000 from any authorised dealer in India on the basis of self-declaration.

**9. *How much foreign exchange is available to a person going abroad on emigration?***

Person going abroad on emigration can draw foreign exchange upto USD100,000 on self-declaration basis from an authorized dealer in India. This amount is only to meet the incidental expenses in the country of emigration.

No amount of foreign exchange can be remitted outside India to become eligible or for earning points or credits for immigration. All such remittances require prior permission of the Reserve Bank.

**10. *Is there any purpose for which going abroad requires prior approval from the Reserve Bank or Govt. of India?***

Dance troupes, artistes, etc., who wish to undertake cultural tours abroad, should obtain prior approval from the Ministry of Human Resources Development, Government of India, New Delhi.

**11. *How much foreign exchange can be purchased in foreign currency notes while buying exchange for travel abroad?***

Travellers are allowed to purchase foreign currency notes/coins only up to USD 2000. Balance amount can be taken in the form of traveller's cheque or banker's draft. Exceptions

to this are (a) travellers proceeding to Iraq and Libya can draw foreign exchange in the form of foreign currency notes and coins not exceeding US\$ 5000 or its equivalent; (b) travellers proceeding to the Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States can draw entire foreign exchange released in form of foreign currency notes or coins.

**12. Do same Rules apply to persons going for studies abroad?**

For the purpose of studies abroad, exchange for maintenance expenses is released in the form of (i) currency notes up to US\$ 2,000, (ii) the balance foreign exchange may be taken in form of traveller's cheques or bank draft payable overseas.

**13. How much in advance one can buy foreign exchange for travel abroad?**

The foreign exchange acquired for any purpose has to be used within 60 days of purchase. In case it is not possible to use the foreign exchange within the period of 60 days it should be surrendered to an authorised dealer.

**14. Can one pay by cash full rupee equivalent of foreign exchange being purchased for travel abroad ?**

Foreign exchange for travel abroad can be purchased from banks against rupee payment in cash up to Rs.50,000/-. However, if the rupee equivalent exceeds Rs.50,000/-, **the entire payment** should be made by way of a crossed cheque/banker's cheque/pay order/demand draft only.

**15. Within what period a traveller who has returned to India is required to surrender foreign exchange?**

On return from a foreign trip travellers are required to surrender unspent foreign exchange held in the form of currency notes within 90days and travellers' cheques within 180 days of return. However, they are free to retain foreign exchange upto USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their RFC(Domestic) Account without any limit.

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

Residents are permitted to hold foreign currency up to USD 2,000 or its equivalent or credit to their RFC(Domestic) Account without any limit provided the foreign exchange was -

- a. acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- b. acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation, or
- c. acquired by him by way of honorarium or gift while on a visit to any place outside India; or
- d. acquired by him from an authorised person for travel abroad and represents the unspent amount thereof.

**17. Is one required to surrender foreign coins also to an authorised dealer?**



There is no restriction on residents holding foreign coins.

**18. How much foreign exchange can one send as gift / donation to a person resident outside India?**

Any person resident in India can remit upto USD 5,000 in any one year as a gift to a person residing outside India or as donation to a charitable/educational/religious/ cultural organisation outside India. Remittances exceeding the limit require prior permission from the Reserve Bank.

**19. Is one permitted to use International Credit Card (ICC) for undertaking foreign exchange transactions?**

Use of the International Credit Cards (ICCs) / ATMs/ Debit Cards can be made for making personal payments like subscription to foreign journals, internet subscription, etc., and for travel abroad in connection with various purposes. Your entitlement of foreign exchange on International Credit Cards (ICCs) is limited by the credit limit fixed by the card issuing authority only. With ICCs you can i) meet expenses/make purchases while abroad ii) make payments in foreign exchange for purchase of books and other items through internet in India. If you have a foreign currency account in India or with a bank overseas, you can even obtain ICCs of overseas banks and reputed agencies.

Use of these instruments for payment in foreign exchange in Nepal and Bhutan is not permitted.

**20. While coming into India how much Indian currency can be brought in?**

A person coming into India from abroad can bring in with him Indian currency notes within the limits given below:

- a. upto Rs. 5,000 from any country other than Nepal or Bhutan, and
- b. any amount in denomination not exceeding Rs.100 from Nepal or Bhutan.

**21. While going abroad how much foreign exchange, in cash, can a person carry?**

Residents are free to carry the foreign exchange purchased from an authorised dealer or money changer in accordance with the Rules. They are, however, allowed to carry foreign exchange in the form of currency notes/coins upto USD 2,000 or its equivalent only. Balance amount can be carried in the form of traveller's cheque or banker/s draft. (In this connection please see item No.9).

**22. While coming into India how much foreign exchange can be brought in?**

A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000/- or its equivalent and/or the value of foreign currency exceeds USD 5,000/- or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.

**23. While going abroad how much foreign exchange can a person carry?**

Residents are free to carry the foreign exchange purchased from an authorised dealer or money changer in accordance with the Rules. In addition, they can also carry up to USD

2,000, or higher amounts representing the unutilized balance of a previous trip, if already held by them (see item 13 above) in accordance with the Regulations.

**24. *Is one required to follow complete export procedure when a gift parcel is sent outside India?***

A person resident in India is free to send (export) any gift article of value not exceeding Rs. 5,00,000 provided export of that item is not prohibited under the extant EXIM Policy.

**25. *How much jewellery one can carry while going abroad?***

Taking personal jewellery out of India is governed by Baggage Rules framed under Export-Import Policy by the Government of India. No approval of Reserve Bank is required in this case.

**26. *Can a resident extend local hospitality to a non-resident?***

A person resident in India is free to make any payment in Indian Rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.

**27. *Can residents purchase air tickets in India for their travel not touching India?***

Residents may book their tickets in India for their visit to any third country. That is residents can book their tickets for travel for instance to London/New York through domestic/foreign airlines in India itself.

**28. *Can a resident open a foreign currency denominated account in India?***

Persons resident in India are permitted to maintain foreign currency accounts in India under following two Schemes:

**a. *EEFC Accounts:-***

To avoid exchange loss on conversion of foreign exchange into Indian Rupee & Rupee into foreign exchange, residents can retain upto 50% of foreign currency remittances received from abroad in a foreign currency account, viz., EEFC account, with an authorised dealer in India. Funds held in EEFC account can be utilised for current account transactions and also for approved capital account transactions as specified by the extant Rules/Regulations/Notifications/Directives issued by the Government/RBI from time to time.

**b. *RFC Accounts :-***

Returning Indians, i.e., those Indians, who were non-residents earlier, and are returning now for permanent stay, are permitted to open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets. Assets held outside India at the time of return can be credited to such accounts. The foreign exchange (i) received or acquired as gift or inheritance from a person referred to sub-section (4) of section 6 of FEMA, 1999 or (ii) referred to in clause (c) of section 9 of the Act or acquired as gift or inheritance therefrom may also be credited to this account.

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

available to residents provided foreign exchange to be credited to such account is received out of certain specified type of funds/accounts.

**c. RFC (Domestic)Account:-**

A person resident in India can open, hold and maintain with an authorized dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India.

The account may also be credited with/opened out of foreign exchange earned like proceeds of export of goods and/or services, royalty, honorarium, etc., and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels by resident individuals.

**29. Can a person resident in India hold assets outside India?**

In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. **(Please also refer to the Liberalised Remittance Facility of USD 25,000 discussed below).**

**II. LIBERALISED REMITTANCE SCHEME OF USD 25,000.**

**30. What is the liberalised Remittance Scheme of USD 25,000?**

This is a new facility extended to all resident individuals under which they may freely remit upto USD 25,000 per calendar year for any permissible current or capital account transaction or a combination of both.

**31. Who is eligible to avail of this Liberalised Remittance Facility?**

The facility is available to resident individuals only.

**32. Is there any frequency for the remittance?**

Resident individuals can avail of the remittance facility under the Scheme once in a calendar year.

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

This facility is available for making remittance/s for any permissible current or capital account transaction or a combination of both. It is not available for purposes specifically prohibited (Schedule I) or regulated by the Government of India (Schedule II) of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

**34. Can residents avail of this facility for acquiring immovable property and other assets abroad?**

Yes. Individuals are free to use this Scheme to acquire and hold immovable property, shares or any other asset outside India without prior approval of RBI.

**35. *Can individuals open a foreign currency account abroad for making remittance under the scheme?***

Yes. Individuals are free to open, hold and maintain foreign currency accounts with a bank outside India for making remittances under the Scheme without the prior approval of RBI. The account can be used for putting through any transaction connected with or arising from remittances under the Scheme.

**36. *What is the impact of the Scheme on the existing facilities for private/business travel, gift, donation, studies, medical treatment etc./items covered in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000?***

The facility under the Scheme is in addition to those already available under Foreign Exchange Management (Current Account Transactions) Rules, 2000.

**37. *Can an individual send remittance under the Scheme to any country?***

Remittance cannot be made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan. The facility is also not available for making remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as 'non-co-operative Countries or Territories' viz., Cook Islands, Egypt, Guatemala, Indonesia, Myanmar, Nauru, Nigeria, Philippines and Ukraine.

Further, remittance under the facility cannot be made to individuals and entities identified as posing significant risk or committing acts of terrorism as advised to banks by RBI from time to time.

**38. *What are the requirements to be complied with by the remitter?***

The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. He has to furnish an application-cum-declaration in the specified format regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

**39. *If an investment of USD 25,000 rises in value within the year, can one book profits and invest abroad again?***

The investor is free to book profit or loss abroad and to invest abroad again. He is under no obligation to repatriate the funds sent abroad.

**40. *Can an individual, who has repatriated the amount sent during the calendar year, avail of the facility once again?***

Once a remittance is made for an amount upto USD 25,000 during the calendar year, he would not be eligible to make any further remittances under this route, even if the proceeds of the investments have been brought back into the country.

**41. *Can remittances be made only in US Dollars?***

The remittances can be in any currency equivalent to USD 25,000 in a calendar year.

**42. Last year, resident investors could invest in equities of overseas listed firms that hold at least 10% in a listed Indian firm. Does this condition still apply?**

The stipulation that investors could invest in equities of overseas listed firms that hold at least 10% in a listed Indian firm which was made in terms of our A.P.(DIR Series) Circular No.66 dated January 13, 2003 continues as an additional facility. Under the current Liberalised Remittance Scheme, no such stipulation has been made.

**43. Can an individual investor sign-on with an international online brokerage and buy and sell stocks ( without exceeding the USD 25,000 limit)?**

The Scheme does not restrict such transactions, provided the transactions are within the limit of USD 25,000 per calendar year and is otherwise in order.

### III. GUIDELINES FOR FINANCIAL INTERMEDIARIES OFFERING SPECIAL SCHEMES, PROTECTION UNDER THE SCHEME.

**44. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

**45. What restrictions have been placed on the scope of activity of the intermediaries?**

It has been decided in public interest that all banks, both Indian and foreign, including those not having an operational presence in India, should seek prior approval from Reserve Bank for the schemes being marketed by them in India to Indian residents either for soliciting foreign currency deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

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

No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme of USD 25,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make.

**47. Whether minor resident Individuals would be permitted to open, maintain and hold such foreign currency accounts if the same is permissible as per local law in the country of the overseas branch?**

Banks may take necessary steps in the matter based on the settled legal position regarding enforcement of the declaration in case the remittance is made on behalf of a minor.

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

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

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

No. Banks in India can not open a foreign currency account in India for residents under the Scheme.

**50. Can OBU in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**

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

**General Information**

For further details/guidance, please approach any bank authorised to deal in foreign exchange or contact Regional Offices of the Foreign Exchange Department of the Reserve Bank.

**4. Frequently Asked Questions (FAQs) on Acquisition and Transfer of Immovable Property in India by a person resident outside India**

In order to address various issues relating to acquisition and transfer of immovable property in India by a person resident outside India under the provisions of the Foreign Exchange Management Act, 1999, a set of FAQs has been prepared for the information of all the concerned. These FAQs seek to cover the broad spectrum of issues relating to acquisition and transfer of immovable property in India by a non-resident Indian (NRI) or a foreign national of Indian origin (PIO) or a foreign national of non-Indian origin as also by a person resident in India who is not a citizen of India. In case there are other issues to be resolved, a reference may be made to the Chief General Manager, Foreign Investment Division, Reserve Bank of India, Central Office, Mumbai 400 001.

**I Regulations/Directions issued by Reserve Bank of India**

***Q.1. Where can one find regulations/directions issued by Reserve Bank for acquisition and transfer of immovable property in India by a person resident outside India?***

A.1. Regulations regarding acquisition and transfer of immovable property in India by a person resident outside India have been notified vide RBI Notification No. FEMA 21/2000-RB dated May 3, 2000 as amended vide Notification No. FEMA 64/2002-RB dated June 29, 2002 and Notification No. FEMA 65/2002-RB dated June 29, 2002 and relevant directions issued in the form of A.P. (DIR Series) Circulars. These are available on RBI website: <http://www.rbi.org.in/index.dll/25?sectionhomepage>

**II Acquisition of immovable property in India by way of purchase by a person resident outside India**

***Q.2. Under the extant foreign exchange regulations to whom is general permission available for purchase immovable property in India?***

A.2. General Permission is available to purchase only a residential/commercial property in India to a person resident outside India who is a citizen of India (NRI) and who is a Person of Indian Origin (PIO).

***Q.3. Who is a Person of Indian Origin (PIO)?***

A.3. For the purpose of acquisition and transfer of immovable property in India, a PIO means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who (i) at any time, held Indian passport; or (ii) who or either of whose father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

***Q.4. Is NRI/PIO who has purchased residential/commercial property under general permission required to file any documents with Reserve Bank of India?***

A.4. NRI/PIO who has purchased residential/commercial property under general permission is not required to file any documents with the Reserve Bank.

***Q.5. Is there any restriction on number of residential/commercial property that NRI/PIO can purchase under the general permission available?***

A.5. There is no restriction on number of residential/commercial property that NRI/PIO can purchase under the general permission available

***Q.6. Can a name of a foreign national of non-Indian origin be added as a second holder to a residential/commercial property purchased by NRI/PIO?***

A.6. No.

***Q.7. Can a foreign national of non-Indian origin resident outside India acquire any immovable property in India by way of purchase?***

A.7. No. Under section 2 (ze) of the Foreign Exchange Management Act, 1999 'transfer' includes among others, 'purchase'. Therefore, a foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of purchase.

***Q.8. Can a foreign national of non-Indian origin acquire residential property on a lease in India?***

A.8. Yes. A Foreign National of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan may acquire only residential accommodation on lease, not exceeding five years for which he/she does not require prior permission of Reserve Bank of India.

***Q.9. Can a person resident outside India (i.e. a NRI or a PIO or a foreign national of non-Indian origin) acquire agricultural land/plantation property/farm house in India by way of purchase?***

A.9. No. A person resident outside India cannot acquire by way of purchase agricultural land/plantation property/farm house in India.

**III Acquisition of immovable property in India by way of gift by a person resident outside India**

***Q. 10. Can NRI/PIO acquire residential/commercial property by way of gift under the general permission available?***

A. 10. Yes. Under general permission available NRI/PIO may acquire residential/commercial property by way of gift from a person resident in India or a NRI or a PIO.

***Q. 11. Can a foreign national of non-Indian origin resident outside India acquire residential/commercial in India by way of gift?***

A. 11. No. Under section 2 (ze) of the Foreign Exchange Management Act, 1999 'transfer' includes among others, 'gift'. Therefore, a foreign national of non-Indian origin resident outside India cannot acquire residential/commercial property in India by way of gift.

***Q. 12. Can a person resident outside India (i.e. a NRI or a PIO or a foreign national of non-Indian origin) acquire agricultural land/plantation property/farm house in India by way of gift?***

A. 12. No. A person resident outside India cannot acquire agricultural land/plantation property/farm house in India by way of gift.

#### **IV Acquisition of immovable property in India by way of inheritance by a person resident outside India**

***Q.13. Can a person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) hold any immovable property in India acquired by way of inheritance from a person resident in India?***

A.13. Yes. A person resident outside India can hold immovable property acquired by way of inheritance from a person resident in India as per the provisions of Section 6(5) of the Foreign Exchange Management Act, 1999.

***Q.14. Can a person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) hold any immovable property in India acquired by way of inheritance from a person resident outside India?***

A. 14. With the specific approval of Reserve Bank a person resident outside India may hold any immovable property in India acquired by way of inheritance from a person resident outside India, provided the bequeathor had acquired such property in accordance with the provisions of foreign exchange law in force at the time of acquisition or under FEMA regulations.

#### **V Transfer of immovable property in India by way of sale by a person resident outside India**

***Q.15. Under general permission available to whom can NRI transfer by way of sale his residential/commercial property?***

A.15. NRI can transfer by way of sale residential/commercial property in India to a person resident in India or to a NRI or a PIO.

***Q.16. Under general permission available to whom can a PIO transfer his residential/commercial property by way of sale?***

A.16. PIO can transfer by way of sale residential/commercial property in India only to a person resident in India.



***Q. 17. Can a PIO transfer by way of sale his residential/commercial property to a NRI or a PIO?***

A.17. No. He would need to seek Reserve Bank prior approval for transfer by way of sale residential/commercial property in India to a NRI or a PIO.

***Q. 18. Can a foreign national of non-Indian origin whether resident in India or outside India transfer by way of sale residential/property in India acquired with the specific permission of Reserve Bank to a person resident in India or outside India?***

A. 18. No. A foreign national of non-Indian origin whether resident in India or outside India would need to seek prior approval of Reserve Bank for transfer by way of sale residential/property in India acquired with the specific permission of Reserve Bank to a person resident in India or outside India.

***Q.19. Under general permission available to whom can NRI/PIO transfer by way of sale his agricultural land/plantation property/farm house in India?***

A.19. Under the general permission available NRI/PIO may transfer by way of sale his agricultural land/plantation property/farm house in India to a person resident in India who is a citizen of India.

***Q.20. Can a foreign national of non-Indian origin resident outside India transfer by way of sale agricultural land/plantation property/farm house acquired by him in India?***

A. 20. A foreign national of non-Indian origin resident outside India would need to seek prior approval of Reserve Bank for transfer, by way of sale, agricultural land/plantation property/farm house acquired in India.

**VI Transfer of immovable property in India by way of gift by a person resident outside India**

***Q.21. Under general permission available can NRI/PIO transfer his residential/commercial property by way of gift?***

A. 21. Yes. NRI/PIO may transfer by way of gift residential/commercial property in India to a person resident in India or to a NRI or a PIO.

***Q. 22. Under general permission available to whom can NRI/PIO transfer by way of gift agricultural land/plantation property/farm house in India?***

A.22. Under the general permission available NRI/PIO may transfer by way of gift agricultural land/plantation property/farm house in India to a person resident in India who is a citizen of India.

***Q.23. Can a foreign national of non-Indian origin resident outside India transfer by way of gift agricultural land/plantation property/farm house acquired by him in India?***

A.23. No. A foreign national of non-Indian origin resident outside India would need to seek prior approval of Reserve Bank for transfer by way of gift agricultural land/plantation property/farm house acquired by him in India.

**VII Transfer of residential/commercial property in India by way of mortgage by a person resident outside India**

***Q.24. Can NRI/PIO transfer by way of mortgage his residential/commercial property to an authorized dealer/housing finance institution in India?***

A. 24. Yes.

***Q.25. Can NRI/PIO transfer by way of mortgage his residential/commercial property in India to a party abroad?***

A.25. No. He should seek prior approval of RBI.

***Q.26. Can a foreign national of non-Indian origin resident in India or outside India transfer by way of mortgage his residential/commercial property in India acquired with the specific approval of Reserve Bank to a party in India or abroad?***

A. 26. No. He should seek prior approval of RBI. However, immovable property purchased by a person resident outside India who has established a Branch Office or other place of business for carrying on in India any activity in accordance with FERA/FEMA regulations, may under general permission available, mortgage such a property with an authorized dealer as a security for any borrowing.

**VIII Mode of payment for purchase of residential/commercial property in India by NRI/PIO**

***Q.27. Under the general permission available what is mode of payment for purchase of residential/commercial property in India by NRI/PIO?***

A.27. Under the general permission available NRI/PIO may purchase residential/commercial property in India out of funds remitted to India through normal banking channel or funds held in his NRE/FCNR (B)/NRO account. No consideration shall be paid outside India.

***Q.28. Can 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) be credited to NRE account?***

A. 28. Yes, provided original payment was made by way of inward remittance or by debit to NRE/FCNR (B) account. For this purpose no permission of Reserve Bank is required and they may approach the Authorised Dealer directly in the matter. (Please refer to A. P. (DIR Series Circular No. 46 dated November 12, 2002).

***Q. 29. Can NRI/PIO for the purpose of acquisition of flat/house in India for his own residential use avail of loan from authorized dealer against the security of funds held in his NRE Fixed Deposit account/FCNR (B) account?***

A. 29. Yes, subject to certain terms and conditions (Please refer to Schedules 1 and Schedules 2 to Notification No. FEMA 5/2000-RB dated 3rd May 2000).

***Q.30. Can NRI/PIO, avail of housing loan in rupees from an authorized dealer or housing finance institution in India approved by the National Housing Finance Bank for purchase***

***of residential accommodation or for the purpose of repairs/renovation/improvement of residential accommodation?***

A. 30. Yes, subject to certain terms and conditions. Such loans can be repaid by the borrower by way of inward remittance through normal banking channel or by debit to his NRE/FCNR (B)/NRO account or out of rental income derived from renting out such property. Such loan can also be repaid by the borrower's close relatives through their account in India by crediting the borrower's loan account. (Please refer to Regulation 8 to Notification No. FEMA 4/2000-RB dated 3rd May 2000 and A.P. (DIR Series) Circular No.95 dated April 20, 2003 and A.P. (DIR Series) Circular No.94 dated May 25, 2003).

***Q. 31. Can NRI avail of housing loan in rupees from his employer in India?***

A. 31. Yes, subject to certain terms and conditions (Please refer to Regulation 8A to Notification No. FEMA 4/2000-RB dated 3rd May 2000 and A.P. (DIR Series Circular No.27 dated October 10, 2003).

#### **IX Repatriation of sale proceeds of residential/commercial property purchased by NRI/PIO**

***Q.32. Can NRI/PIO repatriate the sale proceeds of residential/commercial property in India acquired by way of inward remittance through normal banking channel or by debit to NRE/FCNR (B)/NRO account? If so, what is the quantum?***

A.32. NRI/PIO may repatriate the sale proceeds of residential/commercial property in India acquired by way of inward remittance through normal banking channel or by debit to NRE/FCNR (B) account. The amount to be repatriated should not exceed the amount paid for acquisition of residential/commercial property (a) in foreign exchange received through normal banking channel or by debit to FCNR (B) account or (b) the foreign currency equivalent, as on the date of payment, of the amount paid by debit to NRE account. The sale proceeds of residential/commercial property in India acquired by way of debit to NRO account cannot be repatriated and should be credited to NRO account only.

***Q.33. The rupee loan availed by NRI for purchase of residential accommodation was repaid either by inward remittance or by debit to NRE/FCNR (B) account. Can the sale proceeds of such property be repatriated?***

A.33. Yes. Repayment of loan in foreign exchange is treated as equivalent to the foreign exchange received for purchase of residential accommodation.

***Q.34. Is there any lock in period for sale of residential/commercial property purchased out of inward remittance/debit to NRE/FCNR(B) account?***

A.34. No lock in period is applicable for sale of such property.

***Q.35. Is there any restriction on repatriation of sale proceeds of residential property purchased by NRI/PIO out of funds remitted to India through normal banking channel or funds held in his NRE/FCNR (B) account?***

A.35. Yes. Repatriation of sale proceeds is restricted to not more than two residential properties.

**X Remittance of sale proceeds of residential/commercial property received by way of gift by NRI/PIO**

***Q.36 Into which account the sale proceeds of residential/commercial property received by way of gift by NRI/PIO can be credited?***

A.36. The sale proceeds of residential/commercial property received by way of gift by NRI/PIO should be credited to NRO account only.

**XI Remittance of sale proceeds of immovable property inherited by a person resident outside India**

***Q.37. Can sale proceeds of any immovable property inherited by NRI/PIO from a person resident in India be remitted abroad?***

A. 37. Yes. Amount not exceeding USD one million, per calendar year subject to production of documentary evidence in support of inheritance and Tax clearance certificate/no objection certificate from Income Tax authority to authorized dealer for remittances. However, if a PIO is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran he should seek prior approval of Reserve Bank with documentary evidence in support of inheritance and tax clearance/no objection certificate from Income Tax authority. This remittance facility is not available to a citizen of Nepal or Bhutan. (Please refer to Regulation 4 (3) to Notification No. FEMA 13/RB-2000 dated 3rd May 2000)

***Q.38. Can sale proceeds of any immovable property in India inherited, by a foreign national of non-Indian origin resident outside India, from a person resident in India be repatriated by him?***

A.38. Yes. Amount not exceeding USD one million, per calendar year subject to production of documentary evidence in support of inheritance and Tax clearance certificate/no objection certificate from Income Tax authority to authorized dealer for remittances. However, a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran shall seek prior approval of Reserve Bank with documentary evidence in support of inheritance and tax clearance/no objection certificate from Income Tax authority. This remittance facility is not available to a citizen of Nepal or Bhutan. (Please refer to Regulation 4 (2) (ii) to Notification No. FEMA 13/RB-2000 dated 3rd May 2000)

***Q.39. Can sale proceeds of any immovable property in India inherited, by a person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin resident outside India), from a person resident outside India be repatriated by him or his successor?***

A.39. No. He needs to seek prior approval of Reserve Bank with documentary evidence in support of inheritance and tax clearance/no objection certificate from Income Tax authority.

**XII Acquisition of immovable property for carrying on a permitted activity in India**

***Q.40. Can a person resident outside India who has established a Liaison Office in India in accordance with FERA/FEMA regulations purchase immovable property?***

A.40. No.

***Q. 41. Can a person resident outside India who has established a Branch Office or other place of business for carrying on in India any activity in accordance with FERA/FEMA regulations purchase commercial/residential property?***

A.41. Yes, provided it is necessary for or incidental to carrying on such activity and all applicable laws, rules, regulations or directions are duly complied with. The purchase price should be paid by way of inward remittance through proper banking channel. A declaration in form IPI should be filed with Reserve Bank within ninety days from the date of acquisition of commercial/residential property.

***Q. 42. Can such a property referred to in Q. No.41 be mortgaged with an authorized dealer as a security for any borrowing?***

A.42. Yes, RBI has granted general permission for such a mortgage.

***Q.43. On winding up of the business can the sale proceeds of such property be repatriated?***

A.43. Yes, with prior approval of Reserve Bank.

### **XIII Acquisition/Transfer of immovable property in India by Foreign Embassies/Diplomats/ Counsel Generals**

***Q.44. Can Foreign Embassies/Diplomats/Counsel General purchase/sell immovable property in India?***

A.44. Yes. Under general permission available Foreign Embassies/Diplomats/Counsel General may acquire any immovable property other than agricultural land/plantation property/farm house in India. Such property may be purchased/sold provided prior clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale. The consideration for purchase of such property should be paid by way of inward remittance through normal banking channel.

### **XIV Other issues**

***Q. 45. Can NRI/PIO rent out the residential/commercial property purchased out of foreign exchange/rupee funds, if not required for immediate use?***

A. 45. Yes. Rent received, being current income may be credited to NRO/NRE account or remitted abroad.

***Q.46. Can NRI who had acquired immovable property viz., residential/commercial property/agricultural land/plantation property/farm house in India while he was a person resident in India continue to hold or transfer such immovable property? In which account the sale proceeds may be credited?***

A.46. Yes, under the provisions of Section 6 (5) of the Foreign Exchange Management Act, 1999 NRI who had acquired immovable property in India while he was a person resident in India may continue to hold such property. Under the general permission available he may transfer by way of sale or gift agricultural land/plantation property/farm house in India to a person resident in India who is a citizen of India and may transfer by way of sale or gift residential/commercial property in India to a person resident in India or to a NRI/PIO. The sale proceeds may be credited to NRO account.

***Q.47. Can a PIO who had acquired immovable property viz., residential/commercial property/ agricultural land/plantation property/farm house in India while he was a person resident in India continue to hold or transfer such immovable property? In which account the sale proceeds may be credited?***

A.47. Yes, under the provisions of Section 6 (5) of the Foreign Exchange Management Act, 1999, PIO who had acquired immovable property in India while he was a person resident in India may continue to hold such property. Under the general permission available he may transfer agricultural land/plantation property/farm house in India by way of sale or gift to a person resident in India who is a citizen of India and residential/commercial property in India by way of sale to a person resident in India and way of gift residential/commercial property in India to to a person resident in India or to a NRI/PIO. However, if a PIO is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan he should seek prior approval of Reserve Bank for transfer of such immovable property in India. The sale proceeds may be credited to NRO account.

***Q.48. Can the sale proceeds of the immovable property referred to in Q. Nos. 46 and 47 credited to NRO account of NRI/PIO, be remitted abroad?***

A.48. Yes, provided the immovable property was held for a period not less than ten years.

***Q. 49. What if such an immovable property was held for less than ten years?***

A. 49. If such a property acquired out of rupee funds is sold after being held for less than ten years, remittance can be made, if the sale proceeds were held for the balance period in NRO account (Savings/Term Deposit) or in any other eligible investment, provided such investment is traced to the sale proceeds of the immovable property.

***Q.50. Under erstwhile FERA, foreign nationals of non-Indian origin resident in India or outside India had with the specific approval of Reserve Bank acquired residential property in India. While they can continue to hold the same under the provisions of Section 6 (5) of the FEMA, 1999 can they transfer such property?***

A.50. Yes; only with the prior approval of Reserve Bank.

***Q.51. Is a person resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?***

A.51. A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000.

***Q.52. Where are the terms a 'person resident in India' and a 'person resident outside India' defined?***

A.52. Section 2 (v) and section 2 (w) of the Foreign Exchange Management Act, 1999 defines a 'person resident in India' and a 'person resident outside India' respectively.

***Q.53. What is meant by a person resident in India?***

A.53. From FEMA angle, a person resident in India means a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. In other words, to be treated as ‘a person resident in India’, under FEMA a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has also to comply with the condition of the purpose/intention of stay.

***Q.54. Does Reserve Bank determine the residential status of a person for the purpose of acquisition of immovable property in India?***

A.54. No. Under FEMA residential status is determined by operation of law. The onus is on an individual to prove his/her residential status if questioned by any other authority.

***Q.55. If a foreign national (except a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan) is a person resident in India as per the provisions of Section 2 (v) (i) B of the Foreign Exchange Management Act, 1999 does he require approval of RBI to purchase any immovable property in India?***

A.55. No, he does not require approval from Reserve Bank from FEMA angle. However, approvals if any, required in terms of regulations prescribed by other authorities such as the concerned State Government etc., will have to be obtained by him/her.