

Report of the
Committee to Review
the Facilities for Individuals
Under FEMA, 1999

August 2011

**Report of the Committee to
Review the Facilities for Individuals under FEMA 1999**

LETTER OF TRANSMITTAL

August 5, 2011

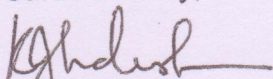
Dr. D. Subbarao
Governor
Reserve Bank of India
Mumbai

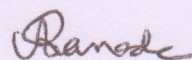
Dear Sir,

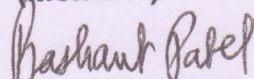
We herewith submit the Report of the Committee to Review the facilities for Individuals under FEMA, 1999. The Committee's recommendations for rationalization and streamlining of existing instructions and procedures have been made with the twin objectives of being in harmony with the existing current account convertibility and the move toward fuller capital account convertibility as also of facilitating a shift from the micro management of forex transactions of individuals to the monitoring of flows arising from the forex transactions of residents, Non-Resident Indians and Persons of Indian Origin.

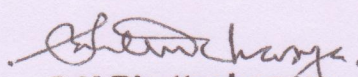
The Committee wishes to convey its sincere thanks for this opportunity given by the Reserve Bank.

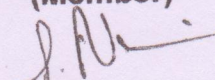
Yours faithfully,

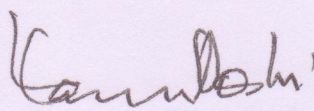

(K.J. Udeshi)
Chairman

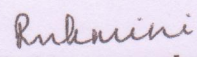

Ajit Ranade
(Member)

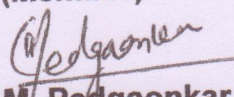

Prashant Patel
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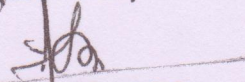

S.K. Bhattacharyya
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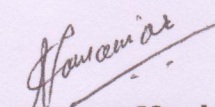

Sanjay Nair
(Member)

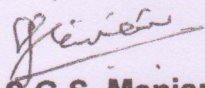

Kanu H. Doshi
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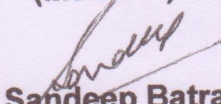

R. Veeraraghavan
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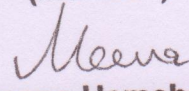

A.M. Pedgaonkar
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A. Surendran
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Chapter I

Introduction

In the Annual Monetary Policy Statement for 2011-12, Governor, Dr.D.Subbarao indicated that:

“Recognising the need for facilitating genuine foreign exchange transactions by individuals – Residents/Non-resident Indians (NRIs) and Persons of Indian Origin (PIOs) – under the current regulatory framework of FEMA, Reserve Bank has constituted a Committee under the Chairmanship of Smt. K.J. Udeshi. The Committee comprises representatives of various stakeholders. The Committee will identify areas for streamlining and simplifying the procedures so as to remove the operational impediments, and assess the level of efficiency in the functioning of authorized persons, including the infrastructure created by them.”

1.2 The Committee thus constituted comprised external experts, representatives from select Authorized Dealer (AD) banks, Foreign Exchange Dealers Association of India and Indian Banks' Association as listed in Annex I. The Committee commenced its work from May 6, 2011 and was expected to submit its report in three month's time.

1.3 The terms of reference of the Committee were:

- i. To review the current regulatory framework under FEMA for individuals – Residents as well as NRIs/PIOs (except in the areas of Forex Markets and Risk Management);
- ii. To identify areas where further streamlining and simplification of procedure is possible and recommend measures to remove operational impediments so as to make the liberalization measures more meaningful;

iii. To examine the level of efficiency in the functioning of the Authorised Persons, including infrastructure created by them, in discharging of the powers delegated to them with regard to the facilities available to Residents as well as NRIs/PIOs; and

iv. To consider any other matter of relevance to the above.

1.4 The Committee commenced its work from May 6, 2011 and the then Executive Director and presently Deputy Governor, RBI, Shri H R Khan, addressed the Committee at its first meeting on May 6, 2011. The Committee also had the privilege of interacting and having comprehensive discussions with the then Deputy Governor, Smt. Shyamala Gopinath, Deputy Governor, Shri Anand Sinha, and Executive Director, Shri G Padmanabhan, The Committee is deeply appreciative of insights provided by the top management of the Reserve Bank.

1.5 The Reserve Bank issued a Press Release (Annex II) on May 10, 2011 at the request of the Committee, to invite comments/suggestions from the members of the public and other stake holders on the foreign exchange related schemes/facilities available to individuals – Residents, NRIs/PIOs. In particular, the Committee is thankful to the Bombay Chartered Accountants' Society, The Chamber of Tax Consultants and the users of the forex facilities in general, both in India and overseas, who shared their views/suggestions with the Committee.

1.6 As the majority of the Committee members were bankers, the Committee had to rely on the services of RBI to undertake visits to branches of ADs in Mumbai, New Delhi, Kolkata, Chennai, Ahmedabad, Bangalore, Hyderabad, Kochi and Chandigarh in order to examine their efficiency in discharging the powers delegated to them. The Committee is thankful to the RBI officials for their invaluable assistance in undertaking this task and submitting their findings expeditiously.

1.7 The Committee held in all seven meetings and all Members evinced keen interest in the deliberations and extended their unreserved support in flagging issues and providing fresh insights.

1.8 The Committee is appreciative of the unstinted support provided by the officials of the Foreign Exchange Department, RBI and in particular Smt. Sujatha Prasad, S/Shri Ajay Kumar, Aditya Gaiha, Ajay Vij, D.K. Srivastava and Ms Anjali Parikh.

1.9 The Committee is also appreciative of the herculean efforts of Smt. S.A. Talpade, Private Secretary, Banking Codes and Standards Board of India for providing secretarial services to the Committee.

Chapter II

Overview

This year marks the twentieth anniversary of the dramatic opening up of the Indian economy. The past two decades have witnessed a huge transformation across sectors such as industry, external trade, banking and finance. This is also a period when the economy has become globalized, in terms of flows of goods and services, investments, capital, people, technology and ideas. In the area of foreign exchange the country has certainly moved away from an older paradigm of managing scarcity, to a more liberal and flexible regime. In fact there has been occasional concern that the recent stock of foreign exchange is excessive for the country. As the trade to GDP ratio has steadily climbed to almost 40 per cent, the inward flow of foreign direct investment has also risen substantially. The accumulated stock of foreign exchange reserves is largely attributable to non-debt creating inflows.

2.2 As a part of the liberalization process, and as part of the obligations under Article VIII of the charter of its membership of International Monetary Fund, India accepted the move to current account convertibility in August 1994. Barring a few exceptions, all quantitative and sectoral restrictions were removed for all current account transactions. In subsequent years a significant element of capital account convertibility has also been introduced with an unprecedented liberalization of outflows by residents.

2.3 To facilitate cross border transactions involving foreign exchange, and to better reflect India's growing and robust international engagement, a major legal transition took place. In 1999 India's Parliament passed a new law "FEMA" which replaced the older version of FERA 1973. In the nomenclature itself, the word "Control" was replaced by "Management". This change along with other major features of FEMA signaled a move away from the earlier "scarcity" and "control" mindset of FERA. The RBI was given the authority to frame rules under FEMA, and the first set of

comprehensive rules and regulations were published in May 2000. Thereafter, the RBI has continued to issue new guidelines and rules, with a view to be in tune with changing times and requirements, and also to reflect the direction of greater liberalization.

2.4 As such, FEMA governs any transactional relationship between a resident and a non-resident entity. The rules under FEMA broadly indicate that (a) all current account transactions should be enabled and facilitated; and, (b) specified capital account transactions be enabled, with necessary references to the approving authority. FEMA also gave substantial delegated powers to Authorised Dealers for better functioning of FEMA.

2.5 FEMA has now been in existence for more than a decade. Various experiences both positive and negative have been gathered during this period. There has been a major concern that the application of FEMA to transactions between individuals (as against corporates), has been unnecessarily burdensome. It is as if the functioning of a law, which was aimed at liberalizing has become constrained by excessive regulation.

2.6 In 2004, the *Committee on Procedures and Performance Audit on Public Services (CPPAPS)*, set up by RBI, attempted “to look at whether, within the overarching framework of policy intent, the policy contents were such as to enable a seamless flow of services”. The CPPAPS made several recommendations, mainly to adopt “procedures, wherein at least for individuals, foreign exchange transactions would have the same ease of operations as rupee transactions”, and not be unnecessarily burdensome.

2.7 The RBI Committee, on *Fuller Capital Account Convertibility (FCAC)* in 2006 had stated that, “there is a need to break out of the “control mindset, and substantive policy issues should be de-linked from procedural issues”. In this regard, the FCAC Committee recommended, *inter alia*, the setting up of an internal RBI Task Force to review items identified as procedural / operational matters, so as to examine the efficacy in the functioning of the powers delegated to Authorised Persons and Regional Offices of the RBI.

The Task Force which was set up, submitted its findings and recommendations in 2007. Although the Task Force addressed a number of issues, a large number of anomalies remain.

2.8 As several committees, including the present one, have dealt with procedural infelicities, it is worth highlighting some of the main areas which have created difficulties in the functioning of FEMA.

2.9 **Mindset:** The regime under the older FERA was characterized by a mindset of “control”. This was a consequence of having to manage scarcity. Even the concerned Department at the RBI was named as the “Exchange Control Department” (ECD). The abatement of foreign exchange scarcity and the passage of the new law (FEMA) unfortunately did not wipe away all traces of the control mindset. The operations of FEMA still betray a fear of compensatory payments between non-residents and residents, harking back to the FERA days. Thus it is not uncommon to find current account transactions often being subject to additional document requirements to establish bonafides, where none is necessary. This is a case of liberalization or reform being defeated by intricate rules and regulations.

2.10 **When in Doubt, Say NO!** Even though FEMA has many enabling features, and delegation of powers to Authorized Dealers (ADs), it is often the case that the bias is toward using the older restrictive approach. This is possibly a consequence of the lack of clarity in some of the regulations itself, causing the ADs to adopt a “safer” and older route of just saying NO!

2.11 **Incentives for Frontline Staff of ADs:** The structure of incentives, and the level of preparedness of the frontline staff of many ADs results in situations that users face unnecessary hardships in executing even the simplest FEMA compliant transactions. Since there are harsh individual penalties for the staff at the counter in case of a wrongly given permission (Type 1 error), and none for a Type 2 error (i.e. giving a wrong denial), this results in impediments for customers. It is as if the staff has no incentive to say “yes” whereas saying a “no” is safer.

2.12 Use of FEMA for Non FEMA Regulations: The regulations under FEMA have also been burdened with the additional responsibility, which are **not the domain of RBI**, which contaminate the functioning of FEMA. Some of these domains are: (a) **Foreign Policy:** since interaction and transaction with Bangladeshis / Pakistanis / Sri Lankans have other foreign policy implications, FEMA operations have to include necessary checks. (b) **Tax Policy:** This requires that no cross border transaction take place without confirmation that appropriate tax has been paid to Indian tax authorities. FEMA is charged with this tax compliance. (c) **Internal Security:** Issues like KYC, money laundering are not really in the purview of FEMA, but nevertheless constrain the freer functioning, due to their compliance requirement. (d) **FDI Policy/ Takeover Code:** Since India has sectoral caps for foreign investment, as also limits on holdings of non-resident Indians in listed Indian companies, the actual daily monitoring of these holdings has been charged to FEMA regulators. Some of these anomalies can surely be corrected by shifting the relevant compliance responsibility to the appropriate regulator, such as SEBI, stock exchanges or CBDT.

2.13 Multiple Regulators: Since powers have been delegated to Authorized Dealers (ADs), it is as if instead of an erstwhile single regulator (the RBI), we now have a multitude of regulators, each interpreting FEMA in his own way! e.g. terms like “legitimate dues” and “bonafides” have multiple interpretations, even across branches of the same bank!

2.14 Concept of Non-Repatriability: There is no longer a need for distinction between repatriable and non-repatriable funds for non-residents. Since non-residents have been given the freedom to remit US \$ 1 million annually, it makes little sense to maintain procedures under FEMA that continue to treat these two categories separately.

2.15 Holding of Joint Accounts between Residents and Non-Residents: The very status of being resident or not has become fluid, and can change several times in any person’s lifetime. Furthermore the

presence of a large Indian diaspora, with near relatives spread across the resident and non-resident divide, it makes little sense to prohibit the joint account holding between these two categories of individuals, at least for those that are close relatives.

2.16 Inherent Inconsistencies: Over a period of time, the FEMA rules now contain contradictory provisions, e.g. a resident can remit money as a gift to a non-resident through the Liberalized Remittance Scheme, but cannot gift in rupees to that same non-resident in India.

2.17 Restraints on Individuals setting up Business Abroad: The current FEMA regime explicitly prohibits individuals from setting up businesses overseas or having a controlling or majority stake in an overseas company. This restriction is an unfair handicap when the entrepreneurial skills of Indians have been recognized worldwide.

2.18 Consistency of Definitions under FEMA: There are several instances wherein the definition of certain terms varies across sections e.g. the term “Person of Indian Origin” (PIO) differs according to the investment purpose; the definition of “real estate” varies under various regulations. There is a need to make definitions uniform and consistent across FEMA.

2.19 Approach of the Committee: The Committee received a multitude of suggestions from several individuals resident in India and abroad as also ADs and various associations and entities and the issues examined in this Report emanate from these. The approach of the Committee has been towards doing away with transaction by transaction approval at the AD level so as to leave no scope for arbitrariness or rent-seeking and towards bringing more clarity and transparency, so that law abiding citizens, Residents NRIs and PIOs can benefit from a liberalized regime.

2.20 The Committee is of the considered view that the procedural “knots” in the system need to be untied to enable the present forex liberalization to be effective and in the absence of untying of these knots, any further forex liberalization will not be meaningful. The Committee is of the view that the

implementation of its recommendations would bring about a significant improvement in the functioning of the forex regime as applicable to individuals and these recommendations can be implemented in the current financial year (2011-12). The rest of the Report addresses specific issues of procedures which need to be amended or totally scrapped.

Chapter III

Resident Individuals

In August 1994 India became a signatory to Article VIII of the IMF and accepted full convertibility on the current account. While liberalizing payments on the current account, the RBI set out, certain limits under which residents could make remittances freely for current account transactions. These limits are “indicative limits” in the sense that if higher amounts needed to be remitted all that the resident needs to do is to satisfy the RBI with documentary evidence about the need thereof. Basically, therefore the “reasonableness” of the current account remittance is determined by the user.

3.2 Liberalisation on the capital account for resident individuals came much later in 2004. The year 2004 is a watershed inasmuch as for the first time resident individuals were permitted to remit an amount upto US \$ 25,000 p.a. on the capital account. This was later raised to US \$ 2,00,000 per financial year which continues till date.

3.3 Notwithstanding the significant liberalization for resident individuals, on both current and capital account, the system is heavily knotted up with delegated powers being exercised differently by ADs, procedural hassles, reporting requirements and above all lack of clarity among all parties to the transactions.

3.4 The need of the hour is therefore to bring about rationalization in sync with the overall liberalized foreign exchange system now prevailing. The Committee has based its recommendations keeping in view the need to avoid, as far as possible, RBI/ADs from giving case-by-case approvals and bringing about greater clarity and transparency so as to reduce the scope for benami transactions. To attain this objective, the Committee has undertaken an itemized examination of the prevailing position and set out the reasons for change as follows:

Requirement that a resident shall submit Form 15CA/15 CB (Annex III) signed by the remitter and a Chartered Accountant, for making any remittance abroad

3.5 FEMA Regulation: NIL

3.6 Reasons for Change: Section 195 of the Income Tax Act 1961 mandates deduction of tax from payments made or credit given to non-residents at the rates in force and CBDT circular No.4/2009 (Annex IV) dated June 29, 2009 provides that an undertaking in Form 15 CA accompanied by Chartered Accountant's certificate in Form 15 CB needs to be furnished by the person making the remittance or giving credit to a non-resident.

3.7 Basically, any non-business related expenditure or payment does not attract TDS. Therefore, if the remittance is not related to any business transaction or the remitter is not claiming it as business expenditure and the payment is by debit to the bank account of the resident individual the question of submitting Form 15 CA/CB does not arise.

3.8 In view of this and as the submission of Form 15 CA/CB is not related to FEMA but is contrary to the avowed objective of FEMA viz. facilitating external payments, RBI, which had been issuing circulars to ADs based on the CBDT instructions/ Notifications till 2002, discontinued this practice but has not issued any suitable instructions thereafter. As a result there is no clarity or uniformity among ADs and while some ADs insist on the submission of the Form 15 CA/CB for remittances under the Liberalised Remittance Scheme (LRS), some insist only for remittances above US \$ 5000/- and some don't obtain Form 15 CA/CB at all. This is borne out by the survey results (Annex V) and is not an acceptable situation as it means some residents are subjected to unnecessary costs and harassment while others are not.

Recommendation:

3.9 To enable hassle-free remittances by resident individuals banks may be advised by RBI not to insist on the submission of form 15 CA/15 CB for any remittances under the Liberalised Remittance Scheme (LRS). ADs may obtain a suitable self-declaration from the resident for such remittances as follows:

“I hereby declare that I intend to send the amount mentioned below at col. No. --- to the person specified below at col.no. --- out of my personal earnings. I further declare that this remittance is not related to any business and I am not claiming it as business expenditure. My permanent account no. is -----“.

Hassle-free current account foreign exchange transactions by resident/ individuals

3.10 **FEMA Regulation:** The Government of India has issued a Notification No. GSR 381(E) dated May 3, 2000 notifying the Foreign Exchange Management (Current Account Transactions) Rules 2000 in terms of which drawal of exchange for certain transactions included in Schedule I (Annex VI) thereto has been prohibited and exchange facilities for transactions included in Schedule II (Annex VII) to the Rules may be permitted by ADs provided the applicant has secured the approval from the Ministry/Department of Government of India indicated against the transactions.

3.11 Remittances for transactions included in Schedule III (Annex VIII) may be permitted by ADs upto the ceilings prescribed therein. In respect of transactions included in Schedule III where the remittance applied for exceeds the limit, if any, indicated in the schedule, prior approval of RBI is required.

3.12 Remittances for all other current transactions which are not specifically prohibited under the Rules or which are not included in Schedule

II or III may be permitted by ADs without any monetary/percentage ceilings subject to compliance with the provisions of sub-section (5) of Section 10 of FEMA, 1999.

3.13 Sub-Section (5) of Section 10 of FEMA 1999 stipulates:

“An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.”

3.14 **Reasons for Change:** India became a signatory to Article VIII of the IMF way back in August 1994 and accepted full convertibility on the current account. “Indicative limits” for remittances on the current account were introduced then with the intent that if higher amounts needed to be remitted by the resident individual he could do so with the RBI’s approval. The basic premise being that the “reasonableness” of the amount to be remitted on the current account is to be determined by the user.

3.15 However, through the draconian sub-section (5) of Section 10 of FEMA 1999, RBI has effectively created a system of case-by-case approval by hundreds of ADs with diverse discretionary authority to sit in judgement over the legitimacy of the current account transactions. In 2004, the Committee on Procedures and Performance Audit on Public Services (CPPAPS) set up by the RBI and chaired by former Deputy Governor, Shri

S.S. Tarapore had recommended that the RBI should adopt “procedures wherein foreign exchange transactions at least for individuals, would have the same ease of operations as Rupee transactions”. For example, a resident should be able to transfer money to London for maintenance expenses with the same ease as transferring money for the same purpose to Patna. If we say we are convertible on the current account such ease of operations must necessarily follow. However, the compliance requirement on ADs makes it impossible to give effect to this recommendation of CPPAPS and thereby current account transactions for individuals still remain an unnecessary hassle.

Recommendation:

3.16 Resident individuals should be enabled to undertake any current account transaction other than those included under Scheme I & II of GOI Notification No. GSR 381(E) dated May 3, 2000 upto US \$ 2,00,000/- per financial year on the basis of a simple application form (Annex X) presently used for remittances under LRS without banks insisting on any documentary evidence or a Chartered Accountant’s certificate in Form 15 CA/15CB. If the recommendation at para 3.9 above is accepted, the Application Form may be amended to include the proposed declaration.

3.17 Regulation 5 of Section 10 of FEMA 1999 may be amended suitably so that any current account transaction can be carried out on the basis of a simple declaration as indicated in the recommendation at para 3.9 above.

Resident individuals gifting money or paying for medical expenses of NRI/ PIO visiting India

3.18 **FEMA Regulation:** Such transactions in Rupees in India would be contravening Section 3 of FEMA (- Receipt from and payment to a person resident outside India) as no general or specific permission exists for these transactions.

3.19 Reasons for Change: In terms of the provisions of FEMA Notification No. 16/RB-2000 dated May 3, 2000, a person resident in India is permitted to make any payment in 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. It may be noted that the expenditure being borne is not relating to only NRIs or PIOs but includes all foreigners. However, if a parent were to gift money in India to his NRI child or bear the medical expenses in India of his children or close relatives it would be in contravention of FEMA regulations. If an NRI/PIO gets married in India, gifts made to such NRI/PIO are in contravention of FEMA. Keeping in view the existing liberalization provided vide the above said FEMA Notification No.16 dated May 3, 2000 and the fact that a resident individual can remit upto US \$ 2,00,000/- p.a. under LRS, there is every reason to permit residents to gift to or bear the medical expenses of NRIs/PIOs in Rupees freely in India without the fear of having contravened FEMA.

Recommendation:

3.20 The ambit of FEMA Notification No.16/RB-2000 dated May 3, 2000 may be expanded to include permission to residents making gifts to and bearing medical expenses of visiting NRIs/PIOs.

Resident individual gifting shares to NRI/PIO close relative

3.21 FEMA Regulation: Para 10 of Notification No. FEMA 20/2000-RB stipulates that the resident shall apply to the Reserve Bank for approval to gift the shares and the RBI may grant such approval on being satisfied of the following:

- a. The donee is eligible to hold such a security under Schedules 1, 4 and 5 of these Regulations.

- b. The gift does not exceed 5% of the paid up capital of the Indian company/each series of debentures/each mutual fund scheme.
- c. The applicable sectoral cap/foreign direct investment limit in the Indian company is not breached.
- d. The donor and the donee are relatives as defined in section 6 of the Companies Act, 1956.
- e. The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of US \$ 25,000.
- f. Such other conditions as considered necessary in public interest by the Reserve Bank.

3.22 Reasons for Change: Since the limit under LRS has been revised from US \$ 25,000 to US \$ 2,00,000 the limit for gifting of shares too may be revised to US \$ 2,00,000/-.

3.23 As regards the condition at (b) above, this issue has been dealt with in detail [cf. Chapter IV para 4.22(1)] and one sees no relevance in continuing with the imposition of this condition.

Recommendation:

3.24 General permission may be made available to resident individuals to gift shares/securities/convertible debentures etc. to their NRI/PIO close relative, as defined in Section 6 of the Companies Act, 1956, subject to the following conditions:

- (i) The NRI/PIO donee is 'eligible to hold such a security under Sections 1,4 and 5 of Regulations

(ii) The value of the security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the Rupee equivalent of US \$ 2,00,000.

Restrictions on resident individuals acquiring “qualification” shares in companies abroad for holding the post of a director in the company

3.25 FEMA Regulation: Vide Regulation 24(1)(a) of Notification No. FEMA 120/2004-RB dated July 7, 2004 the “qualification shares” to be acquired should not exceed 1% of the paid-up capital of the overseas company and the amount to be remitted for such shares should not exceed US \$ 20,000 in a calendar year.

3.26 Reasons for Change: Under LRS a resident individual can remit upto US \$ 2,00,000 per financial year for permitted current and capital account transactions which include purchase of securities outside India. But FEMA Notification No. 120 prohibits a resident from remitting more than US \$ 20,000/- p.a. for acquiring “qualification shares” for holding the post of a director in companies abroad. This is anomalous. Considering that we are not living in times of scarce foreign exchange resources there is no rationale for putting any constraints on Indian residents acquiring “qualification shares” in companies abroad.

Recommendation:

3.27 General permission may be granted to resident individuals to acquire qualification shares of an overseas company for holding the post of a director without the existing limitations.

Resident individuals acquiring shares of a foreign company in part/full consideration of professional services rendered to the foreign company or in lieu of Director’s remuneration

3.28 FEMA Regulation: Approval is given by RBI on a case-by-case basis, based on the following factors:

- (i) credentials and net worth of the individual and the nature of his profession;
- (ii) the extent of his forex earnings/balances in his EEFC and/or RFC account;
- (iii) financial and business track record of the foreign entity;
- (iv) potential for forex inflow to the country;
- (v) other likely benefits to the country

3.29 Reasons for Change: Against the backdrop of the move to fuller capital account convertibility, a liberalized scenario and increasing overseas recognition of Indian professional and entrepreneurial abilities, general permission should be available for this.

Recommendation:

3.30 General permission may be granted to resident individuals to acquire shares of a foreign company in part/full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration.

Resident individuals acquiring shares through ESOP scheme in a foreign company which does not hold 51% shareholding (directly or indirectly) in the Indian subsidiary

3.31 FEMA Regulation: Regulation 22(2) of Notification No FEMA 120/2004-RB dated July 7, 2004 permits an Indian resident employee to accept shares offered under ESOP only from a foreign company holding 51% and above equity stake in an Indian company.

3.32 Reasons for Change: There is no stipulation that an Indian company must hold 51% stake or above in a joint venture abroad for offering its shares under ESOP to its overseas employees. But a resident Indian employee or director is prohibited from accepting shares offered under

ESOP Scheme, globally, on uniform basis, by a foreign company which may be holding less than 51% equity stake in the Indian company. There are no grounds under FEMA for continuing such treatment to Indian residents.

Recommendation:

3.33 Indian resident employees or directors may be permitted to accept shares offered through an ESOP Scheme globally, on uniform basis, in a foreign company which has an equity stake, directly or indirectly, in the Indian company.

Resident individuals investing in joint ventures or setting up proprietary/partnership firms abroad

3.34 **FEMA Regulation:** FEMA Notification No.120 covers overseas investments by “Indian party” which term excludes individuals.

3.35 **Reasons for Change:** Under LRS a resident individual can remit upto US \$ 2,00,000 per financial year for permitted current and capital account transactions; which include purchase of securities outside India. Resident individuals ignorant of the exclusion under FEMA Notification No.120 have, through remittances under LRS set up or acquired majority stake in companies abroad and several such cases have come up for compounding. With the move towards fuller capital account convertibility and international recognition of Indian entrepreneurial talent it is time we recognized the need to allow Indian resident individuals to set up or acquire a majority stake in a company abroad by making remittances within a specified limit.

Recommendation:

3.36 Resident individuals may be permitted to set up or acquire a majority stake in a company abroad or invest in a partnership firm and make remittances for this purpose within specified limits.

Resident individuals holding RFC/EEFC account jointly with a resident close relative (as defined in terms of Section 6 of the Companies Act, 1956)

3.37 FEMA Regulation: FEMA Notification No. FEMA 10/2000-RB dated May 3, 2000 – No provision exists for holding joint accounts.

3.38 Reasons for Change: In the current liberalised facilities available to residents the fears if any of misuse of the facility have no basis. Allowing a resident individual to hold his foreign exchange earnings account jointly with his own resident “close relative” (as defined in terms of Section 6 of the Companies Act, 1956) would provide a degree of comfort and assurance to the foreign exchange earning resident that after his death the resident joint holder can get ownership of the funds in this account without any hassles.

Recommendation:

3.39 RFC / EEFC accounts may be permitted to be held jointly with a resident close relative, as defined in Section 6 of the Companies Act, 1956.

Resident individuals holding bank accounts in India jointly with non-resident close relative

3.40 FEMA Regulation: NIL

3.41 Reasons for Change: Currently, if a resident individual holds a bank account jointly with his/her non-resident son/daughter or close relative, it gets qualified as a Non-Resident Ordinary account under the extant regulations and all the relevant regulations as applicable to an NRO account would be applicable to such an account as well.

3.42 It is a common feature across the country that a very large number of residents have their children or kith and kin residing abroad and this prohibition is either unknown or is observed more in the breach. RBI has been instructing banks to advise all their account holders about the benefits of opening joint accounts on an “either or survivor” basis and yet if a family member is a non-resident his/her name cannot be included as a joint holder.

Such a restriction is irrational in the current scenario. Indian Residents must be provided with the assurance and degree of comfort that a joint account provides that their NRI/PIO children or close relative will be able to get ownership of the account without any hassles.

3.43 The joint account should be permitted on an “Either or Survivor” basis as the vast majority of law abiding citizens should not be penalized on account of “fears” that the facility may be misused by a few.

Recommendation:

3.44 Resident individuals may be permitted to include non resident close relative(s) as defined in the Companies Act, 1956 as a joint holder(s) in their resident bank accounts.

Resident individual lending to NRI/PIO close relative in Rupees in India

3.45 **FEMA Regulation:** No general or specific permission available under para no. 3 of Notification No. FEMA 3/2000-RB dated May 3, 2000, on prohibition to Borrow or Lend in Foreign Exchange.

3.46 **Reasons for Change:** A transaction whereby an Indian resident can be permitted to lend to a non-resident close relative has not been considered so far as the thinking has always been that such a transaction would lead to compensatory payments. Now that we are operating in a liberalized scenario wherein a resident individual is free to gift upto US \$ 2,00,000 per financial year he should be equally free to lend in Rupees in India to an NRI/PIO close relative and general permission should be available for this.

Recommendation:

3.47 Resident may be granted general permission to lend in Rupees to their close relative (as defined under the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business.

Residents repaying loans availed of by NRIs in Rupees in India

3.48 FEMA Regulation: Regulation 8 of Notification No. FEMA 4/2000-RB dated 3-5-2000.

3.49 Reasons for Change: A resident can remit upto US \$ 2,00,000 per financial year to a non resident by way of gift. A resident can also repay a loan availed of by an NRI/PIO from an AD or a housing financial institution for acquisition of a residential accommodation in India but he cannot repay a loan availed of by an NRI/PIO for any other purpose. In the current scenario this is irrational.

Recommendation:

3.50 Resident individuals may be granted general permission to repay loans availed of from banks in Rupees in India by their close relatives as defined under Section 6 of the Companies Act.

Chapter IV

Non-Residents and Persons of Indian Origin

The facility available to NRIs and PIOs of opening and maintaining NRE accounts in Rupees and FCNR(B) account in foreign currency, with full repatriability, has been there since the 1970s. Although, these accounts enjoy tax benefits the interest earned on the balances is minimal. In fact the balances in these accounts are dwindling over the last 3 years (Annex IX).

4.2 Non-residents were not permitted to transfer their assets out of India and these had to be maintained in an NRO account. The balances in the NRO account could be utilized only to meet the expenses of NRIs/PIOs on visits to India, or for meeting some utility expenses. Thus, during the era of stringent foreign exchange restrictions, funds of NRIs/PIOs were strictly classified as “repatriable” and “non-repatriable” and this classification also permeated into other financial market regulations e.g. SEBI. With the granting of repatriable rights upto US \$ 1 million per financial year to NRIs/PIOs in January 2003 the classification of funds as “non-repatriable” is no longer meaningful.

4.3 The need for rationalization in foreign exchange transactions relating to NRIs/PIOs stems not only from the above, but also the completely changed scenario of liberalised remittance facilities available to residents.

Credits to NRO account

4.4 **FEMA Regulation:** In terms of para 3A of Schedule 3 of the Foreign Exchange Management (Deposit) Regulations, 2000 (FEMA 5/2000-RB, dated May 3, 2000) following are the permissible credits to NRO account.

- (i) Proceeds of remittances received in any permitted currency from outside India through normal banking channels or any permitted currency tendered by the account holder during his temporary visit to India or transfers from rupee accounts of non-resident banks.
- (ii) “Legitimate dues” in India of the account holder.

4.5 Reasons for Change: There are two issues relating to the credit of “legitimate dues”. The first issue is an operational one. When a credit is initiated through clearing or through electronic funds transfers, banks are unable to ascertain the nature of the transaction at the time of credit to NRO account due to availability of limited time window available to banks to afford the credit to an NRO account or reject the transaction. As a result banks credit the amount and at the time of repatriation of funds, which is often later, banks question the “legitimacy” of the credit. It is legally and technically inappropriate for an Authorised Dealer to credit funds to an NRO account and then at the time of repatriation ask the account holder to produce probate or succession certificate etc. as proof that he is the owner through inheritance or other appropriate receipts.

4.6 In the case of credits to NRE accounts the RTGS/NEFT guidelines stipulate that the remitting bank has to ensure adherence to FEMA guidelines before initiating the credit into the NRE account of the beneficiary. The same operating guidelines should also be made applicable in the case of electronic credits to NRO accounts so that NRIs/PIOs are not hassled at the time of repatriation of funds.

4.7 The second issue relates to the word “legitimate”. In effect, this results in a transaction by transaction approval by hundreds of Authorised Dealers with diverse discretionary judgement as to what is “legitimate” leading to an unfair, inequitable and inappropriate system of allowing credits to an NRO account. NRIs/PIOs should not be left at the mercy of Authorised Dealers in this fashion.

4.8 Credits to an NRO account, other than remittances from abroad, should be permitted on declaration basis accompanied by suitable documentary evidence in support of ownership of the funds for record purposes.

Recommendation:

4.9 (i) Suitable instructions through the RTGS/NEFT guidelines may be issued by RBI to ensure that the remitting bank ensures adherence to FEMA guidelines before initiating credit into an NRO account.

(ii) Credits to an NRO account other than through remittances from abroad may be permitted on declaration basis accompanied by documentary evidence in support of ownership of funds and

(iii) All such credits may be subjected to 100% internal audit in the bank and the RBI may also do a sample check during the regular bank inspections.

Facility of transfer of funds from NRO to NRE account within the ceiling of USD 1 million per financial year

4.10 **FEMA Regulation:** Para 3 of Schedule 1 of FEMA 5/2000-RB, dated May 3, 2000 lists the permitted credits to NRE accounts and para 3B of Schedule 3 lists the eligible debits to an NRO account. The facility of transfer of funds from an NRO account to an NRE account is not available under the current dispensation.

4.11 **Reasons for Change:** In the absence of a specific provision that allows transfers from NRO to NRE account, if an NRI/PIO wants to transfer the funds from his NRO account to an NRE account, the said individual has to compulsorily repatriate the funds outside India from the NRO account to an account outside India and then remit it back into the NRE account thereby incurring exchange loss and unnecessary bank charges.

4.12 The existing regulations were framed when NRIs/PIOs did not have the facility of remitting funds upto US \$ 1 million from their NRO account. In the current liberalized scenario it is hard to defend a regulation which permits an NRI to remit his funds out of India from an NRO account and bring the funds back to India freely for credit to an NRE account but he is not permitted to

directly transfer these repatriable funds from one account to another in India.

Recommendation:

4.13 NRIs/PIOs may be permitted, subject to payment of applicable taxes, to transfer repatriable funds from their NRO account within the overall ceiling of US \$ 1 million per financial year, for credit to their NRE account in India.

Transfer of funds from one NRO account to an NRO account of another NRI/PIO

4.14 **FEMA Regulation:** FEMA 5/2000-RB dated May 3, 2000.

4.15 **Reasons for Change:** As on date the following transactions are permissible:

Transfers from NRE account to another NRE account

Transfers from NRE account to another FCNR account

Transfers from FCNR account to another NRE account

Transfer from FCNR account to another FCNR account

4.16 The Committee has also recommended the permitting of transfer of funds repatriable within the US \$1 million window from NRO account to NRE account (para 4.13). Since the concept of “non-repatriability” of funds no longer exists, NRIs/PIOs may be freely permitted to transfer funds to any other NRI/PIO through the NRO accounts. It is likely that some may hold the view that this move would enable NROs to repatriate more than the \$ 1 million p.a. facility available to them. In this context, reference may be drawn to an observation made in the Report of the CPPAPS in January 2004.

“Ideally, NRO Accounts should be merged into NRE Accounts and allowed free repatriability. This would be a salutary measure which would bring considerable goodwill at minimal costs.”

Further, it has been observed in the Report of the Fuller Capital Account Convertibility in 2007 that effective liberalization results in net inflows being higher rather than large outflows.

Recommendation:

4.17 Transfer of funds from one NRO account to another NRO account of the same individual or any other NRI/PIO may be freely permitted.

Investment in shares/exchange traded derivative contracts approved by SEBI, etc. by an NRI on non-repatriation basis

4.18. **FEMA Regulation:** Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (*FEMA 20/2000-RB dated May 3, 2000*)

4.19 Under various regulatory guidelines, certain investments e.g. exchange traded derivatives etc. or investments made out of funds held in an NRO account are permissible on a non-repatriation basis. Since sale proceeds of such investments have to necessarily be credited to an NRO account and since an amount upto US \$ 1 million per financial year is repatriable out of balances in NRO accounts, the concept of such investments being made on a non-repatriation basis is meaningless, apart from being confusing to NRIs/PIOs and thereby acting as a deterrent to NRIs/PIOs investing in India.

Recommendation:

4.20. The concept of “non-repatriation basis” or “non-repatriable funds” is out dated and all the relevant regulatory guidelines especially with reference to “Investments” need to be amended forthwith to indicate limited repatriability in accordance with the directions and upto the limits as may be specified by the RBI from time to time.

Operation of the Portfolio Investment Scheme (PIS) for NRI/PIOs

4.21. FEMA Regulation: NRIs/PIOs intending to buy and sell equity shares/convertible debentures of Indian companies have to necessarily do so under the Portfolio Investment Scheme which stipulates:

- 1) The NRI/PIO investor will not deal with any other designated branch/bank under the Portfolio Investment Scheme;
- 2) He will ensure that total holding of equity/convertible debentures, both on repatriable and non-repatriable basis in any one Indian company at no time shall exceed 5% of the paid-up capital/paid-up value of each series of convertible debentures of that company;
- 3) He has to apply in two separate application forms, one for investments on repatriable basis and another for investments on non-repatriable basis;
- 4) He shall submit the purchase/sale contract, in original, to the AD within 24/48 hours of the execution of the contract (so that the same can be reported by the AD to RBI);
- 5) He shall maintain a separate exclusive NRE account (for shares purchased on repatriable basis) or NRO account (if the shares are purchased on non-repatriable basis);
- 6) He has to maintain a separate exclusive Demat account for PIS transactions (SEBI requirement) i.e. If he held a Demat account as a resident he cannot use the same;
- 7) All purchase/sale transactions have to be through the stock exchange and may be conducted through their own brokers who are authorized members of registered stock exchanges.

4.22 Reasons for Change: The above PIO rules were framed in 1999 and much water has flown under the bridge since then, making these rules archaic as set out below.

- (i) The limit on total holding in a single company not exceeding 5% of the paid-up capital relates back to the days of the Escorts case and

the imminent threat of a take-over by a non-resident. This issue has undergone a sea-change and “take-overs” are now taken care of under the ambit of SEBI regulations and using FEMA for this purpose is superfluous and an unnecessary cost and hassle to both the non-resident investor and the Authorised Dealer alike.

The same argument applies to the monitoring by RBI of the overall limit of 24% shareholding by NRIs under PIS. All that needs monitoring is the total “foreign” holding comprising FII_s, NRI_s/PIO_s and others and the onus for this lies squarely on the company and not the Authorised Dealer or the Reserve Bank of India. In fact in those sectors where 100% FDI is permissible there is no rationale for monitoring the portfolio investments of NRI_s/PIO_s.

- (ii) The submission of applications by the NRI/PIO investor in 2 separate forms – one for repatriable basis and the other for non-repatriable basis – is meaningless under the current scenario wherein all sale proceeds are repatriable through the US \$ 1 million window.
- (iii) Opening and maintaining exclusive and separate NRE/NRO accounts for operating Portfolio investments is not only tedious but also expensive and serves absolutely no purpose.
- (iv) That the investor should only deal through a designated branch of a bank may compel an investor to put up with shoddy services but it certainly effectively rules out competitive charges/fees. With technological developments reporting can be obtained through any Authorised Dealer once the argument at (1) above is accepted.
- (v) Under the existing Portfolio Investment Scheme (PIS) an investor may end up having to necessarily maintain 3 Demat accounts.
 - (a) Original Demat account which he had before becoming non-resident;
 - (b) Demat account for PIS transactions; and

(c) Demat account for purchase/sale through modes other than PIS such as underlying shares acquired on conversion of ADRs/GDRs, shares acquired under FDI schemes, shares purchased outside India from other NRIs/foreign companies/PIOs/rights/ bonus etc.

(vi) Lastly, the existing rules do not provide any scope for on-line trading by NRI investors

Recommendation:

4.23 (1) The Portfolio Investment Scheme needs to be reviewed in its entirety for the reasons as stated above and the recommendation is that there is no need for continuation of the existing scheme.

(2) SEBI must also be advised by RBI to review the position with regard to the requirement of an NRI/PIO having as many as three Demat accounts.

NRI_s/PIO_s holding their NRE/FCNR(B) accounts jointly with Indian resident close relative

4.24 **FEMA Regulation:** In Regulation 5(1) (ii), Sch 2 of FEMA (Deposit) Regulations 2000 it is stated that “terms and conditions as applicable to NRE accounts (cf. Schedule 1) in respect of joint accounts, repatriation of funds, opening accounts during temporary visit, operation by power of attorney, loans/overdrafts against security of funds held in accounts, shall apply, mutatis mutandis, to FCNR (B) accounts.”

4.25 In terms of the stipulation laid down for NRE accounts Schedule 1 (Regulation 5(1) (i)) under the item No. 9 Miscellaneous, Sr.No.9 (a) joint accounts it is stated that “Joint accounts in the names of two or more non-resident individuals may be opened provided all the account holders are persons of Indian nationality or origin. Where one of the joint holders becomes resident, the authorised dealer may either delete his name or allow the account to continue as NRE account or redesignate the account

as a resident account, at the option of the account holders. Opening of these accounts by a non-resident jointly with a resident is not permissible.”

4.26 Reasons for Change: NRIs/PIOs are currently permitted to allow residents to operate their NRE accounts through granting a Power of Attorney to the resident. Therefore, the issue is not one of facilitating operations on the account but the general issue of assuring NRIs/PIOs that after their death their close relative in India (as defined under the Companies Act 1956) can get ownership of the funds in these accounts without any hassles.

Recommendation:

4.27 The opening of joint FCNR/NRE account with a resident close relative as defined under the Companies Act, 1956 may be permitted.

Opening FCNR (B) account in any freely convertible currency

4.28 FEMA Regulation: In terms of para 2 of schedule 2 to FEMA Notification No. 5 on Designated Currencies, it is stated that “Deposit of funds in the accounts may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.”

4.29 Reasons for Change: The FCNR(B) scheme was introduced with effect from May 15, 1993 and presently six currencies namely US Dollar, Great Britain Pound, Euro, Canadian Dollar, Australian Dollar and Japanese Yen are designated currencies.

4.30 NRIs from Singapore, Hong Kong, New Zealand, GCC Countries etc. have to convert their remittances into the six permissible currencies for opening FCNR(B) accounts in India for which they have to bear exchange / swap loss and incur Bank charges. The FCNR (B) interest rate is regulated by RBI. In extending this facility there would be no downside risk as such but a definite positive change in favour of NRIs/PIOs.

Recommendation:

4.31 FCNR(B) accounts may be permitted to be opened in any freely convertible currency.

Quantum of Rupee Loans in India or foreign currency loan outside India to the Account holder and to third parties against balances held in NRE/FCNR(B) accounts

4.32 **FEMA Regulation:** Schedule 1 of Regulation 5(1)(i) and Schedule 2 of Regulation 5(1)(ii) for NRE & FCNR(B) deposits respectively. In terms of Annual Statement on Monetary Policy 2009-10 (para 111) the cap on quantum of loans against NRE and FCNR(B) balances either to the depositor or third parties was enhanced from Rs.20 lacs to Rs.100 lacs with effect from April 28, 2009.

4.33 **Reasons for Change:** The cap on the quantum of loan compels the NRI/PIO account holder to prematurely withdraw the deposit and therefore does not prevent the flow of money into the market and only serves to benefit the bank while putting the account holder to exchange loss and loss of interest plus penal charges, if any. Further, if the loan is granted by the AD outside India, the cap on the quantum of loan is an unnecessary restriction.

Recommendation:

4.34 Banks may sanction Rupee loans in India or foreign currency loan outside India to either the account holder or third party to the extent of the balance in the NRE/FCNR(B) account subject to margin requirements.

The benefit of additional interest may be permitted to be made available to NRI senior citizens also

4.35 **FEMA Regulation:** Nil. Interest rate on NRO deposits is deregulated.

4.36 **Reasons for Change:** Under the extant regulations, a bank is permitted to formulate fixed deposit schemes specifically for senior citizens

offering higher and fixed rates of interest as compared to normal deposits of any size.

4.37 The benefit of higher rate of interest on deposit schemes is, however, not offered to NRI/PIO senior citizens. To deny them this facility on the ground that it increases the amount of remittances out of India is specious.

Recommendation:

4.38 Banks may be permitted to extend the benefit of higher rate of interest to NRI/PIO senior citizens also in respect of NRO deposits.

NRI/PIO shareholders should be enabled to receive “*in specie*” distribution of the assets of a company which is under Voluntary Liquidation

4.39 **FEMA Regulation:** AP (DIR SERIES) (2006-07) No. 65 Dt. 31-5-2007, AD Category.

4.40 **Reasons for Change:** The RBI’s circular permits distribution of sale proceeds of a Company under voluntary liquidation to non-resident shareholders only after the Official Liquidator’s Order is received. 4.40.

In the case of resident shareholders the liquidator can directly distribute the property, *in specie* to the shareholder without selling the Company’s property but in the case of the non-resident shareholders they have to perforce wait and get only the distribution of sale proceeds of the assets because of the RBI instructions. However, this creates a practical problem since one cannot get an Official Liquidator’s Order until the distribution is made.

4.41 From the FEMA angle there can be no objection to non-resident shareholders also being permitted to receive *in specie* distribution of the assets of a Company which is under voluntary liquidation when these non-resident shareholders can under existing regulations receive the monetary value thereof. This change, if effected, will also enable the non-resident to hold the assets received by way of *in specie* distribution instead of it being

compulsorily sold by the liquidator, putting the non-resident shareholder to loss.

Recommendation:

4.42 General permission may be available to the non-resident shareholders of a Company under Voluntary Liquidation to receive *in specie* distribution of the Company's assets from the liquidator, without the Official Liquidator's Order so as to bring the treatment to non-resident shareholders on par with resident shareholders.

Chapter V

Other Issues

One of the terms of reference of the Committee was “to examine the level of efficiency in the functioning of Authorised Persons, including infrastructure created by them, in discharging of the powers delegated to them with regard to the facilities available to Residents as well as NRIs/PIOs”. Since a significant majority of the members of the Committee are bankers, the Committee had to perforce rely on the services of RBI to undertake a quick survey of branches of banks in Mumbai, New Delhi, Kolkata, Chennai, Ahmedabad, Bangalore, Hyderabad, Kochi and Chandigarh. In all 47 branches of banks, both in the public and private sector, were visited. The composite summary of the findings arising out of these visits are enumerated in Annex V.

5.2 The results of the quick survey reveal that;

- (i) There was divergence in practices, followed by the branches. While certain branches of the same bank were insisting on CA certificate for remittances under LRS, some others were not insisting upon the same. Some other branches were insisting upon CA certificate for remittances beyond US \$ 5000. Some private sector banks were providing such facilities only to their regular customers maintaining accounts with them and walk in customers were being denied LRS facility. One of the branches was found to be not insisting on a CA certificate for certain type of transactions while insisting for certain other type of transactions.
- (ii) The number of branches making references to RBI for seeking guidance on NRO account or other matters were very few. It is possible that the branches may just not have referred the cases to RBI.
- (iii) For remittance from NRO a/c usually the branches were insisting on Application form, Form A 2, 15 CA and 15 CB, declaration form but some branches were ascertaining sources of funds. One of the

branches was insisting on CA certified sources of income, IT returns and declaration that total remittance during the financial year is less than US \$ 1 million. Thus, the practices varied across banks and branches.

(iv) The Survey did not bring out any difficulty faced by the branches surveyed in implementation of Portfolio Investment Scheme.

(v) The survey revealed that customer services were getting facilitated by the branches by having separate Specialized NRI Branch, provision of Booklets/ pamphlets/ Charts to the customers explaining the different facilities available with the branch, provision of separate sales person/ dedicated relationship managers by certain private sector banks, Online programme called INSTANT NRI for dealing with queries of NRIs, provision of trained staff, window glazing done at few branches displaying the forex facilities.

5.3 The divergence in the dealings of ADs arise mainly due to lack of requisite knowledge of foreign exchange rules and regulations and lack of clarity and transparency in the foreign exchange rules and regulations itself.

Recommendation:

5.4 (i) RBI may instruct banks to ensure that frontline staff at branches dealing with forex facilities must necessarily have undergone suitable training.

(ii) The Indian Institute of Banking and Finance (IIBF) may be requested to prepare a Certificate Course on Foreign Exchange Facilities and conduct an examination on-line on the same lines, as has been done by them on “Customer Service and Banking Codes and Standards”.

The Committee has listed below some of the other general issues and recommendations in this regard.

Declaration to be obtained by ADs from resident individuals applying for making miscellaneous remittances and remittances under LRS

5.5 Reasons for Change: Over the years, with every move toward simplifying procedures, the position has regrettably become more confusing as may be seen from the following position which exists to-day.

5.6 ADs are required to obtain:

- a) a **simple letter** (self declaration) from the applicant containing the basic information, viz., name and address of the applicant, name and address of the beneficiary, amount to be remitted and purpose of remittance where the exchange is being released up to US \$ 500 for all permissible transactions i.e. capital and current account transactions.
- b) a **simplified Application-cum-Declaration Form A2** where the exchange being released for permissible transactions, pertaining to individuals, is above US \$ 500 but up to a limit of US \$ 5000.
- c) a **declaration in regular Form A2** where the exchange being released is above US \$ 5000 for all permissible capital and current account transactions.
- d) **Application-cum-Declaration** prescribed by RBI for purchase of foreign exchange under LRS. **A dummy Form A2 has to be prepared by the AD and kept on record if the remittance exceeds US \$ 5000/-.**

5.7 As a result of the above, ADs follow different procedures at different times and at different places. What is worse is that the demeaning declaration required to be given by residents in earlier times is still enforced by some ADs even though the RBI and FEDAI issued instructions that this declaration should not be obtained.

5.8 It is pertinent to note that remittances under LRS upto US \$ 2,00,000/- can be effected for any “permissible capital and current account transactions” and that a simple application-cum-declaration has been

prescribed by the RBI for this purpose. The dummy A2 form has to be prepared by the AD himself. In view of this the instructions as at (a),(b) and (c) should be rescinded.

Recommendation:

5.9 There should be only one Application-cum-Declaration Form (Annex VI) to be submitted by resident individuals for any permissible current and capital account remittances upto US \$ 2,00,000 and the AD should prepare the dummy A2 Form for record if the remittance exceeds US \$ 5000/-. Please also see the recommendation at para 3.16.

A2 form submission by RFC & EEFC account holders for making outward remittances from these accounts

5.10 **Reasons for Change:** Both these accounts are held by residents in foreign currency and opened and maintained out of foreign exchange earnings of individuals and exporters. There is no question of “purchase of foreign currency” for making outward remittances and as such no A2 Form or any declaration should be obtained from these account holders. While this issue may seem trivial it is an irritant, none the less, because it smacks of meaningless paper work, especially, in the context of the existing position indicated as at para 5.5 (d) above.

Recommendation:

5.11 No A2 Form should be obtained from RFC/EEFC account holders when they debit their accounts for making outward remittances.

(a) Repatriation of income and sale proceeds of assets acquired abroad through remittances under LRS

(b) Repatriation of income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement.

5.12 **Reasons for Change:** Unfortunately there has been no ruling on this from the RBI in both cases. Regarding (a) the position has been sought to be clarified through FAQs in the Department’s page on the RBI website and

regarding (b) the position has been clarified in para 13.10 in the Master Circular relating to “Miscellaneous Remittances from India – Facilities for Residents.” A Master Circular is supposed to be a consolidation of existing instructions but in this case para 13.10 clarifies a critical issue for which there are no existing instructions and so also FAQs cannot be said to provide any degree of comfort to residents if they do not have any legal sanctity. Clearly, this issue needs to be addressed appropriately through issue of suitable instructions by RBI.

Recommendation:

5.13 1) Instructions may be issued forthwith clarifying the position that income and sale proceeds of assets held abroad as at (a) and (b) above need not be repatriated.

2) Master circular should contain only a consolidation of existing instructions and

3) Critical issues which are addressed through FAQs must have the legal backing of regulatory instructions.

Definition of the term “real estate business”

5.14 **FEMA Regulation:** Notification No. FEMA 5/RB-2000 dated 3-5-2000

- Regulation 2(p) of Notification No FEMA 120/RB-2004 dated 7.7.2004 **defines** the term ‘**real estate business**’ as buying and selling of real estate or trading in TDRs but does not include development of townships, construction of residential/commercial premises, roads or bridges.
- Regulation 4 (b) of Notification No FEMA 24/RB-2000 dated 3.5.2000 stipulates that the firm or the proprietary concern is not engaged in any agricultural/plantation activity or **real estate business**, i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom.

- The term **‘real estate business’** referred to in other FEMA regulations carries an explanation: “for the purpose of this regulation, real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.”
- However the term **‘real estate business’** referred to under Notification No FEMA 5/RB-2000 dated 3.5.2000 [Schedule 1 – para 6 (a) (i), (b) (iii), Schedule 3 – para 5 A (i), B (i), Schedule 6 – item (ix), Schedule 7 item (vii)] **has neither been defined nor explained.**
- The general impression is that **real estate business** does not include development of townships, construction of residential/ commercial premises, roads or bridges.

In this context, it is pertinent to note that this same recommendation would apply to other terms also which have different definitions e.g. “Person of Indian Origin” has a different definition for different investment purposes. So also the terms ‘close relative’.

Recommendation:

5.15 The term “real estate business”, “PIO”, “close relative” etc. referred to under various FEMA regulations should carry a common definition.

Reference rate for fixing interest rate on NRE deposits

5.16 **FEMA Regulation:** In terms of para 5 of Schedule 1 of FEMA Notification No. 5 on NRE Scheme “Rate of interest applicable to these accounts shall be in accordance with the directions/instructions issued by the Reserve Bank from time to time.” The interest rate is subject to a cap stipulated by RBI (presently 175 basis points over LIBOR/SWAP rates in terms of RBI Circular No.DBOD.No. Dir.BC 82/13.03.00/2008-09 dated 15th November 2008).

5.17 Reasons for Change: The NRE account being a rupee deposit account, the LIBOR/SWAP rate is not perceived as a suitable Reference rate.

Recommendation:

5.18 RBI may replace the LIBOR/SWAP rate as a Reference rate for fixing interest rates on NRE deposits by a more suitable Rupee benchmark rate.

Resident Foreign Currency (Domestic) [RFC(D)] account

5.19 **FEMA Regulation:** Regulation 5A of RBI Notification No. FEMA 10/2000-RB dated 3rd May 2000.

5.20 **Reasons for Change:** A person resident in India can open an RFC (D) account with an AD to which certain credits by way of exchange earnings from services, honorarium, etc. can be afforded.

5.21 A person resident in India can also open an Exchange Earners' Foreign Currency (EEFC) account with an AD for crediting his foreign exchange earnings.

5.22 Neither of these two accounts earns any interest.

5.23 As the provisions in respect of both the accounts are more or less similar as also since both the accounts are held by residents, we may consider the merger of RFC (D) into EEFC account.

Recommendation:

5.24 Existing Resident Foreign Currency (Domestic) Accounts may be converted to EEFC accounts and the EEFC account scheme may be enlarged to include resident individuals meeting the eligibility criteria of RFC(D) accounts.

Credit of sale proceeds of FDI investments to NRE/FCNR accounts

5.25 **FEMA Regulation:** Regulation 11 of FEMA Notification No.20/RB-2000 dated 3-5.2000

5.26 **Reasons for Change:** Regulation 11 refers only to the **remittance** of sale proceeds of investments made by a person resident outside India.

NRI_s are permitted to invest under FDI by debit to their NRE/FCNR account but there is no provision under Regulation 11 for credit of the sale proceeds of FDI investments into NRE/FCNR accounts. Perhaps, this is a lapse as there seems to be no reason for not allowing this.

Recommendation:

5.27 Sale proceeds of FDI investments may be permitted to be credited to NRE/FCNR accounts.

CHAPTER VI

OBSERVATIONS & RECOMMENDATIONS

6.1 The operations of FEMA still betray a “fear” of compensatory payments between non-residents and residents, harking back to the FERA days. **(Para 2.9)**

6.2 The structure of incentives, and the level of preparedness of the frontline staff of many ADs results in situations that users face unnecessary hardships in executing even the simplest FEMA compliant transactions. **(Para 2.11)**

6.3 The regulations under FEMA have also been burdened with the additional responsibility, which are **not the domain of RBI**, which contaminate the functioning of FEMA. **(Para 2.12)**

6.4 Since powers have been delegated to Authorized Dealers (ADs), it is as if instead of an erstwhile single regulator (the RBI), we now have a multitude of regulators, each interpreting FEMA in his own way! **(Para 2.13)**

6.5 Since non-residents have been given the freedom to remit US \$ 1 million annually, it makes little sense to maintain procedures under FEMA that continue to treat these two categories, (repatriable and non-repatriable funds) separately. **(Para 2.14)**

6.6 Over a period of time, the FEMA rules now contain contradictory provisions and there is also a need to make definitions uniform and consistent across FEMA. **(Paras 2.16 & 2.18)**

6.7 The procedural “knots” in the system need to be untied to enable the present forex liberalization to be effective and in the absence of untying of these knots, any further forex liberalization will not be meaningful. **(Para 2.20)**

6.8 Through the draconian sub-section (5) of Section 10 of FEMA 1999, RBI has effectively created a system of case-by-case approval by hundreds of ADs with diverse discretionary authority to sit in judgement over the legitimacy of the current account transactions. **(Para 3.15)**

6.9 The limit on total holding in a single company not exceeding 5% of the paid-up capital relates back to the days of the Escorts case and the imminent threat of a take-over by a non-resident. This issue has undergone a sea-change and “take-overs” are now taken care of under the ambit of SEBI regulations and using FEMA for this purpose is superfluous and an unnecessary cost and hassle to both the non-resident investor and the Authorised Dealer alike.

The same argument applies to the monitoring by RBI of the overall limit of 24% shareholding by NRIs under PIS. All that needs monitoring is the total “foreign” holding comprising FIIs, NRIs/PIOs and others and the onus for this lies squarely on the company and not the Authorised Dealer or the Reserve Bank of India. In fact in those sectors where 100% FDI is permissible there is no rationale for monitoring the portfolio investments of NRIs/PIOs.

(Para 4.22(i))

6.10 To enable hassle-free remittances by resident individuals banks may be advised by RBI not to insist on the submission of form 15 CA/15 CB for any remittances under the Liberalised Remittance Scheme (LRS). ADs may obtain a suitable self-declaration from the resident for such remittances as follows:

“I hereby declare that I intend to send the amount mentioned below at col. No. --- to the person specified below at col.no. --- out of my personal earnings. I further declare that this remittance is not related to any business and I am not claiming it as business expenditure. My permanent account no. is -----.”

(Para 3.9)

6.11 Resident individuals should be enabled to undertake any current account transaction other than those included under Scheme I & II of GOI Notification No. GSR 381(E) dated 3rd May 2000 upto US \$2,00,000/- per financial year on the basis of a simple application form (Annex X) presently used for remittances under LRS without banks insisting on any documentary evidence or a Chartered Accountant's certificate in Form 15 CA/15CB. **(Para 3.16)**

6.12 Regulation 5 of Section 10 of FEMA 1999 may be amended suitably so that any current account transaction can be carried out on the basis of a simple declaration as indicated in the recommendation at Para 3.9.

(Para 3.17)

6.13 The ambit of FEMA Notification No.16/RB-2000 dated 3rd May 2000 may be expanded to include permission to residents making gifts to and bearing medical expenses of visiting NRIs/PIOs. **(Para 3.20)**

6.14 General permission may be available to resident individuals to gift shares/securities/convertible debentures etc. to their NRI/PIO close relative as defined in Section 6 of the Companies Act, 1956 subject to the following conditions:

(i) The NRI/PIO donee is 'eligible to hold such a security under Schedule 1,4 and 5 of Notification No. 20 of FEMA.

(ii) The value of the security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the Rupee-equivalent of US \$ 2,00,000.

(Para 3.24)

6.15 General permission may be granted to resident individuals to acquire qualification shares of an overseas company for holding the post of a director without the existing limitations. **(Para 3.27)**

6.16 General permission may be granted to resident individuals to acquire shares of a foreign company in part/full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. **(Para 3.30)**

6.17 Indian resident employees or directors may be permitted to accept shares offered through an ESOP Scheme globally, on uniform basis, in a foreign company which has an equity stake, directly or indirectly, in the Indian company. **(Para 3.33)**

6.18. Resident individuals may be permitted to set up or acquire a majority stake in a company abroad or invest in a partnership firm and make remittances for this purpose within specified limits. **(Para 3.36)**

6.19 EEFC accounts may be permitted to be held jointly with a resident close relative as defined in Section 6 of the Companies Act, 1956. **(Para 3.39)**

6.20 Resident individuals may be permitted to include non resident close relative(s) as defined in the Companies Act, 1956 as a joint holder(s) in their resident bank accounts. **(Para 3.44)**

6.21 Resident may be granted general permission to lend in Rupees to their close relative (as defined under the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business. **(Para 3.47)**

6.22. Resident individuals may be granted general permission to repay loans availed of from banks in Rupees in India by their close relatives as defined under Section 6 of the Companies Act. **(Para 3.50)**

6.23 Suitable instructions through the RTGS/NEFT guidelines may be issued by RBI to ensure that the remitting bank ensures adherence to FEMA guidelines before initiating credit into an NRO account.

(Para 4.9 (i))

6.24 Credits to an NRO account other than through remittances from abroad may be permitted on declaration accompanied by documentary evidence in support of ownership of funds.

(Para 4.9(ii))

6.25 All such credits may be subjected to 100% internal audit in the bank and the RBI may also do a sample check during the regular bank inspections.

(Para 4.9 (iii))

6.26 NRIs/PIOs may be permitted, subject to payment of applicable taxes, to transfer repatriable funds from their NRO account within the overall ceiling of US \$ 1 million per financial year, for credit to their NRE account in India.

(Para 4.13)

6.27 Transfer of funds from one NRO account to another NRO account of the same individual or any other NRI/PIO may be freely permitted.

(Para 4.17)

6.28 The concept of “non-repatriation basis” or “non-repatriable funds” is out dated and all the relevant regulatory guidelines especially with reference to “Investments” need to be amended forthwith to indicate limited

repatriability in accordance with the directions and upto the limits as may be specified by the RBI from time to time.

(Para 4.20)

6.29 The Portfolio Investment Scheme needs to be reviewed in its entirety for the reasons as stated above and the recommendation is that there is no need for continuation of the existing scheme.

(Para 4.23 (1))

6.30 SEBI must also be advised by RBI to review the position with regard to the requirement of an NRI/PIO having as many as 3 Demat accounts.

(Para 4.23(2))

6.31 The opening of joint FCNR/NRE account with a resident close relative as defined under the Companies Act, 1956 may be permitted.

(Para 4.27)

6.32 FCNR (B) accounts may permitted to be opened in any freely convertible currency.

(Para 4.31)

6.33 Banks may sanction Rupee loans in India or foreign currency loan outside India to either the account holder or third party to the extent of the balance in the NRE/FCNR(B) account subject to margin requirements.

(Para 4.34)

6.34 Banks may be permitted to extend the benefit of higher rate of interest offered to resident for senior citizens to NRI/PIO Senior citizens also in respect of NRO deposits.

(Para 4.38)

6.35 General permission may be available to the non-resident shareholders of a Company under Voluntary Liquidation to receive *in specie* distribution of

the Company's assets from the liquidator, without the Official Liquidator's Order so as to bring the treatment to non-resident shareholders on par with resident shareholders.

(Para 4.42)

6.36 RBI may instruct banks to ensure that frontline staff at branches dealing with forex facilities must necessarily have undergone suitable training.

(Para 5.4 (i))

6.37 The Indian Institute of Banking and Finance (IIBF) may be requested to prepare a Certificate Course on Foreign Exchange Facilities and conduct an examination on-line on the same lines, as has been done by them on "Customer Service and Banking Codes and Standards".

(Para 5.4(ii))

6.38 There should be only one Application-cum-Declaration Form (Annex X) to be submitted by resident individuals for any permissible current and capital account remittances upto US \$ 2,00,000 and the AD should prepare the dummy A2 Form for record if the remittance exceeds US \$ 5000/-. Please also see the recommendation at para 3.16.

(Para 5.9)

6.39 No A2 Form should be obtained from RFC/EEFC account holders when they debit their accounts for making outward remittances.

(Para 5.11)

6.40 Instructions may be issued forthwith clarifying the position that income and sale proceeds of assets held abroad need not be repatriated.

(Para 5.13 (1))

6.41 Master circular should contain only a consolidation of existing instructions.

(Para 5.13 (2))

6.42 Critical issues which are addressed through FAQs must have the legal backing of regulatory instructions. **(Para 5.13 (3))**

6.43 The term “real estate business”, “PIO”, “close relative” etc. referred to under various FEMA regulations should carry a common definition. **(Para 5.15)**

6.44 RBI may replace the LIBOR/SWAP rate as a Reference rate for fixing in rates on NRE deposits by a more suitable Rupee benchmark rate. **(Para 5.18)**

6.45 Existing Resident Foreign Currency (Domestic) Accounts may be converted to EEFC accounts and the EEFC account scheme may be enlarged to include resident individuals meeting the eligibility criteria of RFC(D) accounts. **(Para 5.24)**

6.46 Sale proceeds of FDI investments may be permitted to be credited to NRE/FCNR accounts. **(Para 5.27)**

**Constitution of the Committee to review the
facilities for individuals under FEMA, 1999**

<u>Sr No</u>	<u>Name</u>	<u>Designation</u>	
1	Smt K J Udeshi	Chairman, BCSBI	Chairman
2	Dr Ajit Ranade	Chief Economist, Aditya Birla Group	Member
3	Shri Kanu H Doshi	Dean, Finance Welingkar Institute of Management	Member
4	Shri S S N Murthy	Sr Vice President, IBA	Member
5	Shri S G S Manian	Officer-on-Special Duty (Forex Dept.), FEDAI	Member
6	Shri Samir Kumar Bhattacharyya	General Manager (Retail Banking), SBI	Member
7	Shri Sandhip Batra	Group Compliance Officer and Company Secretary, ICICI Bank	Member
8	Mr Prasanna Divekar	Head-NRI Business, HDFC Bank	Member
9	Smt Rukmini Veeraraghavan	DGM (NRI Services), Bank of Baroda	Member
10	Shri Sanjay Nair	Head Customer Propositions, HSBC	Member
11	Shri Neerav Maniar	Vice President, Citibank	Member
12	Shri A Surendran	DGM (International Banking Department), Federal Bank Ltd.	Member

प्रेस प्रकाशनी PRESS RELEASE



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संचार विभाग, केंद्रीय कार्यालय, एस.बी.एस.मार्ग, मुंबई-400001

DEPARTMENT OF COMMUNICATION, Central Office, S.B.S.Marg, Mumbai-400001

फोन/Phone: 91 22 2266 0502 फैक्स/Fax: 91 22 22660358

May 10, 2011

RBI invites comments for review of procedures relating to foreign exchange facilities to individuals – Residents/NRIs and PIOs

The Reserve Bank of India invites comments/suggestions from the members of the public and other stake holders on the foreign exchange related schemes/facilities available to the individuals – residents, Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) and expatriates employed in India under the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and administered by the Reserve Bank/Authorised Persons dealing in forex. The comments/suggestions could relate to deposit account, investment facilities, acquisition/sale of immovable property, remittance/ repatriation of funds, remittance facilities for individuals or any other related procedural issue. The feedback on these issues may be forwarded to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office Building, 11th floor, S.B.S. Road, Mumbai-400001 or e-mailed latest by June 09, 2011.

It may be recalled that in the Monetary Policy Statement for 2011-12, it has been announced that the Reserve Bank recognises the need for facilitating genuine foreign exchange transactions by individuals – residents/Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) – under the current regulatory framework of FEMA. Keeping this in view, a Committee (Chairperson: Smt. K.J. Udeshi) comprising the representatives of various stakeholders has been set up. The Committee will identify areas for streamlining and simplifying the procedure so as to remove the operational impediments, and assess the level of efficiency in the functioning of authorised persons, including the infrastructure created by them.

Press Release : 2010-2011/1641

Ajit Prasad
Assistant General Manager

Income-Tax Department	FORM NO. 15CA <i>(See rule 37BB)</i> Information to be furnished under sub-section (6) of Section 195 of the Income-tax Act, 1961 relating to remittance of payments to a non-resident or to a foreign company	Ack. No. -
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Part A INFORMATION: REMITTER	GENERAL									
	Name of Remitter (Person responsible for making payment u/s 195 of IT Act, 1961)				PAN of Remitter					
	Flat/Door/Block No.		Name of Premises/Building/Village				TAN of Remitter			
	Road/Street/Post Office		Area/Locality				Status- Write 1 if company, Write 2 if firm, and write 3 if others In case of company-If domestic, write '1' and if other than domestic, write '2'			
	Town/City/District		State		Pin code					
	Principal Place of Business									
	Email Address		(STD code)-Phone Number ()							
	Area Code		AO Type		Range Code		AO No			

INFORMATION : RECIPIENT OF REMITTANCE	Name of recipient of Remittance		PAN of recipient of Remittance									
	Complete Address:		Country to which remittance is made :									
	Principal Place of Business		Status- Write 1 if company, write 2 if firm, and write 3 if others									
	Email Address		In case of company- If domestic, write '1' and if other than domestic, write '2'									
INFORMATION : ACCOUNTANT	Email Address		()									
	(a)	Name of the Accountant* signing the certificate										
	(b)	Name of the proprietorship/ firm of the Accountant										
	(c)	Address										
	(d)	Registration no. of the Accountant										
(e)	Date of Certificate : (DD/MM/YYYY)		**Certificate No :									
* Accountant (other than an employee) shall have the same meaning as defined in the <i>Explanation</i> to Section 288 of Income-tax Act, 1961. ** Please fill the serial number as mentioned in the certificate of the accountant.												
For Office Use Only			For Office Use Only									
			Receipt No.									
			Date									
			Seal and Signature of receiving official									

Part B		PARTICULARS OF REMITTANCE AND TDS (as per certificate of the Accountant)									
PARTICULARS OF REMITTANCE AND TDS		Country:		Currency:							
		In foreign currency		In Indian Rs.							
		Branch of the bank									
		(DD/MM/YYYY)									
		In foreign currency		In Indian Rs.							
		As per Income-tax Act (%)		As per DTAA (%)							
		In foreign currency		In Indian Rs.							
		(DD/MM/YYYY)									
1.	Country to which remittance is made										
2.	Amount of remittance										
3.	Name of the bank										
4.	BSR Code of the bank branch (7 digit)										
5.	Proposed date of remittance	(DD/MM/YYYY)									
6.	Amount of TDS										
7.	Rate of TDS										
8.	Actual amount of remittance after TDS										
9.	Date of deduction of tax at source										
10.	Nature of remittance as per agreement/document										
11.	In case the remittance is net of taxes, whether tax payable has been grossed up?	(Tick)		Yes		No					
12.	If the remittance is for royalties, fee for technical services, interest, dividend, etc., please indicate:-	(Tick)		Yes		No					
	(a) The clause of the relevant DTAA under which the remittance is covered along with reasons	Clause of DTAA									
	(b) Rate of TDS required to be deducted in terms of such clause of the applicable DTAA	As per DTAA (%)									
	(c) In case TDS is made at a lower rate than the rate prescribed under DTAA, reasons thereof										

13.	In case remittance is for supply of articles or things (e.g. plant, machinery, equipment etc.), please indicate,	(Tick)	Yes	No
	(a) Whether the recipient of remittance has any permanent establishment (PE) in India through which the beneficiary of the remittance is directly or indirectly carrying on such activity of supply of articles or things?	(Tick)	Yes	No
	(b) Whether such remittance is attributable to or connected with such permanent establishment	(Tick)	Yes	No
	(c) If the reply to Item no. (b) above is 'yes', the amount of income comprised in such remittance which is liable to tax.			
	(d) If not, the reasons in brief thereof.			
14.	In case the remittance is on account of business income, please indicate:-	(Tick)	Yes	No
	(a) Whether such income is liable to tax in India			
	(b) If so, the basis of arriving at the rate of deduction of tax.			
	(c) If not, the reasons thereof.			
15.	In case any order u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer, details thereof:	(Tick)	Yes	No
	(a) Name and Designation of the Assessing			

	Officer who issued the order/ certificate										
	(b) Date of the order/ certificate	(DD/MM/YYYY)									
	(c) Specify whether u/s 195(2)/ 195(3)/ 197 of IT Act										
16.	In case of any other remittance, if tax is not deducted at source for any reason, details thereof.										

VERIFICATION

I/We, _____ (full name in block letters), son/ daughter of _____ solemnly declare that the information given above is true to the best of my/our knowledge and belief and no relevant information has been concealed. I/We certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source. In a case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/we undertake to pay the amount of tax not deducted or not paid, as the case may be along with interest due. I/We shall also be subject to the provisions of penalty for the said default as per the provisions of the IT Act, 1961. I/We further undertake to submit the requisite documents for enabling the Income-tax Authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our liability under the Income-tax Act as a person responsible for deduction of tax at source. I/We further declare that I/we am/are furnishing this information in my/our capacity as _____ and I/we am/are also competent to sign the return of income as per provisions of section 140 of the Income-tax Act, 1961 and verify it.

Place

Date

Sign here →

FORM NO. 15CB

(See rule 37BB)

Certificate of an accountant*

I/We have examined the agreement (wherever applicable) between Mr./Ms./M/s.....and Mr./Ms./M/s.....requiring the (remitters) (beneficiary) above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of sub-section (6) of section 195. We hereby certify the following:-

A	Name and address of the beneficiary of the remittance		
B	1.	Country to which remittance is made	Country:
	2.	Amount of remittance	In foreign currency
	3.	Name of the bank	Branch of the bank
	4.	BSR Code of the bank branch (7 digit)	
	5.	Proposed date of remittance	(DD/MM/YYYY)
	6.	Amount of TDS	In foreign currency
	7.	Rate of TDS	As per Income-tax Act (%)
	8.	Actual amount of remittance after TDS	In foreign currency
	9.	Date of deduction of tax at source	(DD/MM/YYYY)
	10.	Nature of remittance as per agreement/ document	
	11.	In case the remittance is net of taxes, whether tax payable has been grossed up? If so computation thereof may be indicated.	(Tick) ☐ Yes ☐ No
	12.	If the remittance is for royalties, fee for technical services, interest, dividend, etc, please indicate:-	(Tick) ☐ Yes ☐ No
		(a) The clause of the relevant DTAA under which the remittance is covered along with reasons	Clause of DTAA
		(b) Rate of TDS required to be deducted in terms of such clause of the applicable DTAA	As per DTAA (%)
		(c) In case TDS is made at a lower rate than the rate prescribed under	

	DTAA, reasons thereof		
13.	In case remittance is for supply of articles or things (e.g. plant, machinery, equipment etc.), please indicate,	(Tick) ☐ Yes	☐ No
	(a) Whether the recipient of remittance has any permanent establishment (PE) in India through which the beneficiary of the remittance is directly or indirectly carrying on such activity of supply of articles or things?	(Tick) ☐ Yes	☐ No
	(b) Whether such remittance is attributable to or connected with such permanent establishment	(Tick) ☐ Yes	☐ No
	(c) If the reply to Item no. (b) above is 'yes', the amount of income comprised in such remittance which is liable to tax.		
	(d) If not, the reasons in brief thereof.		
14.	In case the remittance is on account of business income, please indicate:-	(Tick) ☐ Yes	☐ No
	(a) Whether such income is liable to tax in India	(Tick) ☐ Yes	☐ No
	(b) If so, the basis of arriving at the rate of deduction of tax.		
	(c) If not, the reasons thereof.		
15.	In case any order u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer, details thereof:	(Tick) ☐ Yes	☐ No
	(a) Name and Designation of the Assessing officer who issued the order/ certificate		
	(b) Date of the order/ certificate	(DD/MM/YYYY)	
	(c) Specify whether u/s 195(2)/ 195(3)/ 197 of I T Act		
16.	In case of any other remittance, if tax is not deducted at source for any reason, details thereof.		

(Attach separate sheet duly authenticated wherever necessary)



****Certificate No.:**

Signature:

Date :

Name:

Place:

Name of the proprietorship/firm

Address:

Registration number:

** (To be signed and verified by an accountant (other than an employee) as defined in the Explanation to section 288 of the Income-tax Act, 1961).*

*** Certificate number is an internal reference number to be given by the Accountant*

CIRCULAR NO

4/2009., Dated: June 29, 2009

Subject:- Remittances to non-residents under section 195 of the Income-tax Act -- matters connected thereto - reg.

Section 195 of the Income-tax Act, 1961 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a non-resident unless a no objection certificate has been obtained from the Income Tax Department. This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format. The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorised dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

2. There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking. The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

3. The revised procedure for furnishing information regarding remittances being made to non-residents **w.e.f. 1st July, 2009** is as follows:-

- (i) The person making the payment (remitter) will obtain a certificate from an accountant* (other than employee) in Form 15CB.
- (ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

** An "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.*

- (iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. **Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.**

(iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy the certificate and undertaking to the Assessing Officer concerned.

(v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

(vi) A flow chart regarding filing of Form 15CA and Form 15CB is enclosed at Annexure -A.

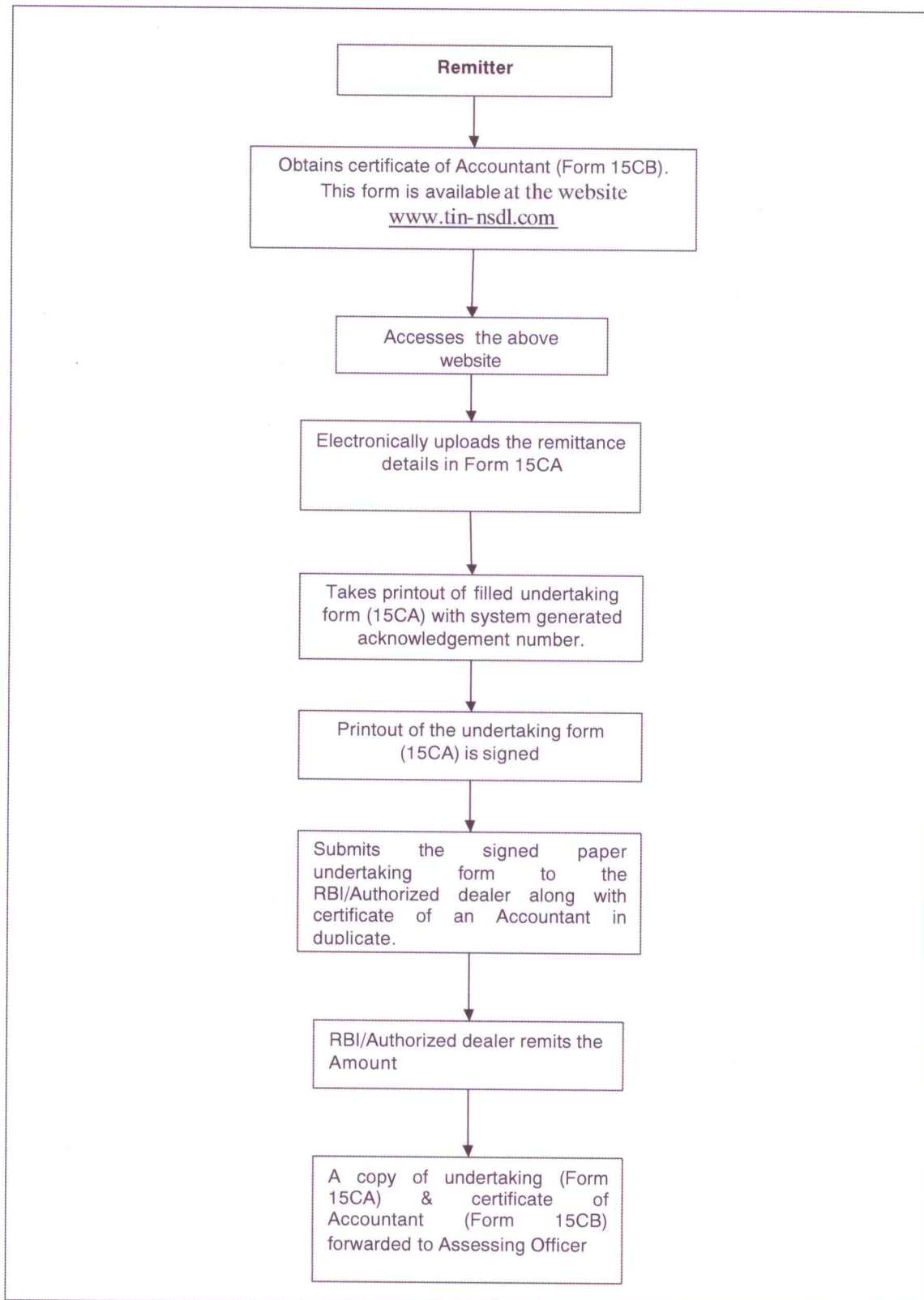
4. The Directorate General of Income-tax (Systems) (www.incometaxindia.gov.in) shall specify the procedures, formats and standards for running of the scheme as well as instructions for filling up Forms 15CA and 15CB. These forms shall be available for upload and printout at www.tin-nsdl.com.

5. The Reserve Bank of India is being requested to circulate the revised procedure among all authorised dealers.

F.No.142/19/2007-TPL

(Anand Kumar Kedia)
Secretary,
Central Board of Direct Taxes.

Flow chart of filing undertaking form u/s 195 of I T Act 1961



Annex IX

NRI Deposits – Outstanding

(US \$ million)

Scheme	2005	2006	2007	2008	2009	2010
1	2	3	4	5	6	7
1.FCNR (A)*	-	-	-	-	-	-
2.FCNR (B)**	11,452	13,064	15,129	14,168	13,211	14,258
3.NR(E)RA	21,291	22,070	24,495	26,716	23,570	26,251
4.NR(NR)RD+	232	-	-	-	-	-
5.NRO	-	1,148	1,616	2,788	4,773	7,381
Total	32,975	36,282	41,240	43,672	41,554	47,890

Inflow (+)/ Outflow (-) During the Month

(US \$ million)

2010-11 (P)				
Scheme	April	May	June	April-June
1	2	3	4	5
1. FCNR(B)	207 (173)	-402 (633)	412 (-3)	217 (803)
2. NR(E)RA	-85 (67)	219 (128)	446 (187)	580 (382)
3. NRO	197 (229)	149 (257)	181 (146)	527 (632)
Total	319 (469)	-34 (1018)	1,039 (330)	1,324 (1817)

* Withdrawn effective August 1994

** Introduced in May 1993

+ Introduced in June 1992 and discontinued w.e.f. April 2002

P – Provisional

Figures in brackets represent inflows (+)/outflows (-) during the corresponding month/period of the previous year.

No. of Branches allocated to each Regional Office of FED

Regional Office	Public Sector banks	Private Sector banks
Mumbai Regional Office (MRO)	6	4
Chennai Regional Office (Chennai)	3	2
Kolkata Regional Office (KRO)	3	2
New Delhi Regional Office (NDRO)	3	2
Bangalore Regional Office	3	2
Hyderabad Regional Office (HyRO)	3	2
Kochi Regional Office	2	1
Ahmedabad Regional Office (ARO)	4	2
Chandigarh Regional Office	2	1
Total	29	18

Query – Whether the branch insists on CA Certificate for any remittance under LRS big or small?

New Delhi - CA certificate is not being obtained in case of miscellaneous remittances by individuals. In case of companies 15CB and 15 CA are obtained.

Hyderabad - In general CA Certificate is not being insisted. However, in few capital account transactions insisting for CA certificate.

Ahmedabad – Branches, in general, not insisting on CA Certificate. However, a branch was providing such services only to customers, One branch was insisting on CA certificate for transaction exceeding USD 5000.

Chennai – A branch was insisting on CA certificate except for the following: a) import of goods if the transactions are principal to principal basis and the non-resident has no permanent establishment in India. B) maintenance expenses of wards by their parents. C) medical expenses for self / dependants, d) Membership fees of overseas institutions, e) Subscription to journals / magazines, f) travel expenses (business and personal), g) education fees to Universities, if the University does not have a permanent establishment in India

Kochi – A branch was insisting on CA certificate.

Bangalore – A branch was insisting on CA certificate for remittance above USD 5000, Others – No

Mumbai- All the branches were insisting on CA certificate

Chandigarh – One branch was insisting on CA certificate while one branch was not insisting.

Kolkata – Two branches were insisting on CA certificate while one branch was not insisting.

Query No. - How many references to RBI relating to NRO accounts (during previous six months)?

No branch reported as regards references relating to NRO a/c to RBI.

Query No. – How many reference to RBI total (during the previous six months)?

Except a few branches, in general, no reference to RBI during the previous six months.

Query No. – Documentation, in any for transactions in NRO A/c ?

New Delhi - Form A-2, Request letter from the customer, Sources of Funds, Ascertain residential status.

Hyderabad - Only for specific cases the bank is obtaining documents for transactions in NRO accounts.

Ahmedabad - request letter, CA certificate form 15 CA and 15 CB other documentary evidence in support of source of fund

Kochi - Application and declaration from the customer and Certificate from the CA, (15 C) is stated to have been collected for remittance.

Bangalore - Remittance of USD one million on production of undertaking by the remitter and a certificate from a CA in the format prescribed by CBDT; a branch was insisting on CA certificate and IT returns for Outward remittance above USD 5000.00.

Chennai– Request letter in prescribed format of Axis Bank Ltd b) Form A2 c) Form 15CA & 15CB, d) Declaration from the NRO remitter that all the outward remittance he has done in the FY is less than USD 1 mio, e) Underlying document for outward remittance, if any.

Mumbai — PAN card for deposits/FDs exceeding Rs.50,000.00. For remittances- Annexure-III, Form –A2, documents evidencing source of fund if applicable

Query No. – Portfolio Investment Scheme – difficulties, if any faced by the branch?

In general, no branch reported any difficulty as regards PIS.

Query No. – How has the branch facilitated customer service to Residents and NRIs in putting through foreign exchange transactions?

New Delhi - Having separate Specialized NRI Branch, Booklet is made available to the customers explaining the different facilities available with the branch.

Hyderabad – The branch displays charts and distribute pamphlets, hand books on facilities extended to NRIs and PIOs.; Separate sales personnel in Forex dept to take care of the clients.

Ahmedabad –Introduced travel card, dedicated relationship managers, lobby managers to cater to customers and Informative brochures on the subject.; Online programme called INSTANT NRI for dealing with queries of NRIs.;

Kochi - Dedicated Relationship Managers (RM) are appointed to take care of NRI customers, a forex cell for dedicated service to NRIs and forex business.

Bangalore RO –A dedicated team handling forex areas and the customers were serviced on priority, Exclusive department catering to the needs of resident and NRI customers putting through foreign exchange transaction.

Chennai – understanding the customer's forex requirements and advising them the obligations, documentation to be fulfilled with respect to RBI and FEMA guidelines.

Mumbai: a designated desk & back up support for NRIs, treating them as Privileged customers. through e-mails, advertisements, posters, Notice Board, Web Site facilities for NRI, Relationship Manager appointed in all countries

Chandigarh – Separate desk , pamphlets



Schedule I

Transactions which are Prohibited (see rule 3)

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.



Schedule II

Transactions which require prior approval of the Central Government
(see Rule 4)

Purpose of Remittance	Ministry / Department of Govt. of India whose approval is required
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings	Ministry of Finance, (Department of Economic Affairs)
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4. Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. Remittance of hiring charges of transponders by	
(a) TV Channels	Ministry of Information and Broadcasting
(b) Internet Service providers	Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)



8. omitted	
9. Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
10. Omitted	
11. Remittance for membership of P&I Club	Ministry of Finance (Insurance Division)



Schedule III

(See Rule 5)

1. Omitted
2. Release of exchange exceeding US\$ 10,000 or its equivalent in one financial year, for one or more private visits to any country (except Nepal and Bhutan).
3. Gift remittance exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual
4. (i) Donation exceeding US\$ 5000 per financial year per remitter or donor other than resident individual
 (ii) Donations by Corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for:-
 (a) creation of Chairs in reputed educational institutes,
 (b) to funds (not being an investment fund) promoted by educational institutes; and
 (c) to a technical institution or body or association in the field of activity of the donor company

Explanation: For the purpose of the item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the Liberalised Remittance Scheme.

5. Exchange facilities exceeding USD 100,000 for persons going abroad for employment.
6. Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country of emigration.
7. Remittance for maintenance of close relatives abroad,@@
 i. exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and –
 (a) is a citizen of a foreign State other than Pakistan; or
 (b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.
 ii. exceeding USD 100,000 per year, per recipient, in all other cases.

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

8. Release of foreign exchange, exceeding USD 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.
9. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
10. Release of exchange for studies abroad exceeding the estimate from the institution abroad or USD 100,000, per academic year, whichever is higher.



11. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.

12. Omitted

13. Omitted

14. Omitted

15. Remittances exceeding US\$ 10,000,000 per project for any consultancy services in respect of infrastructure projects and US\$ 1,000,000 per project, for other consultancy services procured from outside India.

Explanation:- For the purposes of this item number 'infrastructure project' is those related to –

- (i) Power,***
- (ii) Telecommunication,***
- (iii) Railways,***
- (iv) Roads including bridges,***
- (v) Sea port and air port,***
- (vi) Industrial parks, and***
- (vii) Urban Infrastructure (water supply, sanitation and sewage)***

16. Omitted

17. Remittances exceeding five per cent of investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

18. Omitted



(Amendments)

Notification GSR.663 (E) dated August 17, 2000,
S.O.301(E) dated March 30, 2001,
GSR.442(E) dated November 2, 2002,
GSR.831(E) dated December 20, 2002,
GSR.33(E) dated January 16, 2003,
GSR.397(E) dated May 14, 2003,
GSR.731(E) dated September 11, 2003,
GSR.849(E) dated October 29, 2003,
GSR.608(E) dated September 13, 2004,
G.S.R.512(E) dated July 28,2005,
G.S.R.412(E) dated July 11, 2006,
G.S.R.511(E) dated July 28, 2006,
G.S.R.349 (E) dated May 22, 2009 and
G.S.R.382 (E) dated May 05, 2010.

Please Note:-

@@ May be read with A.P. (DIR Series) Circular No.26 dated January 14, 2010.

**Application cum Declaration for purchase of foreign exchange under the
Liberalised Remittance Scheme of USD 2,00,000**
(To be completed by the applicant)

I. Details of the applicant

- a. Name
- b. Address.....
- c. Account No.....
- d. PAN No.....

II. Details of the foreign exchange required

- 1. Amount (Specify currency).....
- 2. Purpose

III. Source of funds:

IV. Nature of instrument

Draft.....

Direct remittance.....

**V. Details of the remittance made under the Scheme in the financial year
(April- March) 200...**

Date :..... Amount :.....

VI. Details of the Beneficiary

- 1. Name
- 2. Address
- 3. Country
- 4*. Name and address of the bank.....
- 5*. Account No.....

(* Required only when the remittance is to be directly credited to the bank account)

of the beneficiary)

This is to authorize you to debit my account and effect the foreign exchange remittance/issue a draft as detailed above. (strike out whichever is not applicable).

Declaration

I,(Name), hereby declare that the total amount of foreign exchange purchased from or remitted through, all sources in India during the financial year as per item No. V of the Application, is within the limit of USD 2,00,000/-(US Dollar Two Lakh only), which is the limit prescribed by the Reserve Bank for the purpose and certify that the source of funds for making the said remittance belongs to me and will not be used for prohibited purposes.

Signature of the applicant

(Name)

Certificate by the Authorised Dealer

This is to certify that the remittance is not being made by/ to ineligible entities and that the remittance is in conformity with the instructions issued by the Reserve Bank from time to time under the Scheme.

Name and designation of the authorised official:

Place:

Signature

Date: Stamp and seal

Format for reporting to Reserve bank

Statement indicating the details of remittances made by resident individuals under the Liberalised Remittance Scheme for the quarter ended

Name of the Bank:

Sl.No.	Purpose of remittance	No. of applicants	Amount remitted in USD
1.	Deposit		
2.	Purchase of immovable property		
3.	Investment in equity/debt		
4.	Gift		
5.	Donation		
6.	Travels		
7.	Maintenance of Close Relatives		
8.	Medical Treatment		
9.	Studies Abroad		
10.	Others		
Total			

Name and designation of the authorised official:

Place:

Signature

Date: Stamp and seal