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# FEMA

## 1. INTRODUCTION

Foreign Exchange Management Act, 1999 (FEMA) replaced the Foreign Exchange Regulation Act, 1973 (FERA) w.e.f. 1st June, 2000.

There are only 49 sections under FEMA, which can be tabulated as under:

| | |
|---|---|
| Section 1 | Title & Commencement of FEMA |
| Section 2 | Definitions |
| Sections 3 to 9 | Regulations and Management of Foreign Exchange |
| Sections 10 to 12 | Deals with Authorised dealers |
| Sections 13 to 15 | Deals with penalties/contraventions |
| Sections 16 to 49 | Appeals & Adjudications |

All current account transactions are generally permitted unless specifically prohibited whereas; all Capital account transactions are generally prohibited unless specifically permitted.

## 2. SOME IMPORTANT CONCEPTS UNDER FEMA

### a. "Persons Resident in India" means —

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

A. A person who has gone out of India or who stays outside India, in either case —

a. For or on taking up employment outside India, or

b. For carrying on outside India a business or vocation outside India, or

c. For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

B. A person who has come to or stays in India, in either case, otherwise than —

a. For or on taking up employment in India, or

b. For carrying on in India a business or vocation in India, or

c. For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

ii. Any person or body corporate registered or incorporated in India,

iii. An office, branch or agency in India owned or controlled by a person resident outside India,

iv. An office, branch or agency outside India owned or controlled by a person resident in India;

**b. "Current account transaction" means —**

Transactions other than capital account transaction and includes the following transaction:

1. Payments due in connection with foreign trade, other current business, services, short-term banking facilities, credit facilities in the ordinary course of business,
2. Payments due as interest on loan and/or net income from investments,
3. Remittances for living expenses of parent, spouse and children residing abroad;
4. Expenses in connection with foreign travel, education, medical care of parents, spouse and children.

**c. "Capital Account Transaction" means —**

Those transactions which alters the assets or liabilities, including contingent liabilities,

i. Outside India of persons resident in India or

ii. Assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;

## 3. BANK ACCOUNTS — RESIDENT INDIAN

**(Refer Notification No. Fema 10 /2000-rb Dated 3rd May, 2000 Read With Subsequent Amendments)**

### a. Resident Foreign Currency Account

A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account, to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange —

1. Received as pension or any other superannuation or other monetary benefits from his employer outside India; or
2. Realised on conversion of the assets acquired, held or owned when he was a

resident outside India or inherited from a person who was resident outside India; or

3. Received or acquired as gift or inheritance from a person resident outside India; or
4. Acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank; or acquired as gift or inheritance therefrom; or
5. Received as the proceeds of life insurance policy claims/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

## b. Resident Foreign Currency (Domestic) Account

A resident individual may open, hold and maintain with an Authorised Dealer in India a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and traveller's cheques:

a. While on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or

b. From any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

c. By way of honorarium or gift while on a visit to any place outside India; or

d. Represents the unspent amount of foreign exchange acquired by him from an authorized person for travel abroad.

e. As gift from a close relative. (Relative as defined in section 6 of the Companies Act, 1956)

f. By way of earning through export of goods/services, or as royalty, honorarium or by any other lawful means.

g. Representing the disinvestments proceeds received by the resident accountholder on conversion of shares held by him to ADRs/DGRs under the sponsored ADR/GDR Scheme approved by the Foreign Investments Promotion Board of Government of India.

h. By way of earnings received as the proceeds of life insurance policy claim/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulation and Development Authority.

This account has to be maintained in the form of Current Account and no interest is payable on RFC (Domestic) Account and there is no ceiling on the balances in the account.

### c. EEFC Account

| | |
|---|---|
| **What is EEFC Account?** | An account expressed in foreign currency and maintained with an Authorized Dealer, a bank dealing in foreign exchange, in India to credit prescribed percentage of earnings in convertible foreign currency. |
| **Who can open an account?** | A person resident in India, which includes individuals, firms, companies, etc. |
| **Permissible credits** | Earning in foreign exchange as per prescribed limits. Re-credit of unutilized foreign exchange earlier withdrawn from such account. |
| **Permissible debits** | Payment towards all current account transactions such as travel, medical, studies abroad, permissible imports commission, customs duty, etc. However, remittances towards gifts and donations exceeding US $ 5,000 per remitter/donor per annum are not permissible. Payments towards permissible capital account transactions Payment in India to 100% Export Oriented Units/Units in Export Processing Zones/ Software Technology Parks Electronic Hardware Technology Parks towards cost of goods and services provided by them. Payment towards trade related loans and advances. Payment in foreign exchange to a person resident in India for supply of goods and services including payment for airfare and hotel expenditure. |
| **Cheque facility** | Available |
| **Nomination facility** | Permitted like in case of any other resident accounts. |

## 4. Bank Accounts — Non-Residents

| **PARTICULARS** | **FCNR** | **NRE** | **NRO** |
|---|---|---|---|
| Who can open the account | NRI | NRI | Any person Resident outside India |
| (For FCNR & NRE — other than nationals of Bangladesh & Pakistan) | Fixed Deposit not permitted | Fixed Deposit not permitted | Fixed Deposit permitted |
| Type of account | Savings/Current | Saving/Current | Fixed Deposit Saving/Current |

| | | | |
|---|---|---|---|
| Joint A/c with person resident in India | Not permitted | Not permitted | Permitted |
| Operations by Resident Power of Attorney Holder (Not for repatriation outside India and for Giving gift to Resident Indian) | Permitted | Permitted | ***Permitted |
| Currency in which account Denominated | As notified by RBI from time to time | Indian Rupees | Indian Rupees |
| Repatriation of Principal Amount | Permitted | Permitted | Not Permitted |
| Repatriation of Interest Amount | Permitted | Permitted | Permitted |
| Tax Implication | Exempted (Non Resident status as per FEMA) | Exempted (Non Resident status as per Income-tax Act) | Exempted |
| International Debit Card | Not applicable | Allowed | Not Allowed |
| Rupee Loan on security of such account to<br>— Account holders<br>— Third party | <br><br>Yes<br>Yes | <br><br>Yes<br>Yes | <br><br>Yes<br>Yes |
| ***POA holder may operate NRO account for making local payments and remittance of current income to the account holder himself, but cannot make gift or transfer funds to another NRO account | | | |

Non-Resident Corporates can open Escrow account and Special account, without prior approval of the Reserve Bank, for acquisition transfer of shares/convertible debentures through open offers/delisting/exit offers, subject to the relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/provisions of the Companies Act, 1956 and subject to certain terms and conditions.

Ship manning/crew managing agencies that are rendering services to shipping companies incorporated outside India are permitted to open and operate non-interest bearing foreign currency accounts in India for the purpose of undertaking transactions in the ordinary course of its business, mainly current account transactions.

Remittance of the maturity proceeds of FCNR (B) deposits to third parties outside India is permitted

## 5. LOANS AVAILABLE TO RESIDENTS — FOREIGN EXCHANGE LOAN

An individual resident in India may borrow a sum not exceeding $ 2,50,000 or its equivalent from close relatives residing outside India, without the prior approval of the RBI, subject to the following conditions:

i. The minimum maturity period of the loan is one year;

ii. The loan is free of interest; and

iii. The amount of loan is received by way of inward remittances in free foreign exchange through normal banking channels or by debit to the NRE or Foreign Currency Non-Resident Bank (FCNR (B)) account of the non-resident lender

(Note: Relative defined in section 6 of the Companies Act, 1956)

## 6. LOANS AVAILABLE TO RESIDENTS — RUPEE LOAN

As per Regulation 4 of FEMA Notification No: 4/2000-RB, dated 3rd May 2000, a person resident in India, not being a company incorporated in India, may borrow in rupees on non-repatriation basis from a non-resident Indian or a person of Indian origin resident outside India, subject to the following conditions:

i. The amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account of the lender maintained with an authorized dealer or an authorized bank in India.

ii. The period of loan shall not exceed three years;

iii. The rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of availment of loan;

iv. Where the loan is made out of funds held in Non-resident Special Rupee (NRSR) account of the lender, payment of interest and repayment of loan shall be made by credit to the credit of lender’s Non-resident Ordinary (NRO; and

v. The amount borrowed shall not be allowed to be repatriated outside India

vi. The amount borrowed shall be utilized in his own business other than the business of chit-fund, Nidhi Company, agricultural or plantation activities, real estate business, construction of farm houses or trading in ‘transferable development rights’ (TDRs)

vii. The amount borrowed shall not be utilized as investment, whether by way of capital or otherwise, in a company or partnership firm or proprietorship concern or any equity, whether incorporated or not, or for re-lending

## 7. LOANS AVAILABLE TO NON-RESIDENTS

1. An authorized dealer may grant foreign currency loans in India against the security of funds held in FCNR (B) account to the account holder only subject to the guidelines stated therein.

2. NRI can get loan against security of shares and/or immovable property.
3. NRI is entitled for housing loans.
4. A Authorised Dealer can grant Rupee Loan against security of assets 'other than shares and immovable property".
5. A NRI employee can receive loan from its Indian Corporate employer for personal purposes including purchase of housing property in India.
6. A NRI can get foreign currency loan outside India from an Indian Company for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad."
7. A NRI can get loan against the security of his NRE/FCNR (B) Accounts from a branch outside India of an authorized dealer.
8. Banks are prohibited from granting fresh loans or renewing existing loans in excess of Rupees 20 lakhs against NRE and FCNR (B) deposits either to the depositors or third parties.

## 8. Remittance facilities for Resident Indian without RBI prior approval

| **PURPOSE** | **AMOUNT NOT EXCEEDING (IN US $)** |
|---|---|
| TRAVEL** — BUSINESS PURPOSE INCLUDING ATTENDING INTERNATIONAL CONFERENCE, SEMINAR, SPECIALISED TRAINING, STUDY TOUR, APPRENTICE TRAINING,MEDICAL TREATMENT AND/OR CHECK ETC | 25,000 PER VISIT |
| Private visits to any country (other than Nepal & Bhutan) | 10,000 per financial year |
| Employment, emigration, Maintenance of close relatives | 100,000 per Calendar year |
| Medical Treatment | 1, 00,000 |
| Studies/Education abroad | 1, 00,000 per academic year |
| Gift/Donation by resident individual | 1, 00,000 per financial year |
| Gift/Donation by others | 5,000 per remitter/donor per annum |
| Corporates can donate for certain specified purposes up to a limit of one per cent of the foreign exchange earnings during the previous three financial years or US $ 5 million, whichever is less Under liberalized | 1, 00,000 per financial year |

| | |
|---|---|
| Remittance Scheme for permissible capital account transactions or current account transactions or combination of both | |
| Reimbursement of pre-incorporation expenses | 5 per cent of the investment brought into India or US $ 100,000, whichever is higher |
| For consultancy service procured from outside India for<br>Executing infrastructure projects | 10 million per project |
| **For other consultancy service procured from out side India** | 1 million per project |
| Remittance of initial and recurring **Expenses for Branch offices opened abroad —** | Remittance up to ten per cent for initial and up to five per cent for recurring expenses of the average annual sales/income or turnover during last two accounting years |

## 9. REMITTANCE FACILITIES FOR NRIs/PIOs WITHOUT RBI APPROVAL

**REFER NOTIFICATION NO. FEMA 13/2000-RB DATED 3RD MAY, 2000 READ WITH SUBSEQUENT AMENDMENTS**

### 1. Remittance of assets by a foreign national of non-Indian origin

A foreign national of non-Indian origin (not being a citizen of Nepal & Bhutan) who has retired from an employment in India or who has inherited assets from a person resident in India or who is a widow of an Indian citizen resident in India may remit an amount not exceeding US $ one million, per financial year. The remittance facility in respect of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

### 2. Remittance of assets by NRI/PIO

A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit an amount up to US $ one million, per financial year, out of the balances held in his Non-Resident (Ordinary) Rupee (NRO) account/sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement), for all *bona fide* purposes. The remittance facility in respect of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

### 3. Repatriation of sale proceeds of residential property purchased by NRIs/PIO out of foreign exchange

Repatriation of sale proceeds of residential property (without lock in period) purchased by NRI/PIO out of foreign exchange or by way of loans (to the extent of such loan/s repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts), is restricted to not more than two such properties. Repatriation is permitted for amounts representing the refund of application/earnest money/purchase consideration made by the house building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder.

### 4. Remittance of current income

Remittance of current income like rent, dividend, pension, interest etc. of NRIs/PIOs who maintains NRO account/or do not maintain NRO Account is freely allowed. The resident Power of Attorney holder is not permitted to repatriate outside India funds held in the account other than to the non-resident individual account holder nor to make payment by way of gift to a resident on behalf of the non-resident account holder or transfer funds from the account to another NRO account.

### 5. Facilities for students

As Non-Residents, they will be eligible to receive remittances from India (i) up to US $ 100,000 from close relatives in India on self declaration towards maintenance, which could include remittances towards their studies also and (ii) up to US $ 1 million out of sale proceeds of assets/balances in their account maintained with an AD in India.

### 6. International Credit Cards

NRIs/PIOs can use International Credit Cards abroad and settle the account out of balances held in the cardholder's FCNR/NRE/Non-Resident (Ordinary) Rupee accounts.

### 10. Investments in immovable property in India

| Notification No. FEMA 21/RB - 2000 dated 3rd May, 2000 | NRI | PIO | Foreign |
|---|---|---|---|
| General permission available for purchase immovable property in India | Yes | Yes | No |
| Restriction on number of residential/commercial property to be purchased under the general permission available | No | No | NA |
| Can a name of a foreign national of non-Indian origin be added as a second holder to a residential/commercial property purchased | No | No | NA |
| Can a foreign national of non-Indian | NA | NA | No |

| | | | |
|---|---|---|---|
| origin resident outside India acquire any immovable property in India by way of purchase | | | |
| Can a foreign national of non-Indian origin acquire residential property on a lease in India | NA (**lease | NA < = 5 yrs) | Yes** |
| Acquire agricultural land/plantation property/farm house in India by way of purchase or gift | No | No | No |
| Acquire residential/commercial property by way of gift under the general permission available | Yes | Yes | No |
| Hold any immovable property in India acquired by way of inheritance from a person resident in India or a person resident outside India? | Yes | Yes | Yes |
| **Transfer by way of sale residential/commercial property to:** | | | |
| (a) NRI/PIO | Yes | No ** | No ** |
| (b) Foreign National | No | No | No ** |
| (c) Resident Indian | Yes | Yes | No ** |
| **Sale of agricultural land/plantation property/farm house in India to:** | | | |
| (a) NRI/PIO/Foreign National | No | No | No |
| (b) Resident Indian | Yes | Yes | Yes ** |
| **Transfer of residential/commercial property by way of gift to:** | | | |
| (a) NRI/PIO | Yes | Yes | No |
| **Notification No. FEMA 21/RB - 2000 dated 3rd May, 2000 NRI PIO Foreign** | | | |
| (b) Foreign National | No | No | No |
| (c) Resident Indian | Yes | Yes | Yes |
| **Transfer by way of gift agricultural land/plantation property/farm House in India to:** | | | |
| (a) NRI/PIO/Foreign National | No | No | No |
| (d) Resident Indian | Yes | Yes | No ** |

| **Transfer by way of mortgage of residential/commercial property to:** | | | |
|---|---|---|---|
| (a) An authorized dealer in India/housing finance institution in India | Yes | Yes | No ** |
| (b) A Party abroad | No ** | No ** | No ** |
| (** Seek prior approval from RBI) | | | |

## 11.INBOUND INVESTMENTS

### Investments Facilities in Brief

| **Avenues of Investment** | **Nature of Instruments** | **Category of Investors** |
|---|---|---|
| Public /Private Limited Companies | Shares/Convertible Debentures/Preference shares | Non-Resident Indians/Non-residents/Non-Resident Incorporated Entities/ Foreign Institutional Investors |
| Public Limited Companies | NCDs | NRIs |
| Trading Companies | Shares/Convertible Debentures/Preference Shares | Non-residents |
| SSI Units | Shares/Convertible Debentures/Preference Shares | Non-residents |
| EOU or Unit in Free Trade Zone or in Export Processing Zone | Shares/Convertible Debentures/Preference Shares | Non-residents |
| Public/Private Ltd. Companies | Right Share | Existing shareholders/Renounces |
| Under Scheme of amalgamation/merger | Shares/Convertible Debentures/Preference Shares | Existing shareholders |
| Employees Stock Option | Shares/Convertible Debentures/Preference Shares | Employees resident outside India |
| ADR/GDR | Receipts | Non-residents |
| Portfolio Investment Scheme | Shares/Convertible | Debentures FIIs & NRIs |

| | | |
|---|---|---|
| Investment in Derivatives | Exchange Traded Derivatives | FIIs (on repatriation basis) & NRIs (on non-repatriation basis) |
| Govt. Securities | Govt. dated Securities/Treasury Bills,<br>Units of Domestic Mutual Funds, Bonds issued by PSUs and shares of Public Sector Enterprises being divested | NRIs & FIIs |
| Indian VCU or VCF or in a Scheme floated by VCF | SEBI Registered VCF/VC Units | SEBI Registered Foreign Venture Capital Investor |

(A) **List of Activities for which Automatic Route of RBI for investment by person resident outside India is not available**:(1) Petroleum Sector (except for private sector oil refining), (2) Investing companies in Infrastructure & Services Sector, (3) Defence and Strategic Industries, (4) Atomic Minerals, (5) Print Media **, (6) Broadcasting, (7) Postal services, (8) Courier Services, (9) Establishment and Operation of satellite, (10) Development of Integrated Township and (11) Tea Sector.

** FIIs, NRIs and FVC are permitted to invest through Foreign Direct Investment (FDI) and portfolio investment within the composite ceiling of 26 per cent of the paid-up capital of an Indian company publishing newspapers and periodicals dealing with news and current affairs

(B) **List of activities or items for which FDI is prohibited: (1)** Retail Trading (except single brand product retailing), (2) Atomic Energy, (3) Lottery Business, (4) Gambling and Betting, (5) Agriculture and Plantations (6) Business of Chit Fund (7) Nidhi Company (8) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified (9) Trading in Transferable Development Rights (TDRs).

**Some sectoral cap on Investments by persons resident outside India**

| | |
|---|---|
| Private Sector Banking | 74% |
| Non-Banking Financial Companies | 100% |
| Petroleum Refining | 100% |
| Petroleum product pipelines | 100% |
| Oil exploration | 100% |
| Coal & Lignite | 100% |

| | |
|---|---|
| Drugs & Pharmaceuticals | 100% |
| Ports and harbours | 100% |
| Mining | 74% |
| Films | 100% |
| Mass Rapid Transport Systems | 100% |
| Air Transport Services | 49% for others or 100% |
| Any other sector/activities | 100% |
| Insurance | 26% |
| Telecommunications | 49% |
| Petroleum Product Marketing | 100% |
| Housing and Real Estate (NRI) | 100% |
| Power | 100% |
| Road and Highways | 100% |
| Hotel & Tourism | 100% |
| Advertising | 100% |
| Airports | 74% |
| Pollution Control & Management | 100% |
| Special Economic Zone | 100% |
| Townships, housing, builtup Infrastructure etc. (subject to conditions of min. capitalization of US $ 10 million & certain other conditions of size of project & tenure of completion) | 100% |

The above sectoral limits are general in nature and may vary according to other terms and conditions as set out in the respective regulations/circular.

## 12.OUTBOUND INVESTMENTS

## A. P. (DIR SERIES) CIRCULAR NO. 75, DATED 14-6-2007

### AUTOMATIC ROUTE

In order to provide greater flexibility to Indian parties (companies incorporated in India or created under an Act of Parliament) for investments abroad, the existing limit of 200 per cent of the net worth of the Indian party has been enhanced to 300 per cent of the net worth. However, the limit applicable to registered partnership firms for overseas investment will continue to be 200 per cent of their net worth. Accordingly, AD Category-I banks may allow overseas investments under the Automatic Route up to 300 per cent of the net worth of the Indian party (other than registered partnership firms), as on the date of the last audited balance sheet.

In the cases other than those referred above, will require approval of the Reserve Bank, and application should be made in Form ODB

### ADR/GDR AUTOMATIC ROUTE

In terms of this scheme, Indian companies can freely utilize up to 100% of ADR/GDR proceeds for overseas investments without any limit under the automatic route subject to post facto report to the Reserve Bank.

### ADR/GDR AUTOMATIC STOCK/SWAP ROUTE

Under this route Indian companies can automatically swap their fresh issue of ADRs/GDRs for overseas acquisitions in the same core activity not exceeding 200% of the net worth or 10 times of their export earnings in the last year subject to post facto report to RBI. Within 30 days from the date of issue of ADRs and GDRs and/or GDRs in exchange for acquisition of shares of the foreign Co., Indian party shall submit a report in form ODG to the Reserve Bank.

### INVESTMENT BY PARTNERSHIP FIRMS

A partnership firm registered under the "Indian Partnership Act, 1932" which is engaged in providing specified professional services, may without prior approval of RBI (post facto report only), can invest up to US $ 1 million or its equivalent in one financial year in a foreign concern engaged in similar activity, by way of remittance from India: and/or capitalisation of fees/ other entitlements due to it from such foreign concerns provided the investing firm is a member of the respective All India Professional Organisation Body.

### NORMAL ROUTE

Proposals not covered under the above automatic routes are considered by the Special Committee on Overseas investments headed by the Deputy Governor, RBI with member representatives from Ministries of Finance, Commerce, External Affairs and the Reserve Bank. RBI is the secretariat for this Committee. The application for direct investment in joint venture/ wholly owned subsidiary outside India or by way of exchange of shares of a foreign company, shall be made in Form ODI or in Form ODB respectively, to RBI, Mumbai.

### BLOCK ALLOCATION BY RBI

An Indian party, which has exhausted the limit of US $ 100 million in a year, may apply to RBI for a block allocation of foreign exchange subject to such terms and conditions as may be considered necessary.

## INVESTMENT IN EQUITY, PREFERENCE SHARES OF COMPANIES REGISTERED

## OVERSEAS/ RATED DEBT INSTRUMENTS

### CORPORATES

Listed Indian companies are permitted to invest abroad in companies. (a) listed on a recognized stock exchange and (b) which has the share holding of at least 10 per cent in an Indian company listed on a recognized stock exchange in India (as on 1st January of the year of the investment). They are also permitted to invest in rated bonds/fixed income securities. Such investments shall not exceed 25 per cent of the Indian company's net worth as on the date of latest audited balance sheet.

### Foreign Investments in Preference Shares

Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed. It is further permitted that companies which have received funds from outside India for issue of partially/optionally convertible or redeemable preference shares on or up to April 30, 2007 may issue such instruments. Further, the existing investments in such preference shares which are not fully convertible may continue till their current maturity.

### INDIVIDUALS

Resident individuals are permitted to invest in overseas companies indicated at above and in rated bonds/fixed income securities without any monetary limit.

## INVESTMENT BY MUTUAL FUNDS

Mutual Funds are permitted to invest in ADRs/GDRs of the Indian companies, rated debt instruments and also invest in equity of overseas companies indicated above within an overall cap US $ 4 billion. Accordingly, Mutual Funds desirous of availing of this facility may approach SEBI for necessary permission in the matter.

General permission is available to the above categories of investors for sale of securities so acquired.

## Overseas Investment by Venture Capital Funds (VCFs)

DomesticI Venture Capital Funds (VCFs), registered with SEBI, after prior approval from SEBI may invest in equity and equity-linked instruments of off shore venture capital undertakings, subject to an overall limit of US $ 500 million No separate permission from the Reserve Bank is necessary for such VCFs.

### APPROVAL OF THE RESERVE BANK

In all other cases of direct investment abroad which are not covered under the previous paragraphs including investment by Partnership firms not eligible under the automatic route and investment under swap or exchange of share other than covered above, prior approval of the Reserve Bank would be required.

## INVESTMENT IN THE FINANCIAL SERVICES SECTOR

- An Indian party seeking to make investment in an entity engaged in the financial sector should also fulfil the following additional conditions:

  — be registered with the appropriate regulatory authority in India for conducting the financial sector activities;

  — has earned a net profit during the preceding three financial years from the financial services activities;

- Fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

It may be noted that, entities engaged in financial services activities in India making investment in non-financial services activities overseas will also have to comply with the above stated additional conditions.

## CAPITALISATION OF EXPORTS AND OTHER DUES

Indian parties are also permitted to capitalise the payments due from the foreign entity towards exports made to it, fees, royalties or any other entitlements due from the foreign entity for supplying technical know-how, consultancy, managerial and other services within the ceilings applicable. Export proceeds remaining unrealized beyond a period of six months from the date of export will require the prior approval of Reserve Bank before capitalization.

Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software company in the form of shares without entering into Joint Venture Agreements, with the approval of the Reserve Bank.

## ACQUISITION OF A FOREIGN COMPANY THROUGH BIDDING OR TENDER PROCEDURE

An Indian party may remit earnest money deposit or issue a bid bond guarantee for acquisition of a foreign company through bidding and tender procedure and also make subsequent remittances through an authorised dealer in accordance with the provisions of Regulation of the notification.

## Overseas Investments by Proprietorship Concerns

With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietary/unregistered partnership firms are now allowed to set up a JV/WOS outside India with prior approval of the Reserve Bank subject to satisfying certain eligibility criteria.

## INVESTMENT IN FOREIGN SECURITIES OTHER THAN BY WAY OR DIRECT INVESTMENT

General permission has been granted to a person resident in India who is an individual —

- To acquire foreign securities as a gift from any person residence outside India; or
- To acquire shares under Cashless Employees Stock Option Scheme issued by a company outside India, provided it do not involve any remittance from India, or
- To acquire shares by way of inheritance from a person whether resident in or outside India;
- To purchase equity shares offered by a foreign company if he is an employee or a director of an Indian office or branch of foreign company or of a subsidiary in India of a foreign company or an Indian company in which foreign equity holding is not less than 51 per cent.

**GENERAL PERMISSION IN CERTAIN CASES**

Residents are permitted to acquire foreign securities if it represents

- Qualification shares for becoming a director of a company outside India provided does not exceed 1% of the paid capital of the overseas company and the consideration of acquisition does not exceed US $ 20,000 in a calendar year.

— Rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force.

— Purchase of shares of JV/WOS abroad of the Indian promoted company by the employees/directors of an Indian promoted company which is engaged in the field of software where (consideration for purchase does not exceed US $ 10,000 of equivalent per employee in a block of five calendar years; shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India and after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to share allotment.

— Purchase of foreign securities under ADR/GDR linked share option schemes by resident employees of Indian software companies including working directors provided purchase consideration does not exceed US $ 50,000 or its equivalent in a block of five calendar years.

— ESOP Schemes, where the shares under the scheme are offered directly by the issuing company or indirectly through a trust/a Special Purpose Vehicle (SPV)/step down subsidiary, provided (i) the company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees/directors are being offered shares, not less than 51% of its equity, (ii) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and (iii) An Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer banks giving details of remittances/beneficiaries/etc.

## ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

## REFER NOTIFICATION NO. FEMA 7/2000-RB DATED 3RD MAY, 2000

1. A person resident in India may acquire immovable property outside India,—

   (a) By way of gift or inheritance from a person referred to in sub-section (4) of section 6 of the Act, or referred to in clause (b) of regulation 4;

   (b) By way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

2. A person resident in India, who has acquired immovable property outside India under sub-regulation (1) of this regulation, may transfer it by way of gift to his relative who is a person resident in India.

3. Reserve Bank may, on an application made to it; permit a company incorporated in India having overseas offices, to acquire immovable property outside India for its business and for residential purposes of its staff, subject to such terms and conditions as may be considered necessary.

Payment cannot be made either by traveller’s cheque or by foreign currency notes

## EXTERNAL COMMERCIAL BORROWINGS

ECB refer to commercial loans [in the form of bank loans, buyers’ credit, suppliers’ credit, securitised instruments (e.g., floating rate notes and fixed rate bonds)] availed from non-resident lenders with minimum average maturity of 3 years

External Commercial Borrowings (ECB) can be accessed under

i. Automatic Route

ii. Approval Route or

iii. Trade credit

## AUTOMATIC ROUTE

ECB for investment in real sector - industrial sector, especially infrastructure sector-in India, will be under Automatic Route; i.e., will not require RBI/Government approval. Corporates registered under the Companies Act except financial intermediaries (such as banks, financial institutions (Fls), housing finance companies and NBFCs) are eligible. Individuals, Trusts and Non-Profit making Organisations are not eligible to raise ECB.

ECBs for working capital funding will not fall under Automatic Route.

### AMOUNT AND Maturity

a. ECB up to US $ 20 million or equivalent with minimum average maturity of not less than 3 years

b. ECB above US $ 20 million and up to US $ 500 million or equivalent with minimum average maturity of not less than 5 years. Corporates can avail ECB of an additional amount of US $ 250 million with average maturity of more than 10 years under the approval route, over and above the existing limit of US $ 500 million under the automatic route, during a financial year

c. ECB up to US $ 20 million can have call/put option provided the minimum average maturity of 3 years is complied before exercising call/put option. However. Prepayment and call/put options would not be permissible for the additional ECB taken up to a period of 10 years.

### ALL-IN-COST CEILINGS

All-in-cost ceilings for the borrowing in foreign exchange shall be specified by the RBI from time to time.

APPROVAL ROUTE — for borrowers not covered by automatic route

### ELIGIBLE BORROWERS

a. Financial institutions dealing exclusively with infrastructure or export finance such as IDFC, IL & FS, Power Finance Corporation, Power Trading Corporation, IRCON and EXIM Bank will be considered on a case by case basis.

b. Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government will also be permitted to the extent of their investment in the package and assessment by RBI based on prudential norms. Any FCB availed for this purpose so far will be deducted from their entitlement.

c. Cases falling outside the purview of the automatic route limits.

### AMOUNT AND Maturity

a. ECB up to US $ 20 million or equivalent with minimum average maturity of not less than 3 years

b. ECB above US $ 20 million and up to US $ 500 million or equivalent with minimum average maturity of not less than 5 years

c. ECB up to US $ 20 million can have call/put option provided the minimum average maturity of 3 years is complied before exercising call/put option

### ALL-IN-COST CEILINGS

All-in-cost ceilings for the borrowing in foreign exchange shall be specified by the RBI from time to time.

### TRADE CREDIT

Foreign currency credit/loan extended for imports in to India by the overseas supplier, bank and financial institution for original maturity of less than 3 years is hereinafter referred to as 'Trade Credit' for imports. Depending upon the source of finance, such trade credit includes suppliers' credit or buyers' credit. Authorised Dealers (ADs) in foreign exchange are permitted to approve trade credits up to US $ 20 million per import transaction for import of all items permissible under the Foreign Trade Policy (except gold) with a maturity period (from the date of shipment) up to one year. For import of capital goods, ADs are permitted to approve trade credits up to US $ 20 million per import transaction with a maturity period of more than one year and less than three years. No roll-over/extension will be permitted by the AD beyond the permissible period. Trade Credit exceeding US $ 20 million per import transaction will require the prior approval of the Reserve Bank of India

## 13.HOLDING/SURRENDER OF FOREIGN CURRENCY

**(Refer Notification No. FEMA 9 /2000-RB dated 3rd May, 2000 and Notification No. FEMA 11 /2000-RB dated 3rd May, 2000)**

Person resident in India are required to repatriate and bring to India all foreign exchange that is due or accrued to them and deposit the same in the bank account. They are however permitted to hold foreign coins without any limit and foreign currency notes and travellers cheques up to US $ 2000.

A uniform period of 180 days is prescribed for surrender of received/realized/unspent/unused foreign exchange by resident individuals from the date of receipt/realization/purchase/acquisition/date of return of the traveler, as the case may be. In all other cases, the regulations/directions on surrender requirement shall remain unchanged

### Issue of Encashment Certificate (EC)

According to the provisions of the ECM, Authorised Dealers and their exchange bureaux are required to issue Encashment Certificates (EC) in form ECF in all cases of purchase of foreign exchange from the public. It has been decided to dispense with the requirement of issue of Encashment Certificate on security paper. Accordingly when it is requested by the customer, Encashment Certificate in form ECF, duly signed by authorised officials, may be issued by ADs Category I on the request. In cases where the Encashment Certificate is not issued, unspent local currency held by non-resident visitors will not be allowed to be converted into foreign currency.

## 14. IMPORTANT FORMS UNDER FEMA

## FEMA

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| APR | Annual Performance Report (APR) on the functioning of Indian Joint Venture (JV)/Wholly Owned Subsidiary (WOS) abroad |
| BEF | Statement showing details of remittances effected towards import in respect of which documentary evidence has not been received despite reminders |
| CDF | Currency Declaration Form |
| ECB | Annex 1 Application for raising External Commercial Borrowings (ECB) under Approval Route |
| ECB | Annex 2 Reporting of loan agreement details under Foreign Exchange Management Act, 1999 |
| ECB | Annex 3 Reporting of actual transactions of External Commercial Borrowings (ECB) |
| ECF | Issue of Encashment Certificate by authorised dealers |
| FC-GPR | Application to be filed by the company in event of receipt of fresh investment |
| Form A2 | Application for drawal of Foreign Exchange |
| FNC 1 | For setting up project/liaison office |
| GDR/ADR | Quarterly/Return to be filed by an Indian company who has arranged issue of GDR/ADR |
| GR | Exchange Control Declaration (Original/Duplicate) |
| LEG | Application for remittance of legacies, bequests or inheritances to beneficiaries resident outside India |
| ODA | Direct Investment in Joint Venture(JV)/Wholly Owned Subsidiary (WOS) Abroad under Automatic Route |
| ODG | Report on overseas acquisition made under the ADR/GDR Stock Swap Scheme |
| ODI | Application to Reserve Bank of India for Direct Investment in a Joint Venture/ Wholly Owned Subsidiary Abroad |
| ODR | Report on Remittances for Overseas Direct Investment through Authorised Dealer |
| IPI | Declaration of immovable property acquired in India by a person resident outside India |
| NRSR | Application-cum-Undertaking form for opening of Non-Resident (Special) Rupee (NRSR) Account |
| ODB | Application for issue of ADRs/GDRs on back to back basis for overseas acquisitions |
| PP | Exchange Control (Exporters Declaration) (original/duplicate) |
| RMC | Form RMC–F |

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| SOFTEX | Software Export Declaration (SOFTEX) Form (original/duplicate/triplicate) |
| TS1 | Application for transfer of shares of a company registered in India by a non-resident to a person resident in India |
| XOS | Report of export bills outstanding beyond the prescribed period/due date of realisation of as at the end of half-year |