



FEMA: RULES & PROCEDURES

COMPILED BY



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Definitions

Resident in India

Residing for more than 182 days during proceeding F Y

Exceptions:

-Persons gone out of India for employment/ business with the intention to stay outside India for uncertain period.

-Persons come to India for employment/ business with the intention of stay in India for uncertain period.

Non resident in India

A person resident outside India who is a citizen of India or is a person of Indian origin.

Definitions

Person of Indian Origin

Citizen of any country other than Bangladesh and Pakistan, if

-any time held Indian Passport

-He/ either of parent/ any of grand parent was a citizen of India

-Spouse of an Indian citizen or above PIO

General/ Deposit/ Borrowing & Lending	F DI - Investment in firm/ prop.	Immovable property
As above	Sri Lanka also include	-Sri Lanka, Afghanistan, china ,Iran, Napal and Bhutan
-	-	-Independent benefit to Spouse not available.

Definitions

Current Account Transactions

A transaction other than a capital account transaction. Current account transaction generally includes:-

- term -Payments due in the normal course of trade and services, short banking and credit facilities, in ordinary course of business
- Interest due on loans and investments
- Living and travel expenses of family members.

Definitions

Capital Account Transactions

- Transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India, and includes transactions referred to in section 6(3) of FEMA.

Investment on Repatriation basis

- An investment the sale proceeds of which are, net of taxes, eligible to be repatriated out of India.

Liberated Remittance Scheme of USD 2,00,000 for Resident Individuals

Basic Objectives

- ❖ Under this scheme, authorized dealers may freely allow remittance by individuals up to USD 200000 per financial Year 1 (April – March) for any permissible current or capital account transactions or a combinations of both.
- ❖ Resident individuals are free to acquire and hold immovable property or shares or any other asset outside India without prior approval of the Reserve Bank.
- ❖ Individual can also open, maintain or hold foreign currency account with a bank outside India for making remittances under the scheme without prior approval of the Reserve Bank.
- ❖ The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this scheme.

Liberalized Remittance Scheme of USD 2,00,000 for Resident Individuals

Eligibility

Eligible

- All resident individuals including minors are eligible to avail of the facility under the scheme.
- Remittances under the facility can be consolidated in respect of family members.

Not Eligible

- This facility is not available for corporate, HUF, Partnership firms.

Liberated Remittance Scheme of USD 2,00,000 for Resident Individuals

Available Facilities

Any remittance up to USD 200000 per financial year (April – March)for any current or capital account transactions or a combination of both

Resident individuals are free to acquire and hold immovable property of shares or any other asset outside India without prior approval of RBI.

Individuals will also be able to open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the scheme without prior approval of RBI.

The foreign currency account may be used for putting through all transactions connected with or arising from remittances eligible under this scheme.

Investment by resident individual in overseas companies.(No requirement of 10% reciprocal shareholding)

The facility under this scheme is in addition to those already available for private travel, business travel, (except gift remittances and donations), studies, medical treatment, etc.

Liberalized Remittance Scheme of USD 2,00,000 for Resident Individuals

Available Facilities

Limit of USD 200000 under the scheme includes remittances towards gift and donation by a resident individual.

Remittances under the scheme can be used for purchasing objects of art (subject to the provision of other applicable laws)

The scheme can also be used for remittance of funds for acquisition of ESOP's . The scheme is in addition of acquisition of ESOP's linked to ADR/GDR and acquisition of qualification shares.

A resident individual can invest in units of mutual funds, Venture funds, unrated debt securities, promissory notes, etc. under this scheme. Further the resident can invest in such securities out of the bank account opened abroad under the scheme.

Liberalized Remittance Scheme of USD 2,00,000 for Resident Individuals

Available Facilities (Master circular 5/2010 dt.01.07.2010)

An individual who has availed of a loan abroad while a non resident can repay the same on return to India under the Scheme as a resident.



The Scheme can be used for outward remittance in the form of a DD either in the resident individual's own name or in the name of beneficiary with whom he intends putting through the permissible transactions at the time of private visit abroad, can be effected against self declaration of the remitter in the format prescribed.

Liberalized Remittance Scheme of USD 2,00,000 for Resident Individuals

Facilities Not Available

Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.)

Any item restricted under Schedule II of FEMA Current Account Transactions) Rules, 2000.

Remittances for those transactions which are in the nature of remittance for margins or margin calls to overseas exchanges/overseas counterparty

Remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan.

Liberalized Remittance Scheme of USD 2,00,000 for Resident Individuals

Remittance Procedures

Requirements for Remitter:

All remittance through Authorized Dealer only
Furnishing of an application letter cum declaration stating of purpose.

Furnishing the copy of PAN

Purchase of Immovable properties in India

NRI/ PIO can purchase immovable properties other than

-agriculture property/plantation/ farm house

-Purchase price should be paid through funds received from out of India through banking channels from Non resident accounts

-Payments not permitted by traveler cheques/ foreign currency notes or by any other mode

NRI/PIO can transfer immovable property:

-to any resident in India or NRI or PIO

- Agriculture/ Farm house can only be transferred to Indian citizens permanently residing in India.

Purchase of Immovable properties in India

Repatriation of Sale proceeds by NRI/ PIO

Property should have been acquired as per FEMA regulations

Remittance allowed to the extent of Forex received through foreign Banking account or Non resident account

No lock in period of three years (01.11.2002)

USD 1000000 per year for assets acquired through purchase/ legacy/ inheritance

Subject to payments of applicable taxes

Above USD 1000000 per year required prior permission of RBI.

Purchase of Immovable properties in India

Foreign nationals/ citizen of specified countries (PIO definition)

Citizen of specified countries- whether resident of India or not - Prior permission of RBI required for purchase

Can have lease agreement up to 5 years without prior permission

Foreign nationals other than specified countries can acquire properties subject to residential Status and intention to stay for uncertain period.

Foreign nationals who have acquired property by prior permission/ inheritance can transfer with Prior permission of RBI.

Purchase of Immovable properties in India

Acquisition of property for business activities



Non resident setting up Branch office or other business place in India:-



Can acquire immovable property for business purpose



Form IPI 2 within 90 days to be filled with RBI



Liaison Office can not acquire a immovable property

Purchase of Immovable properties outside India

Resident in India can acquire immovable property out of India

- by gift or inheritance from person who acquired property when he was resident outside India or inherited property from person resident outside India
- from Resident if he has acquired property before 08-07-1947 and holding this with the permission of RBI
- By purchase outside India from Balance held in Resident Foreign currency account
- Under USD 200000 per year per family members for Resident individuals
- Such property can be transferred by way of gift to close relatives who is resident in India

Companies incorporated in India

-Indian
Companies
having
overseas
offices

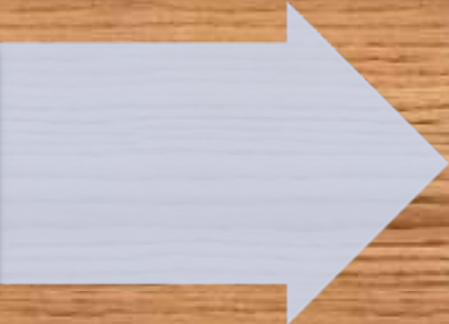
-for
business or
residential
purpose

With prior
permission of
RBI

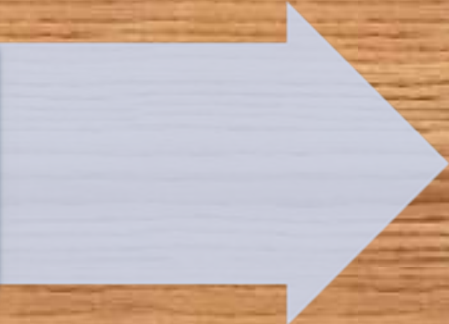
-Application
form and
formalities -
AP (DIR) 71 dt.
13.01.2003

General Permission from AD



- for Indian Companies setting up of overseas office or residential purpose



-15% of average annual sales of two years or 25% of net worth whichever is higher



- AD is authorized to allow remittance for purchase of immovable property



Setting up Project office, Liasioning Office and Branch Office

Permitted Activities - Branch Office

-Export/ Import of goods



-Professional or consultancy services



-Research work related parent company activities



-Promoting technical or financial collaboration



-Representation of Parent company as selling or buying agent



-Foreign airlines/ shipping companies



No retail trading allowed



-Rendering technical support for products of parent company



Manufacturing/ processing activities not allowed

Setting up Project office, Liasioning Office and Branch Office

Permitted Activities – Liaison Office

-Representing parent/ group companies



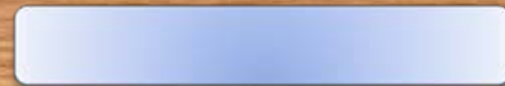
-Promoting export/import



-promoting technical/ financial collaborations



-acting a communication channel between parent company and Indian companies



Setting up Project office, Liasioning Office and Branch Office

General Restrictions

Person resident outside India is not generally set up a Branch or Liaison office in India and require prior permission from RBI.

Citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran and China required specific prior approval for setting of any office in India including project office.

Entities from Nepal are allowed only liaison office in India

Partnership firm/ proprietorship firm are not allowed to open Branch/ Liaison offices in India.

Setting up Project office, Liasoning Office and Branch Office

Permission Route- Basic Eligibility



If sector falls in 100% FDI permitted sector-

Approval required from
RBI



Not 100% FDI permitted
sector-

Government approval
required.



Setting up Project office, Liasioning Office and Branch Office

Other requirements- Additional Eligibilities

Branch Office	Liaison Office
Five years profit making record	Three years profit making record
Minimum net worth USD 100000	Minimum net worth USD 50000

Subsidiary Companies not fulfilling the above conditions may submit letter of comfort from parent Company, if parent company fulfill above conditions. (Format in 23/ 2009)

Setting up Project office, Liasioning Office and Branch Office

Application and Documentation

Application in FNC signed by authorized signatory of home country

RBI Central office through AD

Copy of registration certificate attested by notary public of home country

English translation of documents and certified by Indian Embassy

Latest audited balance sheet

Bankers report from home country banker for KYC

AD shall ensure KYC and due diligence before forwarding the application to central office with its recommendations/ comments

UIN to be allotted by RBI

Setting up Project office, Liasioning Office and Branch Office

Other Compliances:

PAN

Registrar of Companies- Form 44

Other registrations such as TAN, Service tax etc.

Bank Account

Annual activity report by 30th September certified by auditors

One copy to AD and one to Director General of International taxation.

Setting up Project office, Liasioning Office and Branch Office

Remittances of profit out of India:

AD may permit remittances of profit on production of documents

- Certified copies of Balance Sheet and Profit and Loss Account
- CA certificate for

- Remittable profit
- All profit from permitted activities only
- No revaluation profit are included in profit
- Taxes have been paid

Transfer of assets to subsidiary/other offices required prior approval from Central office.

Setting up Project office, Liasioning Office and Branch Office

Project Office- General Permission

If foreign Company secure a Contract from Indian Company for execution of project **AND**

- project is funded by inward remittance from abroad or
- funded by bilateral or multilateral international agencies such as World bank or
- The project has been cleared by appropriate authorities or
- Entity awarding the contract (Indian Company) has been granted term loan by Public
- Financial Institutions (IFCI, IDBI, LIC, UTI, IDFC etc)



IF NOT IN GENERAL PERMISSION ROUTE FOR
SPECIFIC APPROVAL APPLICATION IN FNC 1

Setting up Project office, Liasioning Office and Branch Office

Other Compliances:

ROC Filling such as Form 44

PAN

Bank Accounts

Other registration such as Service tax, TAN etc.

A report to RBI within 60 days intimating certain informations such as:-

Address, Authorized person, contact in formations and bank account details

CA certificate for annual compliances for project status and activities

Setting up Project office, Liasioning Office and Branch Office

Closure of project and remittances of funds:

AD dealer may remit funds out of India on production of documents:-

-copy of final audited project accounts

-CA certificate for remittable profit

-auditors certificate of NIL liabilities

-Proof/ certificate of payments of taxes

Overseas Investments overview and reporting

General Prohibition

An Indian Party is prohibited to make any direct investments in a foreign entity engaged in

- Real estate business (not includes development of townships, construction of residential/ commercial premises, roads or bridges)
- Banking business

Investments which are not as per FEMA regulations required prior approval from RBI.

Overseas Investments overview and reporting

Indian Party (Eligible Investors)

-A Company incorporated in India



-A body created by the act of Parliament



-A registered partnership firm



-Any other entity as notified (Prior permission of RBI required)



-Unregistered firm/ proprietary concern-DGFT recognized star export house (29/2005-06)



-Registered Trust & societies- Engaged in Manufacturing / Education and Health

Overseas Investments overview and reporting

Automatic route for JVs and WOS for Indian Party

No prior approval required from RBI (Except for Pakistan)

Total financial commitments not exceed 400% of net worth of the Indian Party as per last audited balance sheet.

Financial commitments means direct investments by equity, loan and total amount of guarantees (issued by or on behalf of investor/ sister concerns/ group companies etc.)

Net worth means paid up capital and free reserve.

Overseas Investments overview and reporting

Other Points

-For Bhutan investments can be made in INR along with FC

-for Nepal investments allowed in INR only

-400% includes guarantees, export capitalization and ECB

-Indian party should not be a defaulter or in negative list as exporter, banking system (CIBIL)

Not under investigation (CBI, ED & regulatory bodies such as SEBI)

-All investments should be routed through a single branch only

Overseas Investments overview and reporting

Valuation of shares

If investment exceeds USD 50,00,000-by merchant banker registered with SEBI/ merchant bankers outside Indian registered with appropriate authorities

Other cases - By a CA/ CPA

Investments by swap of shares- valuation by Merchant banker in India/ host country

Overseas Investments overview and reporting

Reporting & Compliances

Application in ODI to AD for remittance

Submission of annual reporting in ODI part III

Receive share certificate and reporting to AD

Repatriate to India all dues such as dividend, royalties etc

Reporting of export if to be capitalized against overseas investments

Details of disinvestment/ transfer with in 30 days

Online reporting:

W e f 02.03.2010 on line reporting available for generation of UIN, remittance acknowledgement and part III.

Overseas Investments overview and reporting

Reporting format- Form ODI

Part-I

Section A- Details of Indian Party

Section B- Details of investments in new project

Section C- Details of investments in existing project

Section D-Funding of JV/WOS

Section E-Declaration by the Indian Party

Section F- Certificate by the statutory auditors of Indian Party

Part II- Reporting of Remittances -----(AD)

Part III- Annual Performance Report

Part IV-Report on closure/disinvestment/voluntary liquidation/ winding up of JV/WOS

Overseas Investments overview and reporting

Transfer of Shares

Transfer/
disinvestment without
prior permission

- JV/ WOS listed in overseas stock exchange.
- if Indian Company is listed in India and net worth is not less than 100 Cr.
- if Indian Company is unlisted company and overseas investment is not exceed USD 10 Million.

Overseas Investments overview and reporting

Conditions on Transfer of Shares:

-Sale/ disinvestment should not be write off



-sale should be through stock exchange where it is listed



-if unlisted share valuation on fair value as per audited financial by CA/CPA



-No outstanding due of Indian Party for export, dividend, commission, royalty etc.



-overseas concern in operation for minimum one year and annual report has been filled.



-Indian party should not be under investigation by any regulatory bodies in India.

If above conditions are not fulfilled, prior permission of RBI is required

Overseas Investments overview and reporting

Other Issues

Overseas investments by Proprietorship/ unregistered firms

- Star exporter list of DGFT
- KYC compliances
- not in defaulter list
- overdue export less than 10% of average export of three years
- total investment lower of 10% of average export of three years or 200% of net owned fund
- Prior approval of RBI in Form ODI part I

- Prior approval of RBI in Form ODI part I
- three years or 200% of net owned fund
- total investment lower of 10% of average export of three years

Overseas Investments overview and reporting

Investments by Resident Individual:

-By gift from
Resident
outside India

-Under ESOP

-
Qualification
shares upto
1% of paid up
capital (Max
consideration
USD 20000)

-Right issues

-Liberalized
remittance
scheme USD
200000 per
year



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