

**PUNE BRANCH OF W I R C,
ICAI**

PRESENTATION

ON

BASICS OF FEMA

DATE : 06th November ,2022 , Sunday

BY

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CHARTERED ACCOUNTANT

DIFFERENT WORDING USED UNDER FREA 1973 & FEMA 1999

- ❖ Under FERA ,1973 the concept used was, Resident of India & Non-Resident

But

- ❖ Under FEMA,1999 the concept used is, Person Resident in India & Resident outside India

But we shall use the words Resident & Non-Resident instead of person Resident in India & Person Resident outside India respectively.

PIO/ NRI /OCI Card Holder/ NR

- ❖ PIO means Person of Indian Origin which is defined differently under different notifications issued by RBI for applicable Capital Account transactions .So care needs to be taken while interpreting the meaning of PIO for undertaking the respective capital account transaction.
- ❖ NRI means Non-Resident Indian being citizen of India or PIO.
- ❖ OCI (Overseas Citizen of India) means an individual resident outside India who is registered as OCI Card Holder U/s 7A of citizenship Act,1955
- ❖ NR means Non-Resident which includes NRI, Non NRI(Foreigners of Non Indian Origin), Foreign Companies, Foreign Partnership Firms and all Foreign Incorporated Entities.

APPLICABILITY OF FEMA

TRANSACTION BETWEEN

R & NR

NR & R

R & R

NR & NR

APPLICABILITY OF FEMA

TRANSACTION BETWEEN

R & NR

(YES)

NR & R

(YES)

R & R

**(YES, IF THE
SUBJECT
MATTER
IS LOCATED
OUTSIDE INDIA)**

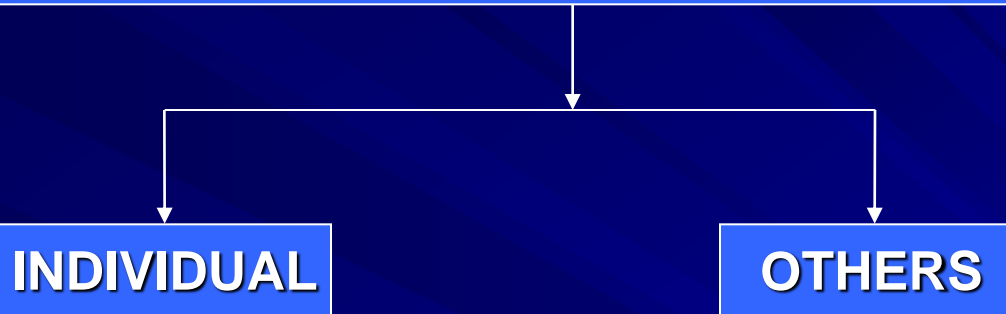
NR & NR

**(YES, IF THE
SUBJECT
MATTER
IS LOCATED IN
INDIA)**

PERSON UNDER FEMA

- INDIVIDUAL
- PARTNERSHIP FIRM
- HUF
- COMPANY
- AOP OR BOI, INCORPORATED OR NOT
- ARTIFICIAL JUDICIAL PERSON
- ANY AGENCY, OFFICE OR BRANCH OWNED AND CONTROLLED BY SUCH PERSON

RESIDENTIAL STATUS UNDER FEMA



- HUF
- PARTNERSHIP FIRM
- COMPANY
- ARTIFICIAL JUDICIAL PERSON
- BRANCH, OFFICE IN INDIA BELONGING TO NON-RESIDENTS
- BRANCH, OFFICE OUTSIDE INDIA BELONGING TO RESIDENTS

RESIDENTIAL STATUS OF INDIVIDUAL U/S 2(V) OF FEMA

INDIVIDUAL IS CONSIDERED AS RESIDENT OF INDIA FOR
THE **CURRENT FINANCIAL YEAR** IF SUCH

INDIVIDUAL HAD PHYSICALLY STAYED IN INDIA FOR 183
DAYS OR MORE DURING **THE PREVIOUS FINANCIAL YEAR**

RESIDENTIAL STATUS OF INDIVIDUAL U/S 2(V) OF FEMA

■ BUT THE CRITERIA OF PHYSICAL STAY IS NOT CONSIDERED IF SUCH INDIVIDUAL GOES OUTSIDE INDIA FOR EITHER

1. EMPLOYMENT OR
2. BUSINESS/ PROFESSION/ VOCATION OR
3. ANY OTHER PURPOSES WHERE CIRCUMSTANCES INDICATES THE INTENTION TO STAY ABROAD FOR AN UNCERTAIN PERIOD.

BECOMES NON-RESIDENT FROM THE DAY ONE HE /SHE LEAVES INDIA

RESIDENTIAL STATUS OF INDIVIDUAL U/S 2(V) OF FEMA

SIMILARLY WHEN AN INDIVIDUAL COMES TO INDIA FOR EITHER

1. EMPLOYMENT OR
2. BUSINESS/ PROFESSION/ VOCATION OR
3. ANY OTHER PURPOSES WHERE CIRCUMSTANCES INDICATES THE INTENTION TO STAY ABROAD FOR AN UNCERTAIN PERIOD.

BECOMES RESIDENT FROM THE DAY ONE HE/SHE COMES TO INDIA

STATUS OF STUDENTS GOING ABROAD FOR EDUCATION

RBI HAS CLARIFIED THAT STUDENTS GOING ABROAD FOR CERTAIN PERIOD BUT THE STAY IS UNCERTAIN & THEREFORE TREATED AS NON-RESIDENT

REF: AP(DIR Series) CIRCULAR NO.45 DATED 08th DEC ,2003

PERSONS RESIDENT IN INDIA OTHER THAN INDIVIDUAL

TREATED “PERSON RESIDENT IN INDIA” UNDER FEMA

- HUF, PARTNERSHIP FIRM, COMPANY ARTIFICIAL JUDICIAL PERSON ETC. IF REGISTERED IN INDIA.
- OVERSEAS BRANCH, OFFICE, AGENCY ETC OWNED & CONTROLLED BY A PERSON RESIDENT IN INDIA.
(SUCH ENTITY IS CONSIDERED AS RESIDENT UNDER FEMA BUT NON- RESIDENT UNDER IT ACT)
- INDIAN BRANCH, OFFICE, AGENCY ETC. OWNED & CONTROLLED BY A NON- RESIDENT.
(SUCH ENTITY IS CONSIDERED AS RESIDENT UNDER FEMA BUT NON- RESIDENT UNDER IT ACT)

CURRENT & CAPITAL ACCOUNT TRANSACTIONS UNDER FEMA

- FOR APPLICABILITY OF FEMA WE NEED TO DETERMINE THE NATURE OF TRANSACTION I.E WHETHER IT IS CURRENT ACCOUNT OR CAPITAL ACCOUNT TRANSACTION.
- THE ENTIRE FEMA REVOLVES AROUND THE CURRENT & CAPITAL ACCOUNT TRANSACTIONS.
- THE CURRENT ACCOOUNT TRANSACTIONS UNDER FEMA ARE ALMOST FULLY PERMISSIBLE
- THE CAPITAL ACCOUNT TRANSACTIONS UNDER FEMA ARE PERMISSIBLE WITHIN CERTAIN LIMITS & SUBJECT TO COMPLIANCES APPLICABLE TO THE CONCERNED TRANSACTIONS.

TYPES OF TRANSACTIONS

CURRENT ACCOUNT

SIMILAR TO ITEMS OF PAYMENTS
DEBITED/CREDITED TO P & L A/C

- INTEREST
- PROFESSIONAL FEE
- ROYALTY
- FEES FOR TECHNICAL SERVICE
- PAYMENT FOR IMPORTS
- RECEIPT AGAINST EXPORTS ETC.

CAPITAL ACCOUNT

SIMILAR TO ITEMS OF
BALANCE SHEET

- INVESTMENT IN SHARES OF FOREIGN ENTITY BY RESIDENT
- ACQUISITION OF PROPERTY (IN INDIA /OUTSIDE INDIA)
- INVESTMENT IN SHARES OF INDIAN ENTITY BY NON RESIDENT
- BORROWING (ECB)/ LENDING (LOAN)
- ACQUISITION OF PLANT & MACHINERIES

NEW TECHNIQUE TO DETERMINE NATURE OF TRANSACTIONS IN ACCOUNTING LANGUAGE

TYPES OF TRANSACTIONS

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graph TD; A[TYPES OF TRANSACTIONS] --> B[CURRENT ACCOUNT]; A --> C[CAPITAL ACCOUNT];
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CURRENT ACCOUNT

ONE EFFECT OF JOURNAL ENTRY GOES TO PROFIT & LOSS ACCOUNT AND ANOTHER EFFECT GOES TO BALANCE SHEET

CAPITAL ACCOUNT

BOTH THE EFFECTS OF JOURNAL ENTRY GO TO BALANCE SHEET

DEFINATION OF CAPITAL ACCOUNT TRANSACTION U/S 2(e) OF ACT

Capital account transaction means a transaction which

- **Alters (increases or decreases) the assets or liabilities, including contingent liabilities, outside India of persons resident in India or**
- **Alters (increases or decreases) assets or liabilities in India of persons resident outside India.**

Prohibited Capital A/c Transactions Under FEMA

Notification-1

- **Drawl of foreign exchange for Remittance to countries notified as Non-cooperative**
- **No foreign investment is permissible in the business of Chit Fund or Nidhi Company**
- **No foreign investment is permissible in agricultural or plantation activities**
- **No foreign investment is permissible in trading TDRs or construction of farm houses or real estate business**

(But commercial, residential ,infrastructure related construction activities are permissible)

SOME OF THE COMMONLY UNDERTAKEN PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS

PERMITTED TO RESIDENTS / NON-RESIDENTS:

- **OVERSEAS INVESTMENT BY RESIDENT IN WOS OR JV**
(RULES DATED 22.08.2022 ISSUED BY MINISTRY OF FINANCE ,GOI)
- **ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA BY RESIDENT**
(RULES DATED 22.08.2022 ISSUED BY MINISTRY OF FINANCE ,GOI)
- **BORROWING IN FOREIGN EXCHANGE BY RESIDENT (INCLUDING ECB)**
(RBI Notification- 3(R))
- **INVESTMENT IN INDIA BY NON-RESIDENT THROUGH WOS OR JV**
(RULES DATED 17.10.2019 ISSUED BY MINISTRY OF FINANCE,GOI)
- **ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY NON-RESIDENT**
(RULES DATED 17.10.2019 ISSUED BY MINISTRY OF FINANCE,GOI)
- **OPENING A BRANCH OFFICE, LIASION OFFICE, PROJECT OFFICE IN INDIA BY NON-RESIDENT**
(RBI Notification- 22 (R))

DEFINATION OF CURRENT ACCOUNT TRANSACTION U/S 2(j) OF ACT

2(j) of the Act defines Current account transaction as transaction other than capital account transaction & without prejudice of to generality of the forgoing such transaction includes,

- i. Payment due in connection with
 - a) Foreign Trade
 - b) Other current Business
 - c) Services &
 - d) Short Term Banking & Credit Facilities in the ordinary course of business

- i. Payment due as
 - a) Interest on Loans &
 - b) Net Income from Investments

PERMISSIBLE AND PROHIBITED CURRENT ACCOUNT TRANSACTIONS

Rules issued by Central Government on Current Account Transactions

- **Schedule I** : List of all prohibited transactions
- **Schedule II** : List of transactions permissible with the permission of concerned Ministry, Government of India.
- **Schedule III** : List of transactions permissible upto certain monetary limits. Beyond which RBI permission is required.

SCHEDULE I

TRANSACTIONS WHICH ARE PROHIBITED

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 & 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

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education & Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments & international bidding (exceeding USD 10,000) by a State Government & 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. & f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-model 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 b) Internet Service Providers	Ministry of information & broadcasting Ministry of communication & 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. Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

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 US\$ 100,000

Ministry of Human Resources Development (Department of Youth Affairs and Sports)

SCHEDULE III

■ *Remittance for individuals under automatic route – Limit USD 250,000*

Private visits to any
Country

Gift or donation

Going abroad for
Employment

Maintenance of
close relatives

Travel for business /
conference

other permissible
current account
transactions

Emigration

Medical treatment abroad

Studies abroad

**Excess
amount
permissible if
required by
country of
emigration,
medical
institute
offering
treatment or
the university**

**Excess
amount for
other
purposes
requires prior
RBI approval**

□ **All other current account transactions for other than individuals not covered in above list are freely permissible without any limit.**

Current Account transactions – Schedule III



Person resident in India on account of his employment or deputation of a specified duration (irrespective of length) or for specific job, the duration which does not exceed three years, is a resident but not permanently resident

Current Account Transactions – Schedule III

Facilities for person other than individual requiring RBI approval

1. Donation exceeding 1% of foreign exchange earnings during 3 previous FYs or US\$5mn, whichever is less for
 - creation of Chairs in reputed educational institutes,
 - contribution to funds (not being an investment fund) promoted by educational institutes; and
 - contribution to a technical institution or body or association in the field of activity of the donor Company
2. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more
3. Remittances exceeding USD 10mn per project for any consultancy services in respect of infrastructure projects and USD 1mn per project, for other consultancy services procured from outside India
4. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses

GOLDEN RULE APPLICABLE TO CURRENT & CAPITAL ACCOUNT TRANSACTION

**ALL THE CURRENT ACCOUNT TRANSACTIONS ARE PERMITTED
UNLESS SPECIFICALLY PROHIBITED / RESTRICTED**

AND

**ALL THE CAPITAL ACCOUNT TRANSACTIONS ARE PROHIBITED
UNLESS SPECIFICALLY PERMITTED**

ASSETS OF NON RESIDENTS OUTSIDE INDIA (RETURNING INDIANS)

SECTION 6(4) OF THE ACT, PERMITS, IN GENERAL TO A PERSON RESIDENT IN INDIA, TO HOLD, OWN, TRANSFER OR INVEST IN FOREIGN CURRENCY, FOREIGN SECURITY OR ANY IMMOVABLE PROPERTY SITUATED OUTSIDE INDIA IF SUCH CURRENCY, SECURITY OR PROPERTY WAS ACQUIRED, HELD OR OWNED BY SUCH PERSON WHEN HE WAS RESIDENT OUTSIDE INDIA OR INHERITED FROM A PERSON WHO WAS RESIDENT OUTSIDE INDIA.

ASSETS OF RESIDENTS IN INDIA (EMIGRENT INDIANS)

SIMILARLY SECTION 6(5) OF THE ACT, PERMITS IN GENERAL TO A PERSON RESIDENT OUTSIDE INDIA, TO HOLD, OWN, TRANSFER OR INVEST IN INDIAN CURRENCY, SECURITY OR ANY IMMOVABLE PROPERTY SITUATED IN INDIA IF, SUCH CURRENCY, SECURITY OR PROPERTY WAS ACQUIRED, HELD OR OWNED BY SUCH PERSON WHEN HE WAS RESIDENT IN INDIA OR INHERITED FROM A PERSON WHO WAS RESIDENT IN INDIA.

OVERSEAS BRANCH BY RESIDENT

- PROPRIETORSHIP, PARTNERSHIP, CORPORATES – ELIGIBLE
- PLAIN APPLICATION TO BE FILED WITH AUTHORIZED DEALER
- INITIAL REMITTANCE UPTO 15% OF AVERAGE ANNUAL SALES / INCOME LAST TWO F.Y. OR 25% OF NET WORTH WHICHEVER IS HIGHER
- REMITTANCE UPTO 10 % OF ANNUAL SALES / INCOME PERMITTED FOR MEETING RECURRING/MAINTENANCE EXPENSES EVERY YEAR
- IF BALANCE IS AVAILABE IN EEFC A/C NO LIMIT FOR REMITTANCE IS APPLICABLE
- NO RBI PERMISSION REQUIRED FOR ACQUIRING FURNITURE & FIXTURE, OFFICE EQUIPMENTS & TAKING OFFICE PREMISES ON LEASE FOR PERIOD NOT EXCEEDING 5 YEARS , GIVING LEASE DEPOSIT, ETC.

OVERSEAS INVESTMENT BY RESIDENT

ELIGIBLE INDIAN ENTITY : CORPORATE,LLP,PARTNERSHIP FIRM ETC..

FINANCIAL COMMITMENT PERMITTED : UPTO 400% OF NET WORTH OF INDIAN ENTITY

400 % COVERS EQUITY CAPITAL,LOAN,GAURANTEE OR DIFFERRED PAYMENT OF INVESTMENT



ODI MEANS STRATEGIC INVESTMENT WITH THE PURPOSE OF DOING BUSINESS

OPI MEANS PORTFOLIO INVESTMENT WITH THE PURPOSE OF EARINING INCOME FROM BUYING & SELLING OF SHARES

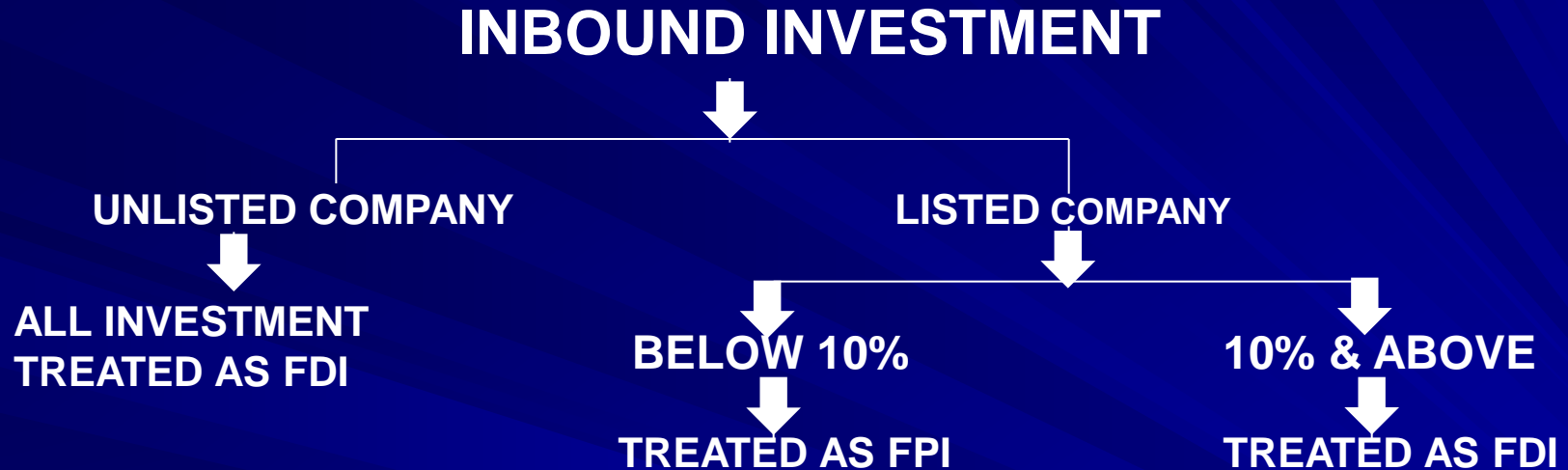
COMPIANCES FOR OVERSEAS INVESTMENT

1. FILING FORM FC AT THE TIME OF MAKING OVERSEAS INVESTMENT OR AT THE TIME OF COMMITTING THE OVERSEAS INVESTMENT WHICH EVER IS EARLIER
2. FORM FC TO BE FILED PHYSICALLY WITH AD (BANKER)
3. AD SUBMITS FORM FC TO RBI ONLINE
4. RBI ALLOTS UIN (UNIQUE IDENTIFICATION NUMBER) BY MAIL UPON RECEIPT OF FC
5. SHARE CERTIFICATE OR SUCH PROOF TO BE PROVIDED TO RBI THROUGH AD WITHIN 6 MONTHS OF MAKING INVESMENT
6. ANNUAL PERFORMANCE REPORT (APR) TO BE FILED WITH RBI THROUGH AD BY 31ST DECEMBER EVERY YEAR
7. FORM FLA TO BE FILED BY 15TH JULY EVERY YEAR FOR THE FINANCIAL YEAR ENDING ON 31ST MARCH

INBOUND INVESTMENT IN INDIA BY NON RESIDENT

- THROUGH WOS OR JV WITH RESIDENT
- CERTAIN ACTIVITY NOT PERMITTED TO NON RESIDENT
- CERTAIN ACTIVITIES PERMITTED TO NON RESIDENT WITH PRIOR APPROVAL OF F.I.F.P. GOVT. OF INDIA
- CERTAIN ACTIVITIES PERMITTED TO NON RESIDENT UNDER AUTOMATIC ROUTE UPTO CERTAIN SECTORIAL CAP (i.e. % OF INVESTMENT BY NON RESIDENT)

INBOUND INVESTMENT IN INDIA BY NON RESIDENT



FDI MEANS STRATEGIC INVESTMENT WITH THE PURPOSE OF DOING BUSINESS

FPI MEANS PORTFOLIO INVESTMENT WITH THE PURPOSE OF EARNING INCOME FROM BUYING & SELLING OF SHARES

COMPIANCES FOR INBOND INVESTMENT

- SHARES TO BE ALLOTTED WITHIN 60 DAYS OF RECEIPT OF FUND
- FORM FC-GPR TO BE FILED WITHIN 30 DAYS OF ALLOTMENT OF SHARES
- FOLLOWING DOCUMENTS TO BE ATTACHED WITH FORM FC-GPR
 - ❑ FIRC
 - ❑ KYC
 - ❑ DECLARATION BY COMPANY
 - ❑ CTC OF BOD
 - ❑ SHARE VALUATION CERTIFICATE
 - ❑ COMPLIANCE CERTIFICATE BY CS

- FORM FC-GPR TO BE FILED ON RBI FIRM PORTAL
- ONCE FC-GPR IS APPROVED RBI SEND MAIL FOR SUCH APPROVAL

BRANCH OFFICE, LIASION OFFICE, PROJECT OFFICE IN INDIA BY NON RESIDENT

- BRANCH OFFICE AND LIASION OFFICE ALLOWED ONLY WITH PRIOR APPROVAL OF RBI
- NET WORTH OF FOREIGN ENTITY INTENDING TO OPEN BRANCH OFFICE HAS TO BE MINIMUM USD 1,00,000 & SHOULD HAVE PROFIT TRACK RECORD FOR LAST THREE YEAR
- FORM FNC TO BE FILLED WITH RBI THROUGH AD
- RBI ALLOTS UIN (UNIQUQE IDENTIFICATION NUMBER)
- BO/LO CAN OPEN BANK ACCOUNT ONLY AFTER GETTING RBI APPROVAL
- ONCE BARNCH OFFICE SETUP IT HAS TO INTIMATE ITS AD WITH THE DATE OF OPERATION
- IF AFETR GETTING RBI APPROVAL,BARNCH OFFICE IS NOT SETUP WITHIN 6 MONTHS, RBI PERMISSION LAPSES
- BO/LO HAS TO SUMBIT ANNUAL ACTIVITY CERTIFICATE TO AD BY 31ST JUNE EVERY YEAR FOR THE FINANCIAL YEAR ENDED 31ST MARCH.
- PROJECT OFFICE IN INDIA PERMITTED WITHOUT RBI APPROVAL
- BUT POST OPENING FORMALITIES TO BE COMPLIED WITH
- BO/LO CAN DO ONLY THE ACTIVITIES SPECIFICALLY PERMITTED BY RBI
- LIASION OFFICE CAN DO ONLY LIASION WORK TO HELP ITS HO FOR PROMOTING THE BUSINESS
- LIASION OFFICE CAN NOT UNDERTAKE ANY COMMERCIAL ACTIVITY OR CAN NOT EVEN ACQUIRE COMMERCIAL PROPERTY FOR ITS USE OTHER THAN BY WAY OF LEASE FOR 5 YEARS.

EXTERNAL COMMERCIAL BORROWING

- ECB MEANS BORROWING FROM A NON-RESIDENT FOR COMMERCIAL PURPOSE.
- ECB COVERS BANK LOAN, LOANS FROM EQUITY HOLDERS, NON-CONVERTIBLE PREFERENCE SHARES & NON-CONVERTIBLE DEBENTURES.
- ECB CAN BE AVAILED UNDER AUTOMATIC ROUTE OR APPROVAL ROUTE.
- FORM ECB FILED UNDER AUTOMATIC ROUTE IS VERIFIED & APPROVED BY CONCERNED AD BANK WHEREAS ECB UNDER APPROVAL ROUTE IS FORWARDED TO RBI BY AD.
- SECTORS ELIGIBLE TO RECEIVE ECB ARE AS UNDER:
 1. MANUFACTURE
 2. SOFTWARE DEVELOPER
 3. SOFTWARE SERVICES PROVIDER
 4. HOSPITAL
 5. TRADING
 6. CONSTRUCTION ETC.
- LLPs ARE NOT PERMITTED TO BORROW MONEY BY WAY OF ECBs.
- ALL ENITITES ELIGIBLE TO RECEIVE FDI ARE ELIGIBLE TO BORROW MONEY BY WAY OF ECBs.

EXTERNAL COMMERCIAL BORROWING

➤ ELIGIBLE BORROWERS & MINIMUM AVERAGE MATURITY PERIOD.

1. MANUFACTURERS UPTO USD 50 MNs (1 YEAR)
2. EQUITY HOLDER OF INDIAN ENTITY HOLDING ATLEAST 25% EQUITY (5 YEARS)
(FOR WORKING CAPITAL ,GENERAL CORPORATE PURPOSES , REPAYMENT OF RUPEE LOAN)
3. ECB REAISED FOR
 - a) WORKING CAPITAL OR GENERAL CORPORATE PURPOSES (10 YEARS)
 - b) ON-LENDING BY NBFC FOR WORKING CAPITAL OR GENERAL CORPORATE PURPOSES (10 YEARS)
4. ECB REAISED FOR
 - a) REPAYMENT OF RUPEE LOAN AVAILED DOMASTICALLY FOR CAPITAL EXPENDITURE (7 YEARS)
 - b) ON LENDING BY NBFC FOR THE ABOVE PURPOSE (7 YEARS)
5. ECB REAISED FOR
 - a) REPAYMENT OF RUPEE LOAN AVAILED DOMASTICALLY FOR THE PURPOSE OTHER THAN CAPITAL EXPENDITURE(10 YEARS)
 - b) ON LENDING BY NBFC FOR THE ABOVE PURPOSE(10 YEARS)

RECOGNISED LENDER

- LENDER SHOULD BE FATF (FINANCIAL ACTION TASK FORCE) COMPLIANT COUNTRY. **
- MULTILATERAL AND REGIONAL FINANCIAL INSTITUTIONS WHERE INDIA IS MEMBER COUNTRY.
- INDIVIDUAL WHO IS EQUITY HOLDER, HOLDING MIN. 25% EQUITY IN INDIAN ENTITY.
- FOREIGN BRANCHES/SUBSIDIARY OF INDIAN BANKS CAN LEND ONLY IN FOREIGN CURRENCY.
- INTERNATIONAL ORGANISATION OF SECURITIES COMMISSION LIKE SEBI.

***NON-COMPLIANT COUNTRIES ARE IRAN, NORTH-KOREA.*

END USED OF ECB

THE NEGATIVE LIST FOR WHICH THE ECB PROCEEDS CANNOT BE UTILISED WOULD INCLUDE THE FOLLOWING:

- REAL ESTATE ACTIVITIES.
- INVESTMENT IN CAPITAL MARKET.
- EQUITY INVESTMENT.
- WORKING CAPITAL AND GENERAL CORPORATE PURPOSES EXCEPT FROM:
 - i. EQUITY HOLDER
 - ii. OTHERS – WITH MAMP OF MORE THAN 10YRS
 - iii. ON-LENDING BY NBFC FOR SUCH PURPOSE
- REPAYMENT OF RUPEE LOAN EXCEPT:
 - i. EQUITY HOLDER
 - ii. ON-LENDING BY NBFC FOR SUCH PURPOSE(FOR CAPITAL EXPENDITURE)
 - iii. ON-LENDING BY NBFC FOR SUCH PURPOSE (OTHER THAN CAPITAL EXPENDITURE)

ALL - IN COST

TOTAL ECB ALL-IN-COST INCLUDES THE FOLLOWING INCURRED IN FOREIGN CURRENCY:

- INTEREST
- UPFRONT FEES / MANAGEMENT FEES
- OTHER FEES & EXPENDITURE
- GUARANTEE FEES

THE ABOVE ECB ALL-IN-COST DOES NOT INCLUDE COMMITMENT FEES & TDS / WHT PAID IN INR

TOTAL ECB BORROWING COST SHALL BE 5% PLUS 6 MONTHS INTER BANK RATE OR ALTERNATE REFERENCE RATE OF 6 MONTHS TENOR APPLICABLE TO CURRENCY OF BORROWING LIKE EURIBOR

IF ECB BORROWING FROM EQUITY HOLDER EXCEEDS USD 5 MN THE ECB LIABILITY & EQUITY RATIO SHOULD NOT EXCEEDS 7:1

ECB CAN BE RAISED IN FREELY CONVERTIBLE FOREIGN CURRENCY AS WELL AS INR

CHANGE OF CURRENCY FOR ECB BORROWING FROM ONE FOREIGN CURRENCY TO ANOTHER FOREIGN CURRENCY IS PERMITTED

BUT ECB BORROWED IN INR CANNOT BE CONVERTED INTO FOREIGN CURRENCY

CONVERSION OF ECB INTO EQUITY

- PERMITTED UPTO THE FDI SECTORAL CAP RELEVANT TO THE BUSINESS OF THE COMPANY
- CONVERSION CAN BE DONE AT FAIR MARKET VALUE APPLICABLE ON THE DATE OF CONVERSION
- IF ECB IS CONVERTED INTO EQUITY EITHER FULLY OR PARTLY TO BE REPORTED IN ECB-2 RETURN

COMPLIANCES

- LENDER AND BORROWER MUST ENTER INTO A LOAN AGREEMENT TO CAPTURE THE TERMS OF THE ECB
- FORM ECB TO BE SUBMITTED ALONG WITH OTHER DOCUMENTS
- FORM ECB TO BE CERTIFIED BY CA / CS
- MONTHLY ECB-2 RETURN TO BE FILED WITH CERTIFICATION BY CA / CS
- MONTHLY ECB-2 RETURN TO BE FILED WITH AD WITHIN 7 WORKING DAYS FROM THE END OF THE MONTH
- MODIFICATION / AMENDMENT IN ORIGINAL TERMS & CONDITIONS OF ECB TO BE REVISED WITHIN 7 DAYS & REVISED ECB TO BE FILED WITH RBI THROUGH AD WITH ALL ATTACHMENT



THANK YOU

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