

Investment by NRIs & PIOs

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What is FEMA

- FEMA stands for “FOREIGN EXCHANGE MANAGEMENT ACT”
- The act has been enacted by the Government of India in the year 1999 in substitution of existing law viz., Foreign Exchange Regulation Act, 1973
- The act has been implemented w.e.f. 01/06/2000

Definition of Resident in India (2 (v))

a person residing in India for more than 182 days during the course of the preceding financial year

India

But does not include

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;

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;

Definition of Resident in India Contd...

- (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;

Definition of Non Resident Indian/ PIO

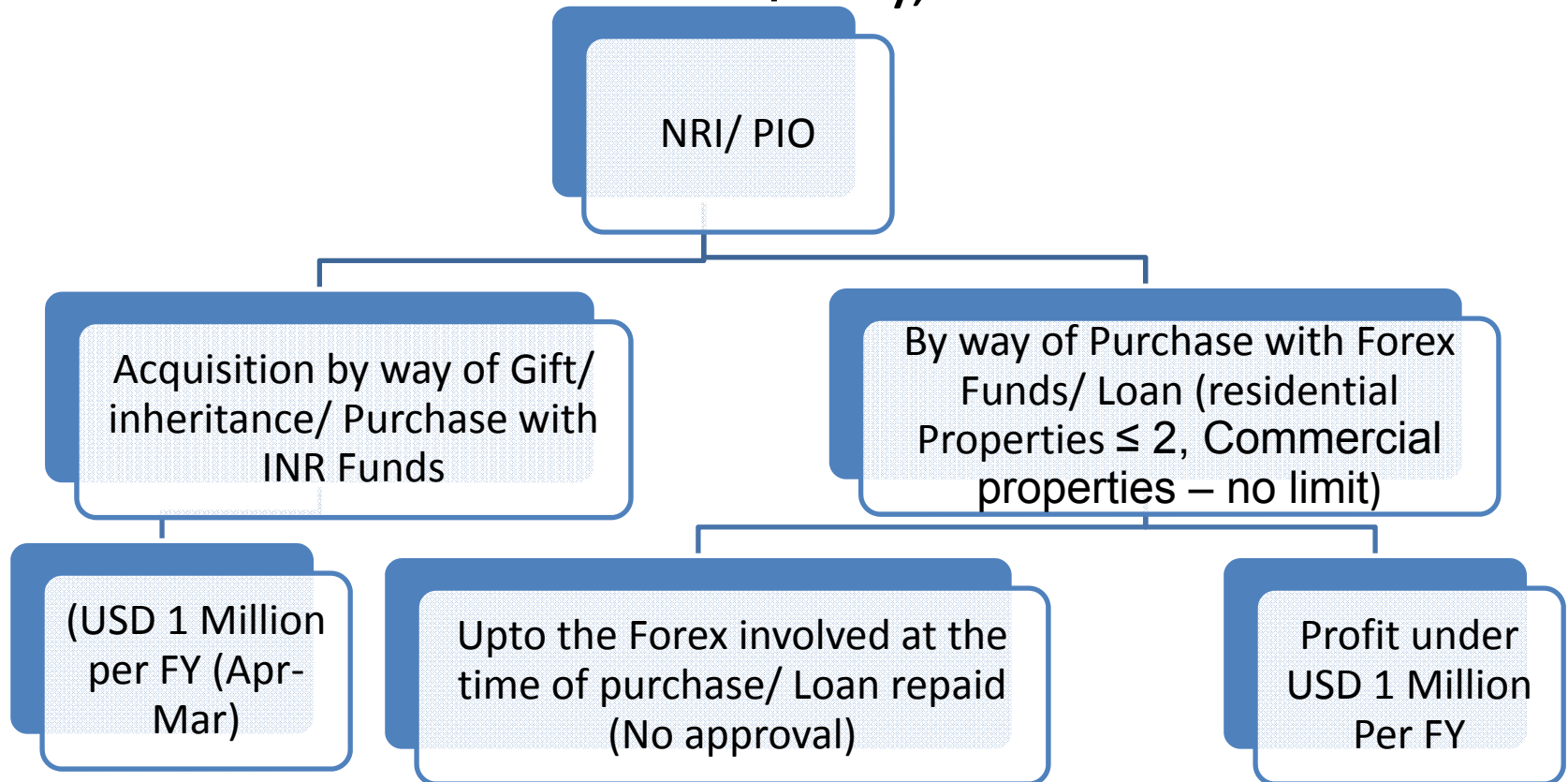
- NRI for the purpose of remittance of assets outside India is defined as –
 - a person resident outside India who is citizen of India.
- Person of Indian Origin (PIO) means a citizen of any country **other than Bangladesh or Pakistan** who had
 - (a) at any time held Indian passport or
 - (b) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 or
 - (c) the person is a spouse of an Indian citizen or a person referred to in (a) or (b).

Remittance of Current Income

- Current Income, means-
 - rent, dividend, pension, interest, etc.
- Is a permissible credit to NRO a/c
- Is also permissible direct remittance, when there is no NRO a/c, subject to
 - Furnishing of Certificate from CA stating that
 - It is eligible for remittance; and
 - all applicable taxes have been paid/ provided for
- Credit to NRE a/c, provided the AD shall ensure that –
 - credit represents current income of the non-resident account holder and
 - income tax thereon has been deducted / provided for.

Remittance of Capital Income

- Capital Income, means-
 - Sale of Immovable Property, Securities etc.



Facilities for Students

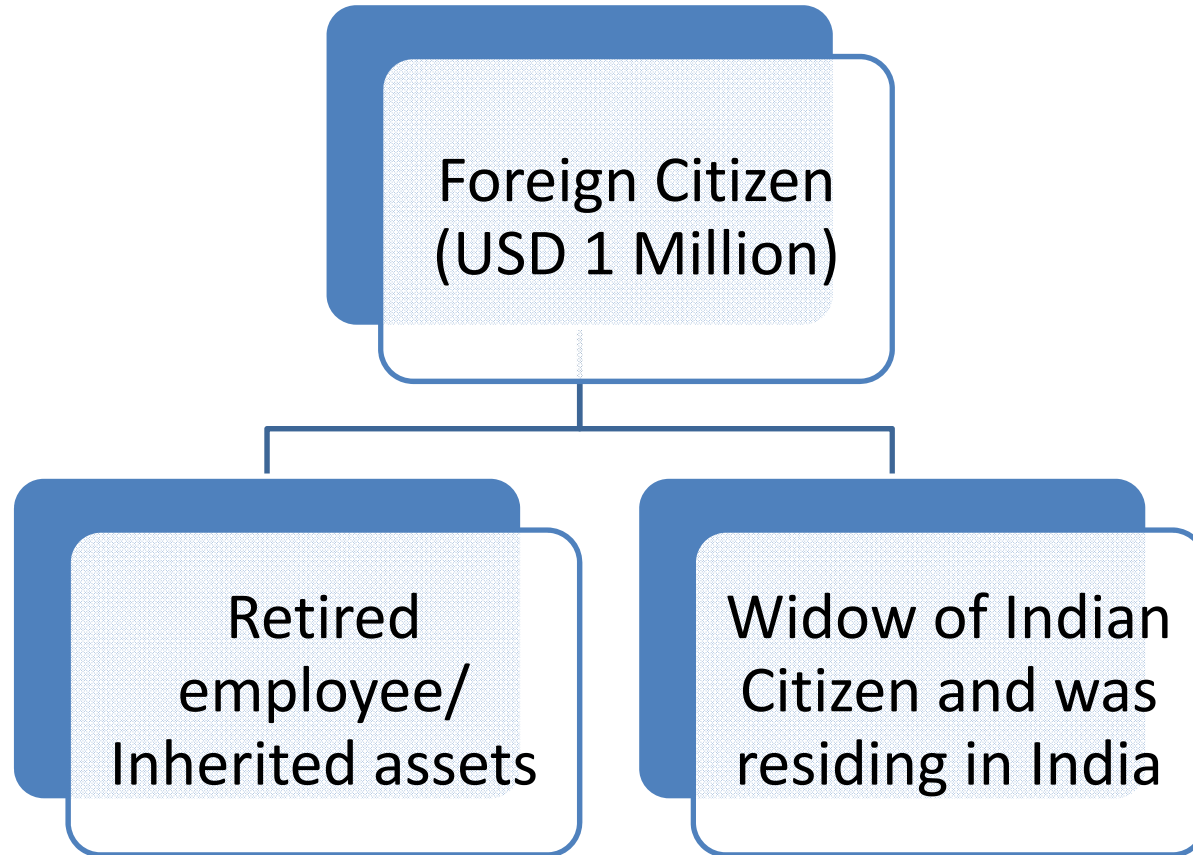
- Students going abroad for studies are treated as Non- Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA. They have the following facilities
 - USD 100,000 from close relatives in India, on self declaration, towards maintenance, which could include remittances towards their studies
 - up to USD 1 million per financial year of the funds held in NRO account
 - upto USD 200,000 per financial year under the Liberalized Remittance Scheme.

Prohibited countries for repatriation – NRI / PIO

- sale proceeds of immovable property (citizens of)
 - (1) Pakistan,
 - (2) Bangladesh,
 - (3) Afghanistan,
 - (4) Nepal and Bhutan
 - (5) China,
 - (6) Sri Lanka
 - (7) Iran
- sale proceeds of other financial assets (citizens of)
 - (1) Pakistan,
 - (2) Nepal and Bhutan.
 - (3) Bangladesh,

Remittance of Capital Income.. Contd.

- Capital Income, means-
 - Sale of Immovable Property, Securities etc.



Prohibited countries for repatriation – Foreign Citizen

- These remittance facilities are not available to citizens of
 - Nepal and Bhutan.

- Acquisition of Immovable Properties in India

Definition of Non Resident Indian/ PIO

- NRI for the purposes of acquisition of immovable property is defined as –
 - a person resident outside India who is citizen of India
- Person of Indian Origin (PIO) means a citizen of any country **other than Bangladesh or Pakistan** who had
 - (a) at any time held Indian passport or
 - (b) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Acquisition of Immovable Property in India

- **NRI/ PIO**

- purchase

- any immovable property (**other than agricultural land/ plantation property / farm house**) in India.

- gift from a person resident in India or a NRI or a PIO.

- any immovable property (other than agricultural land/ plantation property / farm house) in India

- inheritance from a person resident in India or a person resident outside India

- any immovable property in India
 - person resident outside India must have acquired such property in accordance with the provisions of the foreign exchange law in force

Transfer of Immovable Property in India

- **NRI**

- transfer to a person resident in India
 - any immovable property in India
- Transfer to NRI or PIO
 - any immovable property (other than agricultural land or plantation property or farm house)

- **PIO**

- by way of sale
 - any immovable property in India (other than agricultural land / farm house / plantation property) to a person resident in India.
- by way of gift or sale
 - agricultural land / farm house / plantation property in India, to a person resident in India, who is a citizen of India.
- by way of gift
 - residential or commercial property to a person resident in India or to a NRI or PIO.
 - PIO can sell to another PIO only with the prior approval of RBI

Mortgage of Immovable Property in India

- NRI/ PIO can mortgage of residential/ commercial property
 - Automatic route
 - an AD / the housing finance institution in India
 - With prior approval of RBI
 - a bank abroad

Mode of payment of consideration – NRI/ PIO

- Funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE / FCNR(B) / NRO account.
- No other mode of payment is permitted (including the payment by way of Travelers' Cheques or cash)
- Need not file any intimation to RBI (if purchase of residential / commercial property is under general permission)

- Investments in Indian Business entities under FDI

Investment in Firms/ Proprietary Concern/ AOP/BOI

- NRI / PIO can invest on non-repatriation basis under automatic route.
- NRI / PIO can invest on repatriation basis with prior approval of RBI. RBI will decide the application in consultation with the GOI
- Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with AD/ Authorized banks.
- The entity should not engage any prohibited activity

Investment in Limited Liability Partnership Firm

- NRI / PIO can invest on repatriation basis under approval route where 100% FDI is permitted and there are no FDI linked performance related conditions.
- Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with AD/ Authorized banks.
- LLP is not eligible to make downstream investments
- Only by way of cash consideration
- LLPs not be permitted to avail ECBs
- The entity should not engage any prohibited activity
- Conversion of a company with FDI, into an LLP, with the prior approval of FIPB/Government

Foreign Investment – Prohibited Sectors

- Atomic Energy
- Lottery Business including Government / private lottery, online lotteries etc.
- Gambling and Betting including casinos etc.
- Business of chit fund
- Nidhi Company
- Trading in Transferable Development Rights (TDRs)
- Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (Other than Tea Plantations)
- Real estate business, or construction of farm houses.
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco or of tobacco substitutes.
- Activities / sectors not opened to private sector investment including Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).
- foreign investment in any form, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.
- Foreign investment in Trusts other than investment by SEBI registered FVCIs in domestic VCF

- **LOANS FROM NRI**

Loans from NRI / PIO

- Borrowing in FC by Individual resident Indian in India
 - The maximum loan amount is USD 250,000 or its equivalent INR
 - The loan amount shall be received by CFE/NRE/FCNR funds
 - Minimum maturity period of the loan is 1 year
 - The loan is free of Interest

Loans from NRI / PIO

- Borrowing in INR by persons other than Companies in India
 - The loan amount shall be received by CFE/NRE/NRO/FCNR funds
 - The loan period shall not exceed 3 years
 - The Rate of Interest shall not exceed 2% over prevailing bank rate
 - The loan is not eligible for repatriation (but eligible under USD 1 Million)

Loans from NRI / PIO

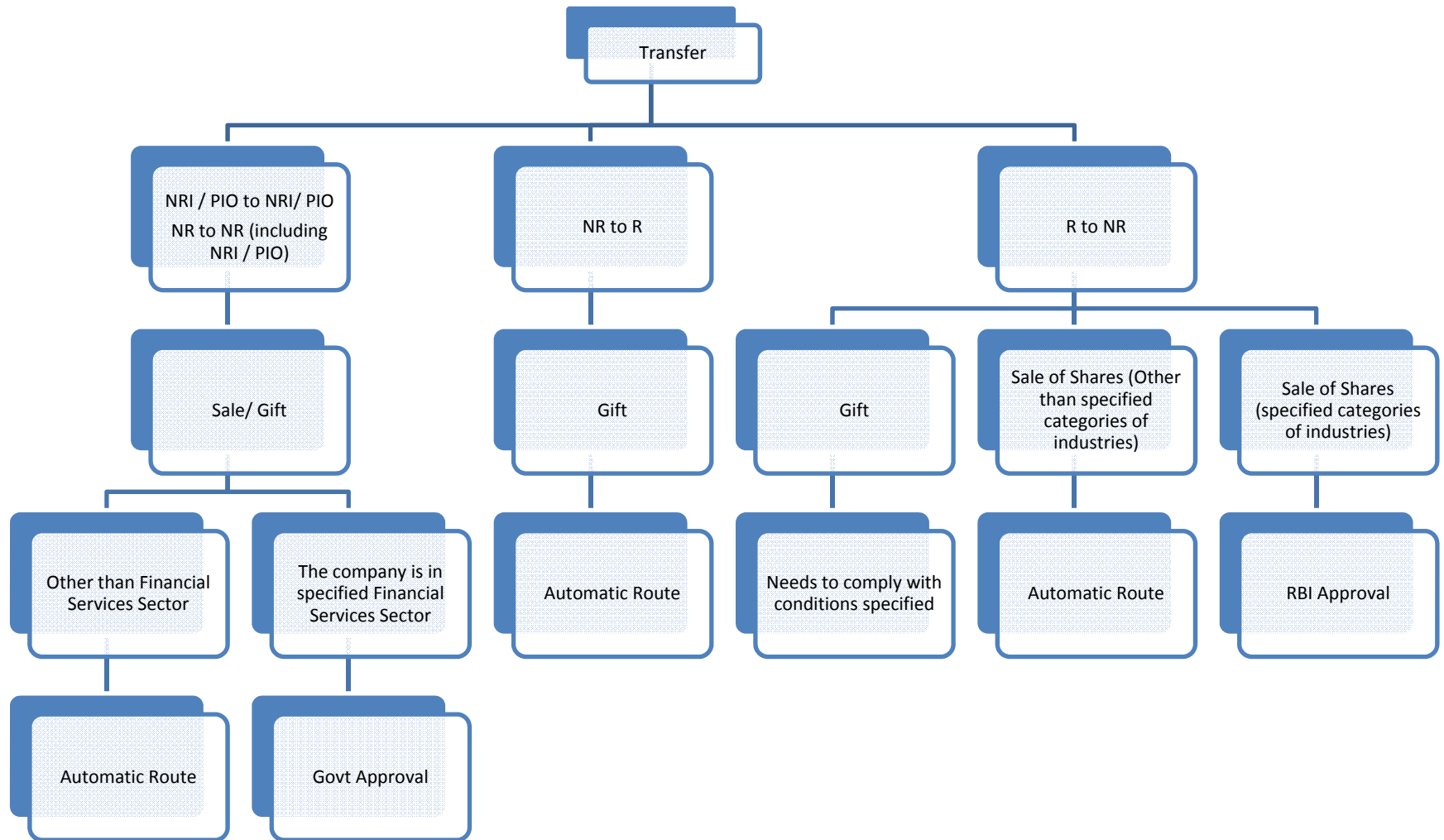
- Borrowing in INR by Companies in India
 - The amount shall be received by way issued of NCDs
 - The issue of NCDs is made by public offer
 - The loan period shall not be less than 3 years
 - The Rate of Interest shall not exceed 3% over prevailing bank rate
 - The company shall file report to RBI within 30 days of receipt
- Additional conditions for repatriation
 - The % of investment by NRI shall be within the limits specified under FDI
 - The amount has to come by CFE/NRE/FCNR account
- Restriction on end use of Funds
 - The borrower shall not engage in Agricultural/ Plantation/ real estate business/ trading in TDR/ does not act as Nidhi or Chit Fund company;
 - also the funds shall not be used for investment in capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not or for re-lending

- Investments in Indian Business entities under PIS

Portfolio Investment Scheme

- Portfolio Investment Scheme (PIS)
 - Means investment by NRI through Stock Exchange in the Second Market
 - NRI should have a unique registration number with AD to deal in PIS
 - NRI can buy securities under PIS upto 5% of the paid-up value of shares/ 5% of each series of Debentures issued by the Company
 - Shares / Debentures purchased by all NRIs together shall not exceed 10% of paid-up value of shares / each series of Debentures
 - Provided the limit of 10% can be extended to 24% with the Special Resolution passed by the company and informed to RBI
 - NRI cannot square off the positions and shall be settled by delivery of underlying securities
 - In case of repatriation benefits – the payment has to be made out of CFE/ NRE/ FCNR account
 - In case of Non-repatriation benefits – the payment has to be made out of CFE/NRE/NRO/FCNR account
 - NRI can also invest in Stock exchange traded derivatives on non-repatriation basis subject to the limits laid down by SEBI
 - Monitoring limit – PUC \geq Rs. 1000 Crore – 0.5% otherwise 2%

Transfer of Shares / CCPS/ CCD



Transfer by R to NR as Gift

- The proposed transferee (donee) is eligible to hold such capital instruments
- The gift does not exceed 5 % of the PUC of the Indian company/each series of debentures/each mutual fund scheme.
- The applicable sectoral cap limit in the Indian company is not breached
- The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956
- The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 during the calendar year.
- Such other conditions as stipulated by Reserve Bank in public interest from time to time

Investment under repatriation basis

- NRI may invest on repatriation basis, without limit:
 - Government dated securities / Treasury bills
 - Units of domestic mutual funds
 - Bonds issued by a public sector undertaking (PSU) in India
 - Non-convertible debentures of a company incorporated in India
 - Perpetual debt instruments and debt capital instruments issued by banks in India
 - Shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids

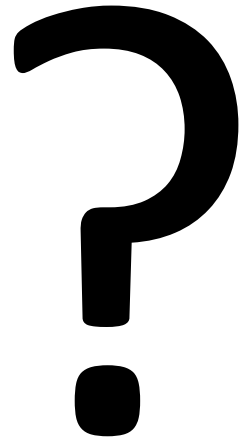
Investment under repatriation basis

- NRI may invest on non-repatriation basis, without limit:
 - Government dated securities / Treasury bills
 - Units of domestic mutual funds
 - Units of Money Market Mutual Funds
 - National Plan/Savings Certificates
 - Non-convertible debentures of a company incorporated in India
 - Exchange traded derivative contracts approved by the SEBI, from time to time, out of INR funds held in India, subject to the limits prescribed by the SEBI.

NRI's are not permitted to invest in small savings or Public Provident Fund (PPF)

Compounding of offenses

- The compounding application can be submitted to the RBI for the cases other than the Cases of contravention having a money-laundering, national and security concern involving serious infringements of the regulatory framework including cases where application for compounding has not been filed within the stipulated period in the memorandum issued by the Reserve Bank may be referred to Directorate of Enforcement for further investigation and necessary action under Section 37 of the Act or to the Anti Money Laundering Authority instituted under Prevention of Money Laundering Act, 2002 or to any other agencies as deemed fit.
- Contraventions related to any transaction without proper approval or permission from the concerned Government or any Statutory Authority as the case may be under the relevant laws/regulations as envisaged under FEMA, would not be compounded unless the required approval is obtained from the concerned authorities.
- The compounding application can be made in the format prescribed as per A.P.(DIR Series) Circular No.31 dated February 1, 2005 (in duplicate). Application Fee Rs. 5,000/-



Questions

Thank you

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