

FEMA for NRIs – Facilities and obligations

CA Saumya Sheth

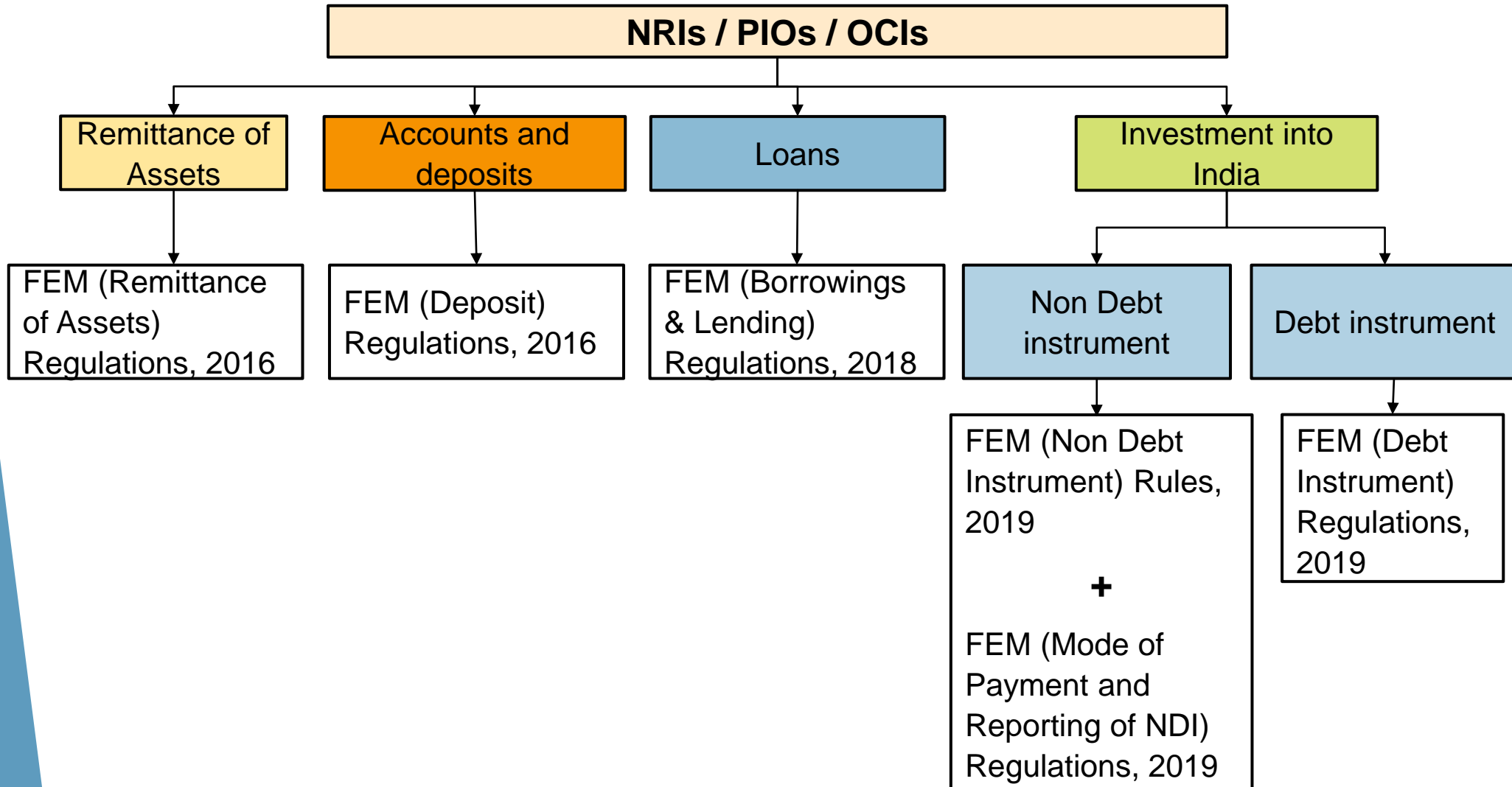
BGSS & Associates

Chartered Accountants

6 April 2020

Framework

Framework



Definitions

Residence – Section 6 of Income Tax Act

Resident (R)

- (1) Stay in India of 182 days or more in a previous year
- OR**
- (2) Stay in India of 60 days or more in a previous year *AND* stay in India of 365 days or more in the preceding 4 years

Resident and Ordinarily Resident (R & OR)

- (1) Resident in at least 2 out of the 10 preceding previous years,
- AND**
- (2) Physical stay in India of at least 730 days in aggregate in the 7 preceding previous years

Resident but Not Ordinarily Resident (RNOR)

- (1) Non-Resident for at least 9 out of 10 preceding previous years
- OR**
- (2) Physical stay in India less than 730 days in aggregate in the 7 preceding previous years

Residential status under FEMA

Person Resident in India

Condition 1 – Stay in India - For more than 182 days in **previous financial year** but does not include

+

Condition 2 – Intention of stay in India

For persons leaving India **for**:

- Employment;
- Business / Vocation;
- Other purpose for stay outside India for an uncertain period

For persons visiting India **other than for**:

- Employment;
- Business / Vocation;
- Other purpose for stay in India for an uncertain period

Person Resident Outside India

Person resident outside India means a person who is not resident in India

Residential status for students

- **A.P.(DIR Series) Circular No. 45 dated 8 December 2003**
- RBI has through above Circular clarified that Indian students studying overseas stay abroad for more than 182 days in preceding financial year and their intention to stay outside India is for an uncertain period and hence, will be treated as 'person resident outside India'.

NRI – definition under FEMA

- FEM (Borrowing & Lending) Regulations, 2018
- FEM (Deposit) Regulations, 2016
- FEM (Remittance of Assets) Regulations, 2016
- FEM (Permissible Capital Account Transactions) Regulations, 2000

NRI means
“a person resident outside India
who is a citizen of India”

- FEM (NDI) Rules, 2019
- FEM (Debt Instruments) Regulations, 2019

NRI means
“an individual resident outside
India who is a citizen of India”

PIO – definition under FEMA

PIO as defined under:

- FEM (Deposit) Regulations, 2016
- FEM (Remittance of Assets) Regulations, 2016

PIO means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan, or such other country as may be specified by Central Government, satisfying following conditions:

- Who was a citizen of India by virtue of Constitution of India or Citizenship Act, 1955 **OR**
- Who belonged to a territory that became part of India after 15 August, 1947 **OR**
- Who is a child or grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b)
- Who is a spouse of foreign origin of a citizen of India **OR** spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: for the purpose of this sub-regulation, the expression Section 7(A) of the Citizenship Act, 1955. 'Person of Indian Origin' includes an 'Overseas Citizen of India' cardholder within the meaning of

OCI – definition under FEMA

OCI as defined under:

- FEM (NDI) Rules, 2019
- FEM (Debt Instruments) Regulations, 2019
- FEM (Deposit) Regulations, 2016
- FEM (Borrowing & Lending) Regulations, 2018

OCI means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955*

PIO category is now only relevant for Deposits Regulations, for all other purposes OCI is relevant

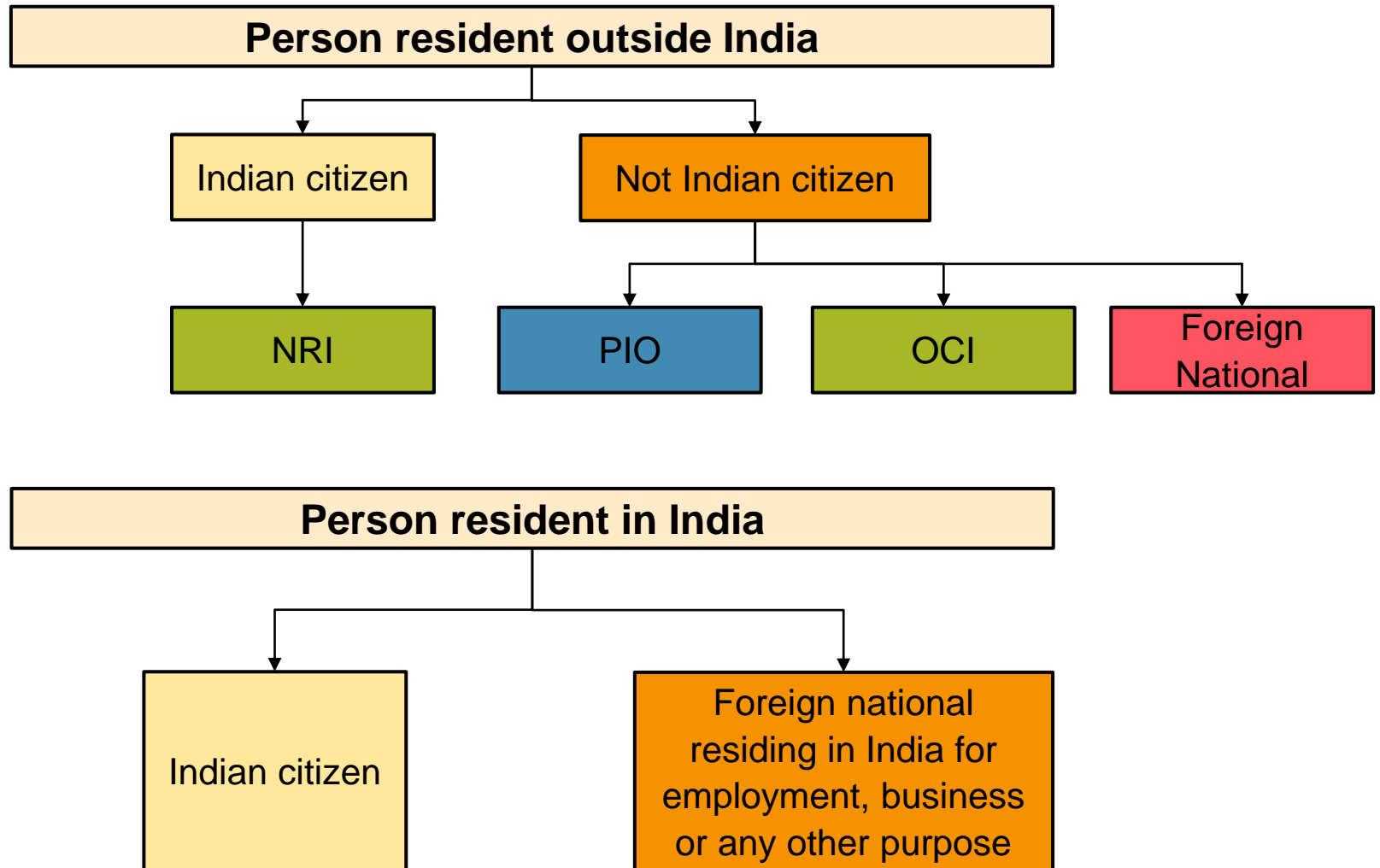
* Relevant extract given in Annexure 1

Distinction between NRI, PIO and OCI

Particulars	NRI	PIO	OCI
Definition	NRI means a person resident outside India who is a citizen of India	PIO means a person resident outside India who is a citizen of any country (excluding Bangladesh, Pakistan) and fulfills any of following conditions: i) Was citizen of India as per Indian constitution or Citizenship Act; or ii) Belonged to territory which became part of India after 1947; or iii) Who is a child or grandchild or a great grandchild of a citizen of India or person referred above; iv) Who is a spouse of foreign origin of a citizen of India or person referred above;	OCI means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955
Citizenship	Indian	Any country (excluding Bangladesh and Pakistan)	Any country (excluding Bangladesh and Pakistan)
Includes	None	Includes OCI card holder	Existing PIO cardholders are deemed to be OCI card holders but separate OCI card to be obtained

As PIO card is now discontinued, only two categories remain, NRI and OCI card holder

Overview of NRIs / PIOs / OCIs



Bank Accounts maintained by NRI

Accounts maintained by NRI (1/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Who can open an account ?	NRI & PIO (includes OCI card holder) (Individual/entities of Pakistan & Bangladesh require prior approval of RBI)		Any Person resident Outside India
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit Only	Savings, Current, Recurring, Fixed Deposit
Repatriability	Repatriable	Repatriable	<ul style="list-style-type: none"> ▪ Not repatriable except for all current income. ▪ Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.

Accounts maintained by NRI (2/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Currency	INR	Forex (Any foreign currency which is freely convertible)	INR
Joint Accounts	<ul style="list-style-type: none"> ▪ Jointly with two or more NRIs/ PIOs ▪ Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013) ▪ The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder. 		
Rate of Interest	As per guidelines issued by the Department of Banking Regulations		
Taxability	Tax Exempt	Tax Exempt	Taxable

Accounts maintained by NRI (3/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Operations by Resident POA Holder	<p>Permitted</p> <ul style="list-style-type: none"> ▪ Withdrawal for local payments ▪ Make investments in India ▪ Remittance to account holder himself through banking channels <p>Prohibited</p> <ul style="list-style-type: none"> ▪ Remittance outside India to other than account holder himself ▪ Make payment by gift to resident ▪ Transfer funds to other NRE account 		<p>Permitted</p> <ul style="list-style-type: none"> ▪ Withdrawal for local payments ▪ Make investments in India ▪ Remittance outside India of current income, net of taxes <p>Prohibited</p> <ul style="list-style-type: none"> ▪ Remittance outside India to other than account holder himself ▪ Make payment by gift to resident ▪ Transfer funds to other NRO a/c`
Loans Outside India (Secured)	<ul style="list-style-type: none"> ▪ AD may allow their branches correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements. ▪ The term “loan” shall include all types of fund based / non-fund based facilities 		<ul style="list-style-type: none"> ▪ Not Permissible

Accounts maintained by NRI (4/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Loans In India	<ul style="list-style-type: none"> ▪ AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements. ▪ These loans cannot be repatriated outside India ▪ Should be used only for personal purposes or business purposes (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business) ▪ In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities ▪ In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from o/s India through banking channels or out of self NRO a/c ▪ The facility for premature withdrawal of deposits not be available in such cases ▪ The term “loan” includes all types of fund based/non-fund based facilities 		<ul style="list-style-type: none"> ▪ Loans against deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business. ▪ The term “loan” includes all types of fund based/ non-fund based facilities

Accounts maintained by NRI (5/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Change in Residential Status from Non-Resident to Resident	<ul style="list-style-type: none"> NRE accounts should be designated as resident accounts OR Funds held in these accounts may be transferred to the RFC accounts immediately upon change of residential status 	<ul style="list-style-type: none"> FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account 	<ul style="list-style-type: none"> From PROI to PRI: Immediately designated as resident accounts From PRI to PROI: Immediately designated as NRO Account

Permissible Credits / Debits (1/3)

➤ NRE & FCNR (B) A/c

Permitted credits:

- a. Inward remittances from o/s India through banking channels
- b. Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c. Tender of foreign currency / bank notes during his temporary visit to India
- d. Transfers from other NRE/ FCNR(B) accounts
- e. Interest accruing on the funds held in the account
- f. Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest) (no qualification of earlier investment account source i.e. original investment could have been made from either NRE or NRO a/c)
- g. Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India through banking channels (*FEM NDI Rules – Chapter IX - Sale of immovable property in India: Credit to NRE a/c restricted to 2 residential properties during lifetime*)
- h. Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if subscription amount was paid from NRE/ FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels

Permissible Credits / Debits (2/3)

➤ NRE & FCNR (B) A/c

Permitted credits:

- a. 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), was paid from NRE / FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels and AD is satisfied about the genuineness of the transaction

Permitted debits:

- a. Local disbursements
- b. Remittances outside India
- c. Transfer to NRE/ FCNR(B) accounts of the account holder or any other person eligible to maintain such account
- d. Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by RBI

Permissible Credits / Debits (3/3)

➤ NRO A/c

Permitted credits:

- a. Inward remittances from o/s India through banking channels
- b. Tender of any permitted currency during his temporary visit to India
- c. Legitimate dues in India of the account holder
- d. Transfers from other NRO accounts
- e. Rupee gift / loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS

➤ NRO A/c

Permitted debits:

- a. All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
- b. Remittance outside India of current income in India of the account holder net of applicable taxes
- c. Transfers to other NRO accounts
- d. Balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions (Limit of \$1 million over and above current income repatriation – FAQ 3 of Accounts in India by NR) (Undertaking from remitter for own funds)
- e. Funds can be transferred to NRE account within this USD 1 Million facility
- f. Settlement of charges on International Credit Cards issued by AD in India to NRIs or PIOs, upto USD 1 Million per financial year

Joint holder -liberalization

- **Individuals resident in India are permitted to include NRI close relatives [relative as defined in Section 6 of the Companies Act, 1956] as a joint holder(s) in their resident savings bank accounts on “Either or Survivor” basis subject to following conditions:**
 - ✓ Such account will be treated as resident bank account for all purposes and all regulations applicable to a resident bank account shall be applicable.
 - ✓ Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.
 - ✓ The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.
 - ✓ Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all resident bank account holders.
 - ✓ Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per extant regulations.
 - ✓ Onus will be on non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.
 - ✓ The above joint account holder facility may be extended to all types of resident accounts including savings bank account.

Special Non Resident Rupee Account – SNRR A/c (1/2)

Particulars	SNRR A/c
Who can open an account ?	Any person resident outside India (excluding Pakistan and Bangladesh nationals), having a business interest in India Business interest to include following: <ul style="list-style-type: none"> • Investment under FEM (Non-Debt Instruments) Rules 2019 and FEM (Debt Instruments) Regulations 2019 • Import of goods and services • Export of goods and services • Trade credit transactions and lending as permitted under FEM (Borrowing and lending) Regulations, 2018 • Business related transactions outside IFSC by IFSC units as may be notified by RBI
Purpose	For undertaking bona fide business transactions in India
Type of Account	Current
Repatriability	Repatriable
Permissible debits and credits	Specific/ incidental to the business proposed to be done by the account holder
Number of accounts	Possible to have separate SNRR A/c for specific business which is in operation in India carried by single person

Special Non Resident Rupee Account – SNRR A/c (2/2)

Particulars	SNRR A/c
Tenure	Concurrent to the tenure of the contract/ period of operation/ the business of the account holder. However, maximum tenure should not exceed 7 years and extension beyond 7 years will require RBI approval However, if its for business interested listed in previous slide, restriction of 7 years will not apply
Transfer from NRO Account	Not permissible
Applicable taxes	All transactions would be subject to applicable taxes
Change in residential status of account holder	SNRR account may be designated as resident rupee account on the account holder becoming a resident.
Reporting	Transactions in SNRR A/c shall be reported to RBI as per applicable regulations

Escrow account (1/3)

Particulars	Escrow Account
Who can open an account ?	<ol style="list-style-type: none">1. Non resident corporates for acquisition/ transfer of capital instruments/convertible notes through open offers/ delisting/ exit offers;2. Resident and non-resident acquirers for acquisition/ transfer of capital instruments/convertible notes
Purpose	For acquisition / transfer of capital instruments / convertible notes
Nature of account	In INR
Type of Account	Current
Repatriability	Repatriable after all formalities relating to acquisition are completed
Foreign exchange risk	Foreign exchange risk has to be on person resident outside India

Escrow account (2/3)

Particulars	Escrow Account
Permissible credits	<p>Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers</p> <ul style="list-style-type: none"> • Foreign remittance through banking channels; • Guarantee issued by AD Bank subject to FEM (Guarantee) Regulations, 2000 <p>Opened by resident / non-resident acquirers in other cases</p> <ul style="list-style-type: none"> • Foreign remittance through banking channels; • Receipt of rupee consideration by resident acquirer who proposes to acquire capital instruments from non-resident sellers • Guarantee issued by AD Bank subject to FEM (Guarantee) Regulations, 2000
Permissible debits	<p>Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers</p> <ul style="list-style-type: none"> • As permitted by SEBI Regulations <p>Opened by resident / non-resident acquirers in other cases</p> <ul style="list-style-type: none"> • Remittance of consideration in bank account of beneficiary (in India or abroad) • Remittance of consideration for refund in case failure of FDI transaction for which account was opened

Escrow account (3/3)

Particulars	Escrow Account
Tenure	Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers <ul style="list-style-type: none">• Immediately upon completion of the purpose Opened by resident / non-resident acquirers in other cases <ul style="list-style-type: none">• Maximum period of 6 months. Extension beyond 6 months would require prior RBI approval• However, if escrow account is opened for 25% of total consideration as permitted under FEM (NDI) Rules 2019, it can be opened for upto 18 months from date of agreement
Transfer from NRO Account	Not permissible
Others	No fund/ non-fund based facility would be permitted against the balances in the account

Case studies on Bank accounts

Case Study 1 –NRE Account for returning NRIs

Facts

- Mr. ABC, is a Indian citizen who went to US for the purpose of his employment on 1 January 2005. He left his job in December 2019 and returned to India permanently for setting up his business.
- During the period from January 2005 to December 2019, he was non-resident under the Act. While in US, he had opened NRE Account in India and transferred his US salary income to his Indian NRE Account.
- During December 2019 to March 2020, he received interest income of Rs. 100,000 from his NRE Account in India.

Query

- Can he continue to keep his NRE A/c after returning to India ?
- Taxability of NRE interest income ?

Case Study 2 – Taxability of FCNR Interest income for returning NRIs

Facts

- Same facts as Case study 1.
- However, instead of NRE Account, Mr. ABC has deposited money in FCNR Deposits in April 2016 for 4 years and hence, it will mature in April 2020.

Query

- What would be status of FCNR deposits ?
- Whether interest income received on FCNR Deposits account of Mr. ABC would be taxable in India in FY 2019-20 under provisions of the Act?

Case Study 3 – Transfer from NRE Account to Savings Account

Facts

- Mr. XYZ, is a Indian citizen who went to US for the purpose of his employment on 1 January 2015.
- He opened NRE Account in December 2015 by remitting his funds from US
- He wishes to transfer funds from his NRE Account to his Indian savings bank account which existed before he moved to US for making some investments in India

Query

- Whether transfer of funds from NRE Account to his Indian savings bank account is permissible under FEMA ?

Case Study 4 – Payment to employees in NRE Account

Facts

- ABC Ltd, an Indian company has opened branch in Dubai and transferred few of its employees from India to work in the Dubai branch
- The total number of days these employees were working in Dubai is more than 300 days in a year.
- ABC Ltd. wants to pay their salary to Indian NRE Account of the employees in India

Query

- Whether it is permissible to pay salary of Indian employees who are working outside India in Indian NRE Bank account ?

Case Study 5 – Receipt of dividend in NRE Account

Facts

- Mr. X, NRI has purchased 1000 shares of Reliance Industries Limited from his NRE Account
- Mr. X has received dividend amounting to Rs. 1000 and wants to deposit the same in his NRE A/c

Query

- Whether it is permissible to credit dividend income to NRE A/c?
- Would answer be different if shares were purchased from NRO Account on non-repatriable basis ?

Deposits

Acceptance of deposit by a company from NRI / PIO on repatriation basis (1/2)

Particulars	Conditions
Eligibility	Any company including NBFC incorporated in India
Conditions for deposits	Under public deposit scheme
Manner of receipt of deposits	<ul style="list-style-type: none">• Inward remittance from outside India through banking channels; or• Debit to the NRE or FCNR (B) Account.
Rate of interest	<ul style="list-style-type: none">• NBFC – as per RBI guidelines• Other companies – as per companies (Acceptance of Deposit) Rules, 2014
Maturity period	Should not exceed 3 years
Cap on company accepting deposits	Aggregate deposits accepted by the company shall not exceed 35% of its net owned funds
Manner of interest payment	<ul style="list-style-type: none">• Remittance through AD• Credit to the depositor's NRE/ FCNR(B)/ NRO/ account
Repatriability	<ul style="list-style-type: none">• Repatriable

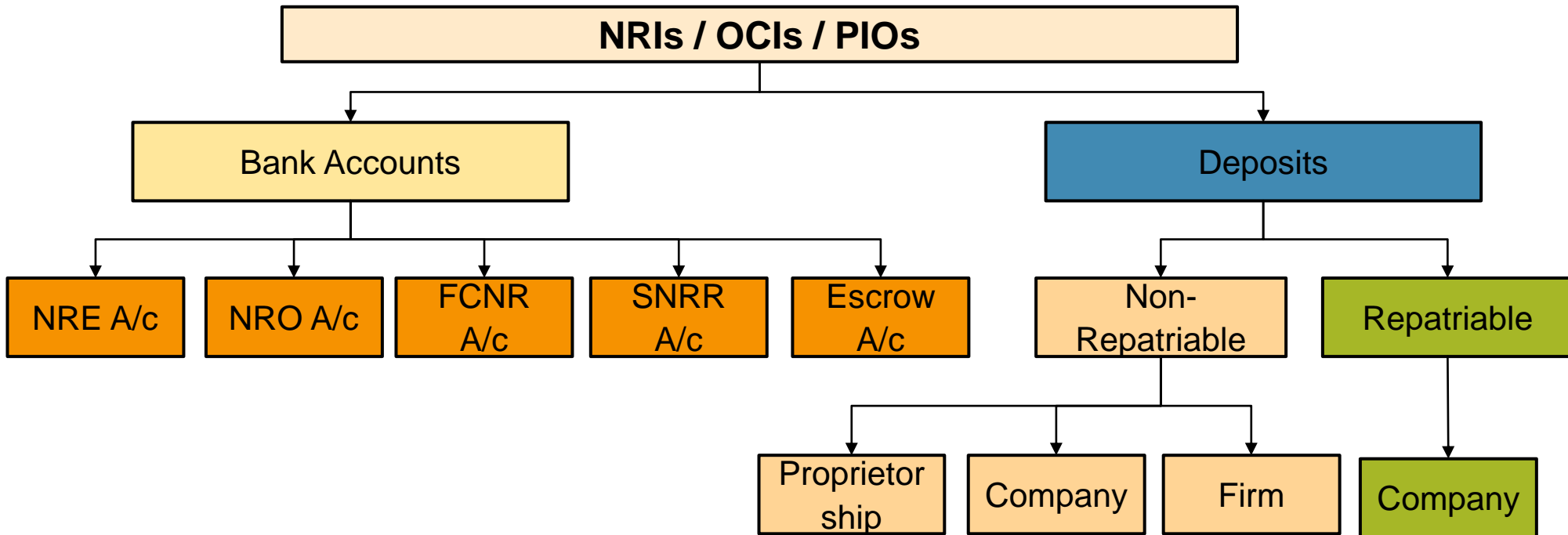
Acceptance of deposit by a company from NRI / PIO on repatriation basis (2/2)

Particulars	Conditions
End-use restriction on deposits	<ul style="list-style-type: none">• Re-lending (not applicable to a NBFC);• Agricultural/ plantation activities;• Real estate business;• Investing in any other concern, firm or a company engaged in above activities.
Manner of repayment of deposit	<ul style="list-style-type: none">• Remittance through AD;• Credit to the depositor's NRE/ FCNR(B) account (the company should certify that the amount of deposit was received either by inward remittance from outside India through banking channels or by debit to the depositor's NRE/ FCNR(B) account);• Credit to NRO account of depositor if depositor so requires

Acceptance of deposit from NRI / PIO on non repatriation basis by proprietor / firm / company

Particulars	Conditions
Eligibility	<ul style="list-style-type: none"> • Any company including NBFC incorporated in India • Proprietorship concern • Firm
Conditions for deposits	<ul style="list-style-type: none"> • In case of company – Private arrangement or under public deposit scheme • In case of firm or proprietorship concern – They should comply with applicable laws relating to acceptance of deposits
Manner of receipt of deposits	<ul style="list-style-type: none"> • Debit to NRO only (Amount standing in NRO should not represent inward remittances or transfer of funds from NRE/ FCNR (B) accounts into the NRO account)
Rate of interest	<ul style="list-style-type: none"> • NBFC – as per RBI guidelines • Others – Subject to applicable regulations
Maturity period	<ul style="list-style-type: none"> • Should not exceed 3 years
End-use restriction on deposits	<ul style="list-style-type: none"> • Re-lending (not applicable to a NBFC); • Agricultural/ plantation activities; • Real estate business; • Investing in any other concern, firm or a company engaged in above activities.
Repatriability	<ul style="list-style-type: none"> • Non-repatriable

Summary of Bank accounts and deposits



Change in residential status

Change of Resident Status of Account holder

Section 6(4) of FEMA

A person resident in India may 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

Section 6(5) of FEMA

A person resident outside India may 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

Returning Indians – section 6(4)

From Non-resident to Resident:

- Person can continue to hold his following overseas assets after becoming resident:
 - Assets, including investments, security
 - Immovable property;
 - Foreign bank accounts;
 - Gift or inheritance from person resident outside India;
 - Foreign income from business or vocation earned when was non-resident;
 - Accrual to his overseas income
- The same can also be transferred or invested in different assets from his overseas funds without any restrictions provided the new investment is not in contravention of any FEMA regulations
- However with regards to interest in firm / LLC abroad, no specific clarity provided and hence, advisable to obtain RBI approval
- Person resident in India inheriting above assets from a person resident outside India would also be permitted to hold above assets outside India

No loan can be taken in foreign country after returning Indian becomes resident

Resident Foreign Currency A/c

Particulars	RFC A/c
Who can open an account ?	Person resident in India
Purpose	For keeping foreign currency
Currency	Foreign currency
Permissible credits	<ul style="list-style-type: none">• Received as pension or superannuation or other benefits from his foreign employer;• Realised on conversion of his overseas assets referred to in section 6(4) and repatriated to India;• Received as gift or inheritance from person resident outside India as per section 6(4)• Transfer of balance from NRE A/c or FCNR deposits upon change in residential status from non-resident to resident• Maturity proceeds from insurance company in India
Permissible debits	No restrictions on utilisation of funds in India / outside India including restrictions provided in Schedule III of Current Account Rules
Joint holder	Resident relative can be joint holder. However, they cannot operate the account during lifetime of account holder

Change of Resident Status of Account holder – Steps to be undertaken

➤ From Non-resident to Resident:

- ✓ Inform AD banker about change in residential status;
- ✓ Convert NRE Account & NRO Account into normal bank account;
- ✓ Inform companies / partnership firm where he is shareholder / debenture holder / partner about change in his residential status;
- ✓ Continue to hold FCNR FD and NRE FD till its maturity and upon maturity convert the same into normal bank account;
- ✓ Continue to hold foreign bank accounts / immovable property / assets acquired when he was non-resident and also use foreign funds to make further investments

Emigrating Indians – section 6(5)

From Resident to Non-resident:

- Person can continue to hold his following Indian assets after becoming resident:
 - Assets, including investments, security
 - Immovable property;
 - Gift or inheritance from person resident in India;
- The same can also be transferred or invested in different assets from his Indian funds
- He can continue to hold interest in LLP / partnership even after becoming Non-resident
- However future investments would need to be made from NRO A/c
- No fresh loan can be given to partnership / LLP and existing loan should be repaid only in NRO A/c
- All existing investments would become on non-repatriable basis
- Cannot undertake agricultural activities after becoming resident even though he can continue to hold agricultural land acquired when he was resident
- Person resident outside India inheriting above assets from a person resident in India would also be permitted to hold above assets in India

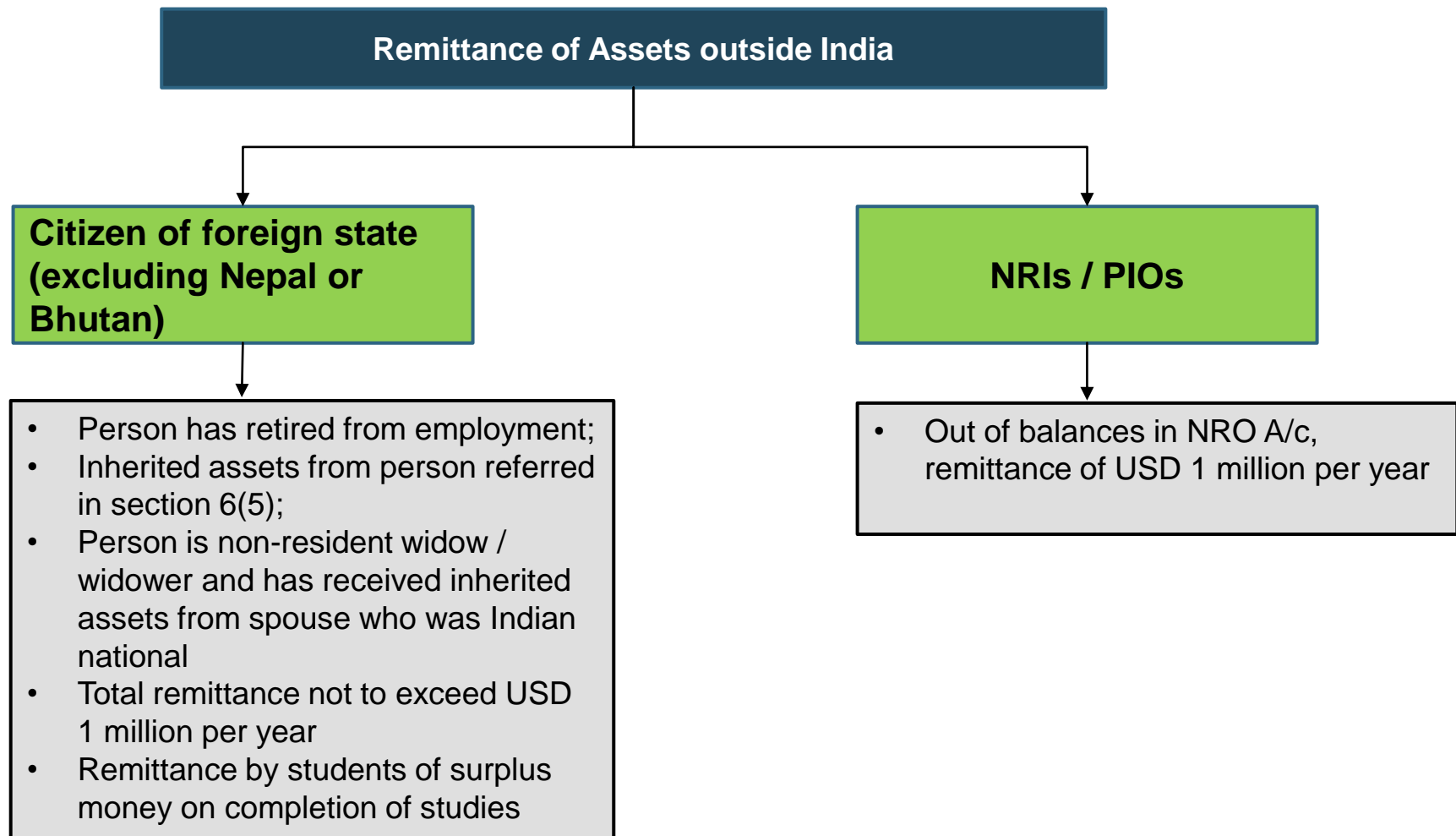
Change of Resident Status of Account holder – Steps to be undertaken

➤ From Resident to Non-resident:

- ✓ Inform AD banker about change in residential status;
- ✓ Convert existing savings account into NRO A/c;
- ✓ Continue to hold PPF Account but only till maturity;
- ✓ Inform companies / partnership firm where he is shareholder / debenture holder / partner about change in his residential status;
- ✓ Inform depository participant about his change in residential status
- ✓ Existing life insurance policies can be continued
- ✓ Partnership firm to deposit share of profit in NRO A/c
- ✓ Prohibition on undertaking existing proprietorship business of trading in real estate, chit fund, nidhi fund, agricultural / plantation activities etc.
- ✓ All overseas investments made under ODI or under LRS route can be continued. However, RBI would need to be informed for change in residential status and cancellation of UIN where investment was made under ODI route

Remittance of Assets outside India

Remittance of Assets outside India



All remittances should be undertaken through only one AD Bank & subject to payment of applicable taxes

Remittance of Assets Outside India

- Available to NRIs / PIOs
- AD Bank may allow to remit upto USD 1 million per year (popularly known as USD 1 million scheme) out of :
 - ✓ balances in NRO A/c
 - ✓ sale proceeds of assets
 - ✓ assets acquired in India by way of inheritance/ legacy
- In case of assets acquired under deed of settlement, made by parents or relatives, settlement should take effect on death of settler
- in case settlement is done during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift. Remittance of sale proceeds of such property would be guided by instructions on remittance of balance in the NRO account mentioned above
- NRI / PIO to give a declaration that :
 - ✓ Remittance is out of balances held in the account arising from his / her legitimate receivables in India
 - ✓ Remittance is not by borrowing from any other person
 - ✓ Remittance is not a transfer from any other NRO account

Case Study 6 – Remittance by NRIs / PIOs

Facts

- Mr. Ram, resident of US and PIO has balances lying in his NRO A/c amounting to Rs. 10 crore received from sale of his inherited immovable property
- He wishes to repatriate the entire amount to US for buying a residential house

Query

- Whether Mr. Ram can repatriate entire amount to US ?

Case Study 7 – Remittance by NR

Facts

- Mr. Steve, resident of US was employed in India by an Indian company for past 10 years;
- He retired from his employment and moved to US;
- He has income lying in his savings account in India amounting to Rs 1 crore;

Query

- Whether Mr. Steve can repatriate entire amount to US ?

Loans by NRIs / PIOs

Loans from NRIs / PIOs in foreign currency

Particulars	Borrowings by persons other than Cos
Eligible recipient	Receipt only by individual resident in India
Maximum amount	Not exceeding USD 250,000
Status of NRIs / PIOs payers	Close relatives of payees as per provisions of Companies Act, 2013
Other restrictions	As may be prescribed by RBI from time to time No conditions prescribed by RBI yet

Advisable to obtain prior RBI approval before obtaining any loan by an Indian individual from his overseas relatives

Loans from NRIs / PIOs in Indian currency by other than Cos

Particulars	Borrowings by persons other than Cos
Mode of acceptance	Directly
Relationship with borrower	Close relatives as per Companies Act, 2013
End-use restriction	Agricultural / plantation / real estate business / construction of farm houses / trading in TDRs / Nidhi / Chit Fund Company / Investment in market including margin trading and derivatives
Additional conditions	Not yet prescribed

Advisable to obtain prior RBI approval before obtaining any loan by an Indian individual from his overseas relatives

Loans from NRIs / PIOs by Cos

- Company can avail loan from NRI / PIOs / OCIs under the ECB route provided they are shareholders in the company
- Company to obtain LRN and comply with ECB provisions
- Apart from ECB route, company cannot obtain loan from NRI / PIO / OCI card holder

Investment by NRI / OCI in Indian debt instruments

Particulars	Investment conditions
Permissible investments	<ul style="list-style-type: none">• Government securities;• Units of domestic Mutual Funds / ETF which invest less than 50% in equity;• Bonds issued by PSUs & Infra Debt Funds;• Listed non-convertible / redeemable preference shares or debentures issued upon scheme approved by NCLT• Debt instruments issued by Bank for inclusion in regulatory capital• Subscription to NPS
Repatriability	Repatriable or non-repatriable
Mode of receipt for repatriable investments	Inward remittance from outside India or from NRE / FCNR
Mode of receipt for non-repatriable investments	Inward remittance from outside India or from NRE / FCNR / NRO
Sale proceeds	<ul style="list-style-type: none">• Sales proceeds to be credited to NRO A/c where instruments were held on non-repatriation basis• Where instruments are held on repatriation basis, it would be credited to NRE / FCNR or remitted abroad

Lending to NRI's

Lending by authorized dealers in foreign currency to NRIs

- Overseas branch of Indian banks can grant foreign exchange loans to NRIs / PIOs against balance lying in NRE / FCNR A/c

Lending by authorized dealers in INR to NRIs for own requirements or own business purposes

- AD can grant INR loans to NRI against security of shares and other securities or against the security of immovable property (other than agricultural or plantation land or farm house) subject to end use restriction, repayment terms as prescribed in the regulations

INR Loans by Resident Individual to NRI relative:

- A resident individual may grant INR loan to a NRI relative by way of crossed cheque/electronic transfer subject to following conditions:
 - Loan is within the LRS limit available to resident
 - Loan cannot be utilised for Chit funds business / Nidhi company / agricultural / plantation / real estate business / trading in TDRs;
 - Loan will be subject to such conditions as may be prescribed

Case studies on borrowing and lending in INR

Case Study 8 – Borrowing and lending in INR

Facts

- Mr. Akash, an Indian citizen wishes to take loan from his NRI friend, Mr. Prakash
- Mr. Prakash has NRE Account in India and intends to provide loan to Mr. Akash for period of 5 years and at an interest rate of 10% per annum
- Mr. Akash intends to use the loan for the purpose of investing in capital of his partnership business. The partnership is engaged in business of providing IT enabled back office support services

Query

- Whether it is permissible for Mr. Akash to obtain loan from NRE Account of his NRI friend?

Case Study 9 – Security Deposit by NRI to Resident

Facts

- Mr. XYZ, is a NRI who wants to take a premise on rent in India
- Indian resident landlord desiring to give the property on rent asks for refundable interest free security deposit from NRI

Query

- Whether Mr. XYZ can give such interest free security deposit to Indian resident landlord for obtaining lease of property ?

Case Study 10 – Loan by Indian company from NRI director

Facts

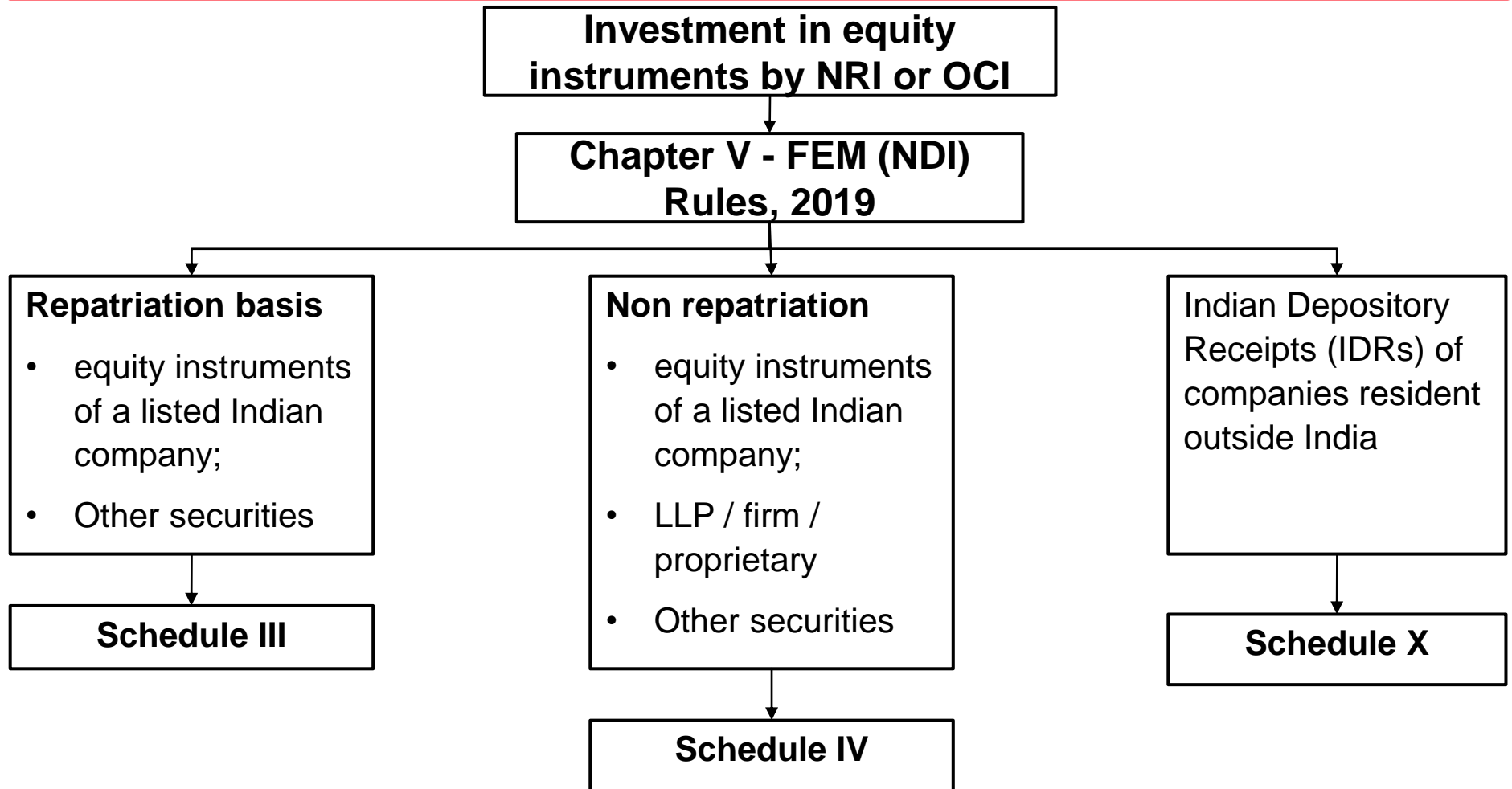
- Mr. XYZ, is a NRI director of an Indian company, XYZ Ltd.
- XYZ Ltd. wants to obtain loan in INR from its director, Mr. XYZ

Query

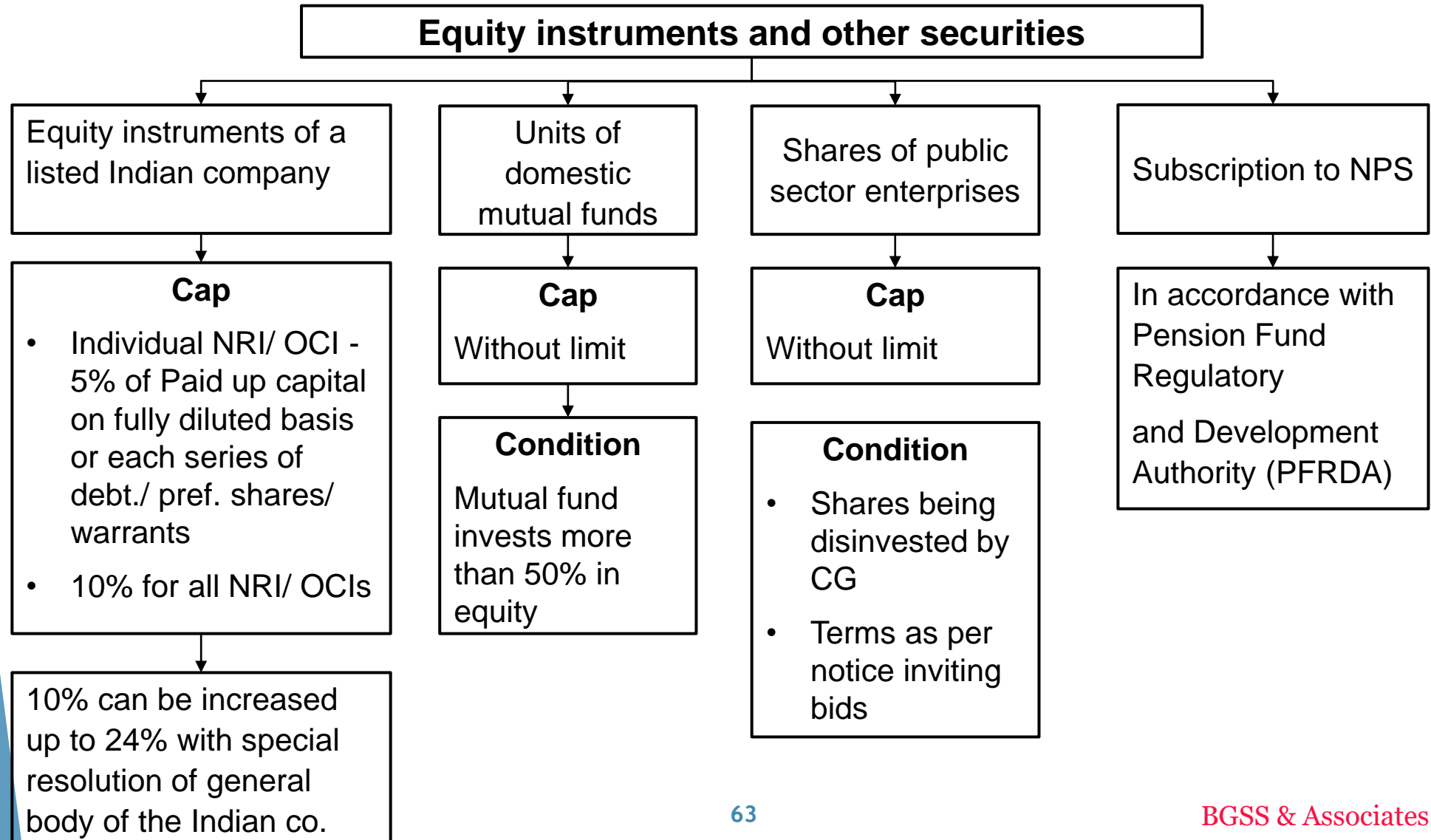
- Whether XYZ Ltd. can obtain INR loan from his NRI director ?

Investment in India by NRI

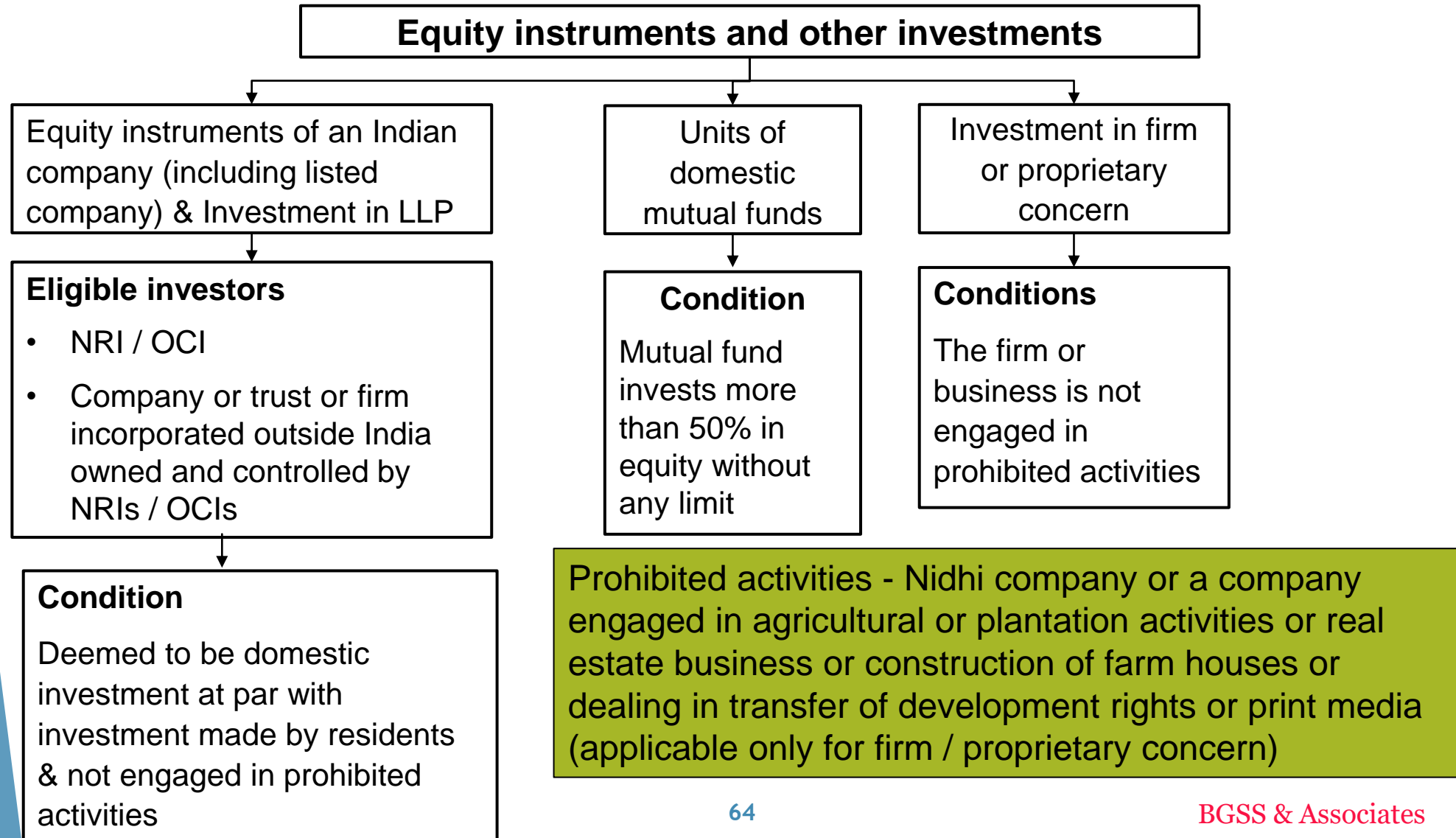
Investments in equity instruments by NRI or OCI



Schedule III – Investments by NRI / OCI on repatriation basis



Schedule IV – Investments by NRI / OCI on non-repatriation basis



Investment in debt Instruments by NRI/ OCI

Schedule 1 – FEM (Debt Instruments) Regulations, 2019

Eligible debt instruments for NRI/ OCI

on Repatriation basis:

- Govt securities or treasury bills or Units of domestic mutual funds or exchange traded funds which invest less than or equal to 50% in equity
- Bonds issued by PSU in India
- Bonds issued by Infrastructure Debt Funds
- Listed non-convertible / redeemable preference shares or debentures issued on merger
- Debt instruments issued by banks, eligible for inclusion in regulatory capital
- Subscribe to National Pension System, if eligible

on Non-repatriation basis:

- Govt securities or treasury bills or Units of domestic mutual funds or exchange traded funds which invest less than or equal to 50% in equity
- National plan / Savings certificate
- Listed non-convertible / redeemable preference shares or debentures issued on merger
- Subscribe to chit funds authorized by registrar of chits

NRI/OCI may keep such instruments as collateral to recognized stock exchange in India for their transactions in exchange traded derivative contract

Thank You

Our Offices

AHMEDABAD

604, Shit Ratna Building, Next to Panchwati Circle,
C.G. Road, Ahmedabad – 380 009

Email : saumya@bgss.co.in

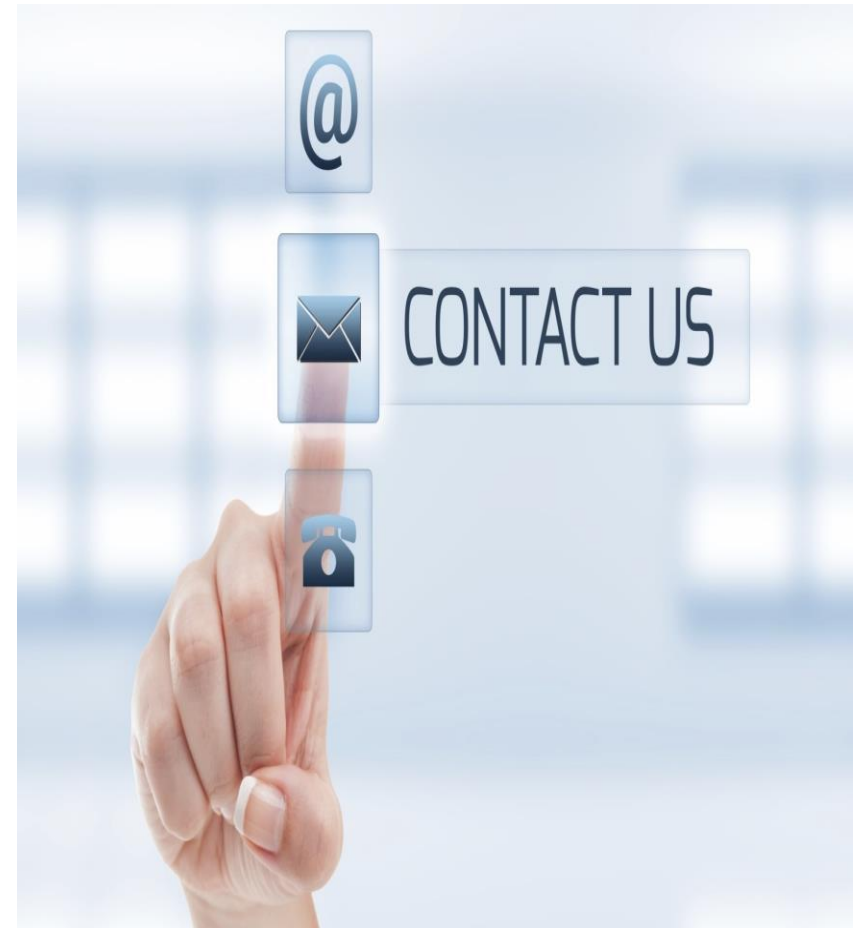
Mobile No: +91 90999 27783

MUMBAI

605, Zee Nayak, M.G. Road, Vile Parle (East),
Mumbai – 400 057

Email : bhaumik@bgss.co.in

Mobile No: +91 98339 15583



Annexure 1 – Section 7A of Citizenship Act, 1955

Section 7A - Registration of overseas citizens of India

➤ The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India:

(a) any person of full age and capacity,--

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a) :

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India