

Applicability of FEMA

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The Foreign Exchange Management Act, 1999 was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

This Act is applicable to all parts of India i.e it applies to any transaction that takes place in India by any person residing in India at the time of transaction. It is also applicable to all branches, offices and agencies outside India owned or controlled by a person who is resident of India. Any contravention that is committed outside India by these entities, is also covered under FEMA.

Residential status is the most important factor for determining the applicability of the Act. The persons that are covered under the Act are Persons resident in India, Non-resident Indian (NRI), Persons resident outside India, Overseas Corporate Body (OCB) and Persons of Indian Origin (PIO).

As per the definition under the FEMA, a "person resident in India" means –

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

(A) A person who has gone out of India or who stays outside India, in either case -

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

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

(B) A person who has come to or stays in India, in either case, otherwise than -

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

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

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India.

An Indian company will always be considered as a resident of India whereas a foreign company will be treated as resident of India only if the control and management of its affairs is situated wholly in India during the relevant tax year.

A non-resident Indian (NRI) means a person resident outside India who is a citizen of India or is a person of Indian origin. A Non-Resident Indian will be treated as a person

resident in India if he returns to or stays in India, for taking up employment in India, or for carrying on in India, a business or vocation, or for any other purpose that would show his intention to stay in India for an uncertain period. Non-Resident Indian citizens and Persons of Indian Origin on temporary visits or stay in India without any intention to stay in India for an uncertain period will be treated as Non-Residents during their stay in India.

Overseas Corporate Body means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably.

There are various definitions for PIO under various notifications under the FEMA. Person of Indian origin means a citizen of any country other than Bangladesh or Pakistan, if –

- a. he at any time held Indian passport; or
- b. he or either of his parents or any of his grand-parents 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 sub-clause (a) or (b).

Another definition for PIO is that "Person of Indian origin" means an individual (not being a citizen of Afghanistan, Bangladesh, Bhutan, China, Iran, Nepal, Pakistan, or Sri Lanka) who -

- (i) at any time held Indian passport; or
- (ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955)."

From the above definitions, it is clear that intention of the person to reside in India is the main basis for determining the residential status of a person under FEMA.

Applicable Rules / Regulations on the basis of residential status

Sl.No.	Residential status	Rules / Regulations
1.	Person resident in India	<ul style="list-style-type: none">• Foreign Exchange (Current Account Transactions) Rules, 2000• Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000• Foreign Exchange Management (Issue of security in India by a branch, office or agency of person resident outside India) Regulations, 2000• Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000• Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000• Foreign Exchange Management (Deposit) Regulations, 2000• Foreign Exchange Management (Export and Import of Currency) Regulations, 2000• Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000• Foreign Exchange Management (Guarantees) Regulations, 2000• Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000

		<ul style="list-style-type: none"> • Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 • Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 • Foreign Exchange Management (Insurance) Regulations, 2000 • Foreign Exchange Management (Remittance of Assets) Regulations, 2000 • Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 • Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 • Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 • Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 • Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004
2.	Non-resident Indian (NRI)	<ul style="list-style-type: none"> • Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 • Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 • Foreign Exchange Management (Deposit) Regulations, 2000

		<ul style="list-style-type: none"> • Foreign Exchange Management (Export and Import of Currency), Regulations, 2000 • Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 • Foreign Exchange Management (Remittance of Assets) Regulations, 2000 • Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 • Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 • Foreign Exchange Management (Investment in Firm or Proprietary concern in India) Regulation, 2000
3.	Person resident outside India	<ul style="list-style-type: none"> • Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 • Foreign Exchange Management (Issue of security in India by a branch, office or agency of person resident outside India) Regulations, 2000 • Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 • Foreign Exchange Management (Deposit) Regulations, 2000 • Foreign Exchange Management (Export and Import of Currency), Regulations, 2000 • Foreign Exchange Management (Remittance

		<p>of Assets) Regulations, 2000</p> <ul style="list-style-type: none"> • Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 • Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 • Foreign Exchange Management (Establishment in India of a branch or office or other place of Business) Regulations, 2000 • Foreign Exchange Management (Investment in Firm or Proprietary concern in India) Regulation, 2000 • Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000
4.	Overseas Corporate Body (OCB)	<ul style="list-style-type: none"> • Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 • Foreign Exchange Management (Issue of security in India by a branch, office or agency of person resident outside India) Regulations, 2000 • Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 • Foreign Exchange Management (Deposit) Regulations, 2000 • Foreign Exchange Management (Remittance of Assets) Regulations, 2000 • Foreign Exchange Management (Transfer or

		<p>Issue of Security by a Person Resident Outside India) Regulations, 2000</p> <ul style="list-style-type: none"> • Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 • Foreign Exchange Management (Establishment in India of a branch or office or other place of Business) Regulations, 2000 • Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003
5.	Persons of Indian Origin (PIO)	<ul style="list-style-type: none"> • Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 • Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 • Foreign Exchange Management (Deposit) Regulations, 2000 • Foreign Exchange Management (Export and Import of Currency), Regulations, 2000 • Foreign Exchange Management (Remittance of Assets) Regulations, 2000 • Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 • Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 • Foreign Exchange Management (Investment in Firm or Proprietary concern in India)

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