RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
CENTRAL OFFICE
MUMBAI 400 001

Notification No. FEMA 13 (R)/2016-RB **April 01, 2016**

Foreign Exchange Management (Remittance of Assets) Regulations, 2016

In exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA 13/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank makes the following regulations in respect of remittance outside India by a person whether resident in India or not, of assets in India, namely:

1. Short title and commencement:-

i) These Regulations may be called the Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

ii) They shall come into force from the date of their publication in the official Gazette.

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2. Definitions:-

In these Regulations, unless the context requires otherwise, -

(i) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);

(ii) 'Authorised Dealer' means a person authorised as an authorised dealer under subsection (1) of section 10 of the Act;

(iii) 'Non-Resident Indian' (NRI) shall have the same meaning assigned under the Foreign Exchange Management (Deposit) Regulations, 2016;

(iv) 'Person of Indian Origin' (PIO) shall have the same meaning assigned under the Foreign Exchange Management (Deposit) Regulations, 2016;

(v) 'Remittance of asset' means remittance outside India of funds representing a deposit with a bank or a firm or a company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of Insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Act or rules or regulations made there under;

(vi) the words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Prohibition on Remittance outside India of assets held in India:-

Save as otherwise provided in the Act or rules or regulations made or issued thereunder, no person, whether resident in India or not, shall make remittance of any asset held in India by him or by any other person:

Provided that the Reserve Bank may, for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person.

4. Permission for remittance of assets in certain cases:-

(1) A citizen of foreign state, not being a Person of Indian origin (PIO) or a citizen of Nepal or Bhutan, who

(i) has retired from an employment in India, or

(ii) has inherited the assets from a person referred to in sub-section (5) of section 6 of the Act; or

(iii) is a widow/ widower resident outside India and has inherited assets of the deceased spouse who was an Indian citizen resident in India, may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter

Provided that for the purpose of arriving at annual ceiling of remittance, the funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign state on repatriation basis in accordance with the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2016 and Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 made under the Act, shall not be included.

Provided further that where the remittance is made in more than one instalment, the remittance of all instalments shall be made through the same authorised dealer.

(iv) had come to India for studies/ training and has completed his studies/ training, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any Organisation in India.

(2) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year,

(i) out of the balances held in the Non-Resident (Ordinary) Accounts (NRO accounts) opened in terms of Foreign Exchange Management (Deposit) Regulations, 2016/ sale proceeds of assets/ the assets acquired by him by way of inheritance/ legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter;

(ii) Under a deed of settlement made by either of his parents or a relative (relative as defined in Section 2(77) of the Companies Act, 2013) and the settlement taking effect on the death of the settler, on production of the original deed of settlement;

Provided that where the remittance under Clause (i) and (ii) is made in more than one instalment, the remittance of all instalments shall be made through the same Authorised Dealer.

Provided further that where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that "the said remittance is sought to be made out of the remitter's balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA."

(3) An authorised dealer in India may, also allow remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013, subject to the following conditions:

(i) Authorised Dealer shall ensure that the remittance is in compliance with the order issued by a court in India/ order issued by the official liquidator or the liquidator in the case of voluntary winding up; and

(ii) no remittance shall be allowed unless the applicant submits:-

(a) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
(b) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013.
(c) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

5. Permission to an Indian entity to remit funds in certain cases:-

(1) An entity in India may remit the amount being its contribution towards the provident fund/ superannuation/ pension fund in respect of the expatriate staff in its employment who are resident in India but not permanently resident therein.

Explanation:

For the purpose of this Regulation, -

(a) 'expatriate staff' means a person whose provident/ superannuation/ pension fund is maintained outside India by his principal employer outside India;

(b) ‘not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

6. Permission for remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office)

(1) A branch or office established in India by a person resident outside India may, for making remittance of assets on closure or remittance of its winding up proceeds, apply to the Authorised Dealer concerned supported by the following documents, namely:

(A) A copy of the Reserve Bank's permission for establishing the branch/ office in India, wherever applicable;

(B) Auditor’s certificate:

(i) indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
(ii) confirming that all liabilities in India including arrears of gratuity and other benefits to the employees etc., of the branch/ office have been either fully met or adequately provided for;
(iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India; and
(iv) confirming that the branch/office has complied with all regulatory requirements stipulated by the Reserve Bank of India from time to time regarding functioning of such offices in India.

(C) A confirmation from the applicant that no legal proceedings are pending in any Court in India and there is no legal impediment to the remittance; and

(D) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the office in India.

(2) On consideration of the application made under sub-regulation (1), the authorized dealer concerned may permit the remittance subject to the directions issued by the Reserve Bank in this regard, from time to time.

7. Reserve Bank's prior permission in certain cases:-

(1) A person who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:

(i) Remittance exceeding USD 1,000,000 (US Dollar One million only) per financial year –

(a) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and

(b) by a Non-Resident Indian (NRI) or Person of Indian Origin (PIO), out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

(ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made;

(2) On consideration of the application made under sub-regulation (1), the Reserve Bank may permit the remittance, subject to such terms and conditions as it deem necessary.

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8. Payment of taxes:-

Any transaction involving remittance of assets under these regulations shall be subject to the applicable tax laws in India.

(Shekhar Bhatnagar)

Chief General Manager-in-charge

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