

## CHAPTER 12

### BANK ACCOUNTS AND OTHER ASSETS OVERSEAS OF RESIDENTS

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### BANK ACCOUNTS AND OTHER ASSETS OVERSEAS OF RESIDENTS

#### Introduction

**12.1** The opening, maintenance of and operations on accounts expressed in foreign currencies abroad as also acquisition, holding and disposal of foreign securities or immovable properties abroad by residents of India are subject to regulation by Reserve Bank. This Chapter outlines the regulations governing the opening and maintenance of foreign currency accounts and holding of foreign securities or immovable properties abroad by residents of India. It also deals with certain exemptions from the restrictions imposed by FERA 1973 granted to persons who have returned to India after a specified period in regard to their foreign currency assets abroad. The control and supervision over overseas bank accounts and other assets is centralised in the Central Office of Reserve Bank at Mumbai and all correspondence relating to these matters should be addressed to the Chief General Manager, Exchange Control Department (Foreign Accounts Section), Reserve Bank of India, Central Office, Mumbai-400 001.

#### Acquisition/Surrender of Foreign Exchange by Residents

**12.2** (i) Section 14 of FERA 1973 authorises the Central Government to order, by notification in the Official Gazette, persons in or resident in India to surrender foreign exchange owned or held by them to Reserve Bank or to such person as the Reserve Bank may authorise, at the prevailing rate of exchange. In terms of its Notification GSR 679E No. F.10/22/90/NRI Cell dated 17th July 1992, the Central Government has directed that every person in or resident in India, who owns or holds any foreign exchange expressed in any currency other than the currency of Nepal or Bhutan, should sell that foreign exchange to an authorised dealer within three months from the date of acquisition thereof, against payment in rupees at the current rate of exchange, **except** in the following cases -

- (a) Foreign exchange held by authorised dealers.
- (b) Foreign exchange acquired or held by persons for business or other purpose within the scope of authorisation granted by Reserve Bank.
- (c) Foreign exchange and any income thereon acquired by persons lawfully i.e. without contravention of the provisions of FERA 1973 while they were resident outside India for a continuous period of not less than one year.
- (d) Foreign exchange and any income thereon earned by persons through employment, business or vocation outside India taken up or commenced while they were resident outside India and such stay outside India was for a continuous period of not less than one year.
- (e) Foreign exchange acquired or received before 8th July 1947 and held outside India with the general or special permission of Reserve Bank.
- (f) Foreign exchange received by way of gift from persons referred to in items (c), (d) and (e) above and provided the resident donee is his relative i.e. husband, wife, brother or sister or any lineal ascendant or descendant of that individual and that tax, if any, payable thereon has been paid in India.
- (g) Foreign exchange received by way of inheritance from persons referred to in items (c), (d) and (e) above out of the funds covered by exemption and provided tax, if any, payable thereon has been paid in India.
- (h) Foreign exchange held in the form of foreign coins.
- (i) Foreign currency/ies held for numismatic purposes up to a total value of U.S.\$ 500.
- (j) Foreign currency/ies held for personal purposes upto a total value of U.S.\$ 2000 inclusive of foreign currency held for numismatic purpose or its equivalent.

(ii) By its Notifications No. FERA. 47/77-RB and No. FERA.48/77-RB both dated 24th November 1977 issued under Sections 8 and 9 of FERA 1973 respectively, Reserve Bank has made it obligatory for any person acquiring foreign exchange by way of income on assets held outside India, inheritance, settlement, gift (other than those covered by exemptions granted by Central Government as stated above) or remuneration for services or by way of payments made on behalf of persons resident outside India, to offer it for sale to an authorised dealer within seven days from the date of receipt if the foreign exchange is received in India. In all other cases, foreign exchange will have to be offered for sale to an authorised dealer within three months from the date of acquisition. If, however, in the meantime, such foreign exchange is brought or sent to India, it will have to be offered for sale within seven days from the date on which it is brought to or received in India.

*NOTE: In the case of residents who receive foreign exchange by way of gift or remuneration or payment for services rendered outside India during their temporary visits abroad, the obligation for repatriation and surrender of the foreign exchange to authorised dealers in India will arise in respect of unspent foreign exchange brought by them at the time of their return to India.*

### **Foreign Currency Accounts Abroad**

**12.3** Section 8(1) of FERA 1973, read with the 'Explanation' thereunder prohibits any person resident in India other than an authorised dealer from depositing money into a foreign currency account abroad without general or special permission of Reserve Bank. No person in or resident in India can, therefore, open an account expressed in foreign currency abroad without prior approval of Reserve Bank. Reserve Bank has, however, granted general permission to persons in or resident in India to maintain and operate on foreign currency accounts abroad in certain cases as explained below.

**(A) Accounts of persons temporarily out of India**

Indian nationals who proceed abroad for purposes such as business, medical treatment, higher studies, training, etc. continue to be treated as residents in India even during their absence from India. In order to facilitate their opening foreign currency accounts and operating them during their stay abroad for purposes connected with their visits, Reserve Bank has granted general permission to such persons to open foreign currency accounts with banks abroad and operate them during their stay outside India, provided deposits into the accounts are made only out of (a) foreign exchange obtained from an authorised dealer or money-changer in India or (b) foreign exchange received outside India by way of scholarship or stipend, or by way of salary or payment for services not arising from any business in India or anything done while in India. The general permission ceases to be operative on the return of the account holder to India. The accounts opened in terms of the general permission should, therefore, be closed and balances transferred to India immediately on return to India.

*[cf. Reserve Bank Notifications No.FERA 47/77-RB dated 24th November 1977 and FERA 134/93-RB dated 26th April 1993].*

**(B) (i) Accounts of persons coming or returning to India from abroad for employment, business, settlement, etc.**

Reserve Bank has granted general permission to persons who have come or returned to India after a minimum continuous stay of one year abroad as persons resident outside India (hereafter referred to as 'such persons') in regard to the maintenance of and operations on foreign currency accounts with banks abroad, provided the funds held in the bank accounts were acquired by such persons otherwise than in contravention of the provisions of FERA 1973, while they were resident outside India. The general permission also applies to all income i.e. interest, dividend, etc. earned on the foreign exchange assets i.e. bank deposits, investments in foreign currency shares or securities, or immovable properties situated outside India or investments in business etc. outside India, lawfully acquired by such persons while resident outside India as well as to sale proceeds of such investments (but received after their return to India). Pension received by such persons from erstwhile employment outside India is also covered by the general permission. In the case of persons who have not returned to India for good i.e. those who have retained their links abroad through employment, business or vocation outside India, taken up or commenced while they were resident outside India, the exemption applies to foreign currency continued to be acquired through such employment, business or vocation outside India even after their return to India. Balances held in overseas bank accounts by such persons at the time of their return to India are not required to be surrendered or declared to Reserve Bank. Fresh credits to such accounts should be out of foreign currency acquired for which exemption is available as indicated above.

**(ii) Accounts of residents held since prior to 8th July 1947**

Residents maintaining foreign currency balances abroad which were acquired by them prior to 8th July 1947 were required to obtain permission of Reserve Bank for continuing to hold these balances abroad and submit annual returns of such foreign exchange held and repatriate to India the incomes earned on these balances. Such persons have now been granted general permission by Reserve Bank in regard to maintenance of and operations on their foreign currency accounts with banks abroad, provided they hold the necessary permission (or licence) issued by Reserve Bank. The general permission also applies to all interest incomes earned on the foreign currency balances. Such persons need not, therefore, submit annual returns in respect of the funds held in the accounts to Reserve Bank or repatriate the interest incomes earned on such accounts as stipulated in the respective permission/licence issued by Reserve Bank.

**(iii) Accounts abroad maintained out of funds received by way of gift or inheritance from funds held abroad by persons referred to in category (i) and (ii) above**

Residents who may acquire foreign currency funds by way of gift or inheritance from the persons referred to in category (i) and (ii) above out of the funds covered by the exemption granted by Reserve Bank have also been granted general permission for maintenance of and operation on the foreign currency accounts with banks abroad, provided in the case of gift, the recipient donee is a relative i.e. husband, wife, brother, sister or any lineal ascendant or descendant of the donor and the tax payable thereon, if any, has been paid in India. As a result, such foreign currency funds received by residents or any incomes earned thereon subsequently would also be covered by the general permission and hence need not be declared to Reserve Bank.

*[cf. Reserve Bank Notification No.FERA.116/92-RB dated 7th 1992]*

**(C) Payments out of foreign currency accounts**

Reserve Bank has granted general permission to persons in or resident in India for making any payments to persons resident outside India out of funds held in bank accounts covered by the exemptions referred to in (B) above. Hence, there will be no restrictions on the utilisation of the balances in the said accounts for any bona fide payments in foreign currency. This includes payments for making further investments in shares/securities or immovable properties etc. abroad provided the cost of such investments and/or any subsequent payments required therefor, are met exclusively out of the foreign currency funds held in accordance with the provisions in (B) above.

*[cf. Reserve Bank Notification No.FERA.117/92-RB dated 7th September 1992 issued under Section 9(1) of FERA 1973]*

**Permission for opening New Accounts in certain cases**

**12.4** Persons of Indian nationality/origin returning to India for permanent settlement and satisfying the requirements laid down in category (i) of paragraph 12.3(B) would be eligible for continuing to maintain their existing foreign currency accounts with banks abroad or to open fresh accounts to deposit the eligible funds in such accounts. They can also retain eligible funds in Resident Foreign Currency(RFC)Accounts with an authorised dealer in India (see Part E of Chapter 14). However, persons who do not satisfy the conditions laid down in paragraph 12.3(B) e.g. persons returning to India after short assignments abroad of less than one year, should arrange to close their foreign currency accounts, if any, maintained by them during their stay abroad and transfer the balances therein to India within three months from the date of their arrival in the manner laid down in paragraph 12.2. Reserve Bank may agree, on application, in deserving cases to the retention of the foreign currency accounts abroad for a slightly longer period in order to facilitate settlement of outstanding dues, collection of income-tax refund, etc. subject to the balance being eventually repatriated to India. Applications for this purpose may be made in form FAD 1. They will also be permitted, on application, to keep funds in RFC accounts with an authorised dealer in India (See paragraph 14E.2).

#### **Accounts abroad of Indian Firms, Companies, etc.**

**12.5** (i) Indian shipping companies will be permitted, on application, to maintain foreign currency accounts with banks abroad for retaining foreign exchange earnings by way of freight collections etc. to meet their operating expenses in foreign ports on condition that they will maintain at all times balances not exceeding reasonable fund requirements to meet disbursements at foreign ports subject to such overall limit as may be stipulated by Reserve Bank from time to time as also for meeting expenditure such as P & I Club fees, charter hire payments, ship repairs, dry docking, spares, etc. Any surplus funds should be repatriated to India without delay. Investment of foreign currency balances in any form including placement on call or term deposits with overseas banks is not permitted. Applications for permission to open and maintain foreign currency accounts abroad should be made to the concerned office of Reserve Bank in whose jurisdiction the shipping company is functioning.

(ii) Regulations governing opening of foreign currency accounts abroad by other Indian firms/companies for specific purposes such as for retention of foreign currency subscriptions or proceeds of foreign currency loans raised abroad for financing imports, etc. have been laid down in the respective chapters.

#### **Acquisition, Holding and Disposal of Foreign Securities**

**12.6** (i) Under Section 19(1)(e) of FERA 1973, no person shall, except with the general or special permission of Reserve Bank, acquire, hold or dispose of any foreign security i.e. any security issued outside India or expressed to be payable in any currency other than Indian rupee or elsewhere than in India. By its Notification No. FERA.118/92-RB dated 7th September 1992, Reserve Bank has granted general permission to persons resident in India to acquire, hold or dispose of any foreign security in the following cases:

- (A) Where it is obtained out of foreign exchange acquired by them (a) in a manner otherwise than in contravention of the provisions of FERA 1973 while they were resident outside India or (b) through employment, business or vocation outside India taken up or commenced while they were resident outside India and in either case, their stay outside India was for a continuous period of not less than one year.
- (B) Where it is held since prior to 8th July 1947 and for which the permission/licence of Reserve Bank was obtained.
- (C) Where it is acquired by way of gift or inheritance from persons referred to in category (A) and (B) above and covered by the exemption granted by Reserve Bank, provided in the case of gift, the recipient donee is a relative i.e. husband, wife, brother, sister or any lineal ascendant or descendant of the donor and the tax payable thereon, if any, has been paid in India.

The general permission also applies to acquisition of fresh securities out of the foreign exchange held by residents in terms of general exemption granted by Reserve Bank, vide paragraph 12.3(B) above.

(ii) Persons satisfying the conditions for the general permission referred to in sub-paragraph (i) above can credit the income or sale/maturity proceeds of such securities to their foreign currency accounts abroad and in the case of persons referred to in category (A) of sub-paragraph (i) above, the income or sale/maturity proceeds of securities can also be credited to their RFC accounts with an authorised dealer in India (see paragraph 14E.4).

(iii) Persons resident in India who are not covered by the general permission referred to in sub-paragraph (i) above and holding or becoming owners of foreign securities should make an application to Reserve Bank for permission to hold foreign securities, in form FAD 1.

(iv) Persons resident in India who are not covered by the general permission referred to in sub-paragraph (i) above and holding foreign securities with the permission of Reserve Bank will be allowed to remit up to US \$ 10,000 in a block of 5 years towards acquisition of rights shares of foreign companies if the dividends received by them are not sufficient to cover the cost of rights issues. The applicants should approach Reserve Bank for necessary permission with relevant documents.

**Acquisition of Foreign Currency Shares by Employees of Indian Offices/Branches/Subsidiaries/Joint Ventures in India of Foreign Companies**



**12.7** Persons who are permanently resident in India are not normally allowed to make remittances from India to foreign countries for acquisition of foreign securities. However, Reserve Bank may consider applications from employees of Indian offices/branches of foreign companies as also joint ventures/subsidiaries in India in which foreign equity holding is 51 per cent and above for remittance towards acquisition of foreign currency equity shares of the foreign companies offered at concessive rates below the market price, provided the remittances do not exceed U.S.\$ 10,000/- or its equivalent per employee, in a block of five years including acquisition of shares on rights basis, if any. The application for this purpose may be made to the Reserve Bank with relevant details such as, total number and face value of foreign currency shares to be allotted and the concessive rate offered for the shares vis-a-vis the prevailing market price, together with certified copies of the foreign company's latest audited balance sheet and resolution passed by its Board of Directors or any other document/s in support of the offer of shares to at concessive rate. Furthermore, acquisition of shares of the foreign company by the employees of their Indian branches/offices/wholly-owned subsidiaries in lieu of bonus payment will be allowed without any ceiling. For this purpose, the applicants should approach Reserve Bank for necessary permission with relevant documents.

### **Import and Export of Foreign Securities**

**12.8** There are no restrictions on import into India of any security, whether Indian or foreign. Reserve Bank's permission is, however, required for taking or sending any security to any place outside India in terms of Section 19(1)(a) of FERA 1973. Persons in India who are holders of foreign securities and wish to send the securities to banks or agents abroad for purposes of sale, transfer, etc., should therefore apply to Reserve Bank through an authorised dealer for the necessary export permit. Permission for export of foreign securities will be granted, provided the authorised dealer gives an undertaking in the case of sale that the foreign currency proceeds of the securities sold will be repatriated to India and in the case of transfer that the securities after transfer will be received back in India within a reasonable period. These restrictions however do not apply to persons holding securities covered under the general permission referred to in paragraph 12.6(i).

### **Acquisition, Holding etc. of Immovable Property outside India**

**12.9** (i) In terms of Section 25 of FERA 1973, Indian nationals resident in India and firms/companies registered/incorporated in India are required to obtain permission of Reserve Bank to acquire, hold, transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise, any immovable property situate outside India.

NOTES: A. *These restrictions do not apply to immovable property taken or given on lease for a period not exceeding five years.*

B. *These regulations will be applicable to acquisition, holding etc. of immovable property in Nepal by Indian nationals resident in India and firms/companies registered/incorporated in India even though the transactions may be settled in Indian rupees.*

(ii) By its Notification No. FERA.120/92-RB dated 7th September 1992 issued under Section 25 of FERA 1973, Reserve Bank has granted general permission to Indian nationals to acquire/hold immovable property outside India to the following categories of persons-

- (A) Persons returning to India after a minimum continuous stay of one year abroad as persons resident outside India, provided the property has been purchased out of foreign exchange lawfully acquired by them while resident outside India or earned through employment, business or vocation taken up or commenced while resident outside India.
- (B) Persons holding the property since prior to 8th July 1947 and for which permission/licence of Reserve Bank was obtained.
- (C) Persons acquiring the property by way of gift or inheritance from persons referred to in category (A) or (B) above and covered by the exemption granted by Reserve Bank, provided in the case of gift, the recipient donee is relative i.e. husband, wife, brother, sister or any lineal ascendant or descendant of the donor and the tax payable thereon, if any, has been paid in India.

The general permission also applies to fresh acquisition (which includes holding/disposal) of properties out of foreign exchange held by such persons in terms of general permission granted by Reserve Bank, vide paragraph 12.3(B). Income on such properties can also be credited to their foreign currency accounts abroad. In the case of persons referred to in category (A) above, the income can also be credited to their RFC accounts maintained with an authorised dealer in India (see paragraph 14E.7).

(iii) Indian nationals resident in India who are not eligible for the general permission and holding or becoming owners of immovable properties abroad should apply to Reserve Bank in form FAD 1 for permission to hold immovable properties outside India acquired by them.

NOTE: *It may be necessary for firms/companies registered in India desiring to establish offices abroad to acquire or take on long lease, immovable properties outside India. In cases where applications for establishing offices abroad are approved, permission for acquiring immovable properties required for establishing the offices will be considered.*

### **Declaration of Existing Properties to Reserve Bank**

**12.10** Persons and firms/companies referred to in paragraph 12.9 holding immovable properties outside India as on 1st January 1974 were required to declare to Reserve Bank full particulars of the properties held by them. Permission in the form of holding licences has been granted to those who had declared their properties to Reserve Bank.

### **Sale/Transfer of Immovable Properties**

**12.11** Reserve Bank will permit, on application, any person/firm/company holding immovable property abroad to sell it, provided Reserve Bank is satisfied that the property is being sold at the best possible price and the seller has undertaken to repatriate sale proceeds to India through an authorised dealer. Reinvestment abroad of sale proceeds of a property will not be permitted. Sale of immovable property held abroad to another resident in India is also not permitted. Transfer of property by gift, settlement, lease (for a period exceeding five years), etc. in favour of any person will require prior permission of Reserve Bank [Also see paragraph 12.9(ii) in regard to sale/transfer of properties held abroad by persons eligible for general exemption].

### **Loans against Foreign Currency Balances/Foreign Securities**

**12.12** Authorised dealers should obtain prior approval of Reserve Bank for granting loans and overdrafts whether in India or abroad, to residents against foreign currency balances or foreign securities held by them.

### **Special Facility and RIFEE Scheme to Returning Indians**

**12.13** Non-residents of Indian nationality/origin returning to India for permanent settlement (Returning Indians) were granted foreign exchange entitlements in the form of RIFEE permits under the Returning Indians Foreign Exchange Entitlement Scheme (RIFEE Scheme) up to 50% of the foreign exchange repatriated by them to India at the time of their return to India. RIFEE permit holders could avail of foreign exchange entitlements for certain specified purposes for themselves or their dependants for a period of 15 years reckoned from the date of their return to India. Persons returning to India for exploratory purpose were eligible for a **Special facility** under which they were granted exemption from the requirement of surrender of foreign currency balances held abroad or **Reconversion facility** in respect of foreign currency balances repatriated to India, provided they decided to go back within a period of five years or any extended period. With the introduction of RFC accounts facility, the RIFEE Scheme was withdrawn effective 22nd February 1992. Similarly, in view of the general permission granted to Returning Indians in regard to their foreign assets [cf. paragraph 12.3(B)(i) and 12.6(i)(A)], the Special facility and Reconversion facility were withdrawn since 22nd February 1992. The RIFEE permit holders and those who were granted Reconversion facility have been given option to continue the existing facility or avail themselves of new RFC accounts facility. These options were permitted to be exercised at one stroke or in part amounts during the validity period of RIFEE permit or Reconversion facility. Persons who were granted the Special facility would now be automatically covered by the general permission referred to above.