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Acquisition & Transfer Of Immovable Property

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IN THE NEWS!

Home Run

Indians are among the largest property buyers in Dubai in 2023, beating British investors in at least two quarters

Deals can be cut with **1-5%** down-payment

Many practitioners questioning such instalment plans



Properties can't be bought abroad with borrowed money

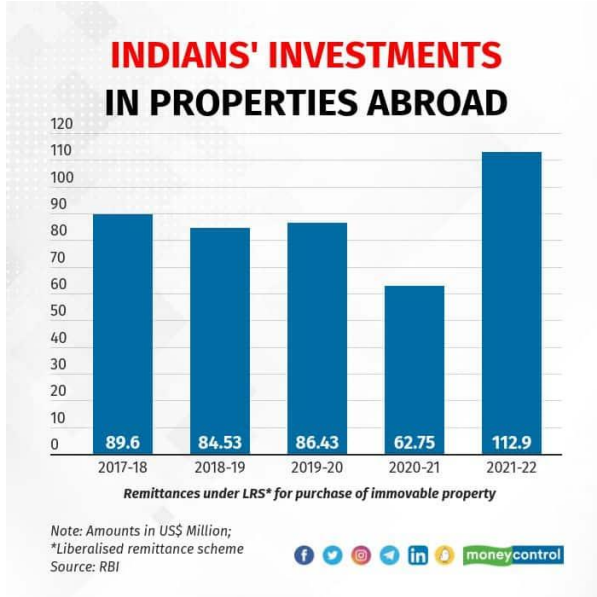
This puts instalment plans in a grey area of the law

SOURCE: ECONOMIC TIMES

Synopsis:

- Navigating property purchases in Dubai can be a regulatory maze for Indians due to foreign exchange laws.
- Deals offering easy payment plans with instalments over years may violate FEMA.
- However, transactions **involving 'instalments'** create obligations in foreign exchange, potentially **breaching FEMA** rules.

The transaction involving purchase of immovable property on **deferred payment** basis is **not permitted** without prior approval of RBI as it **creates obligation** in foreign exchange



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

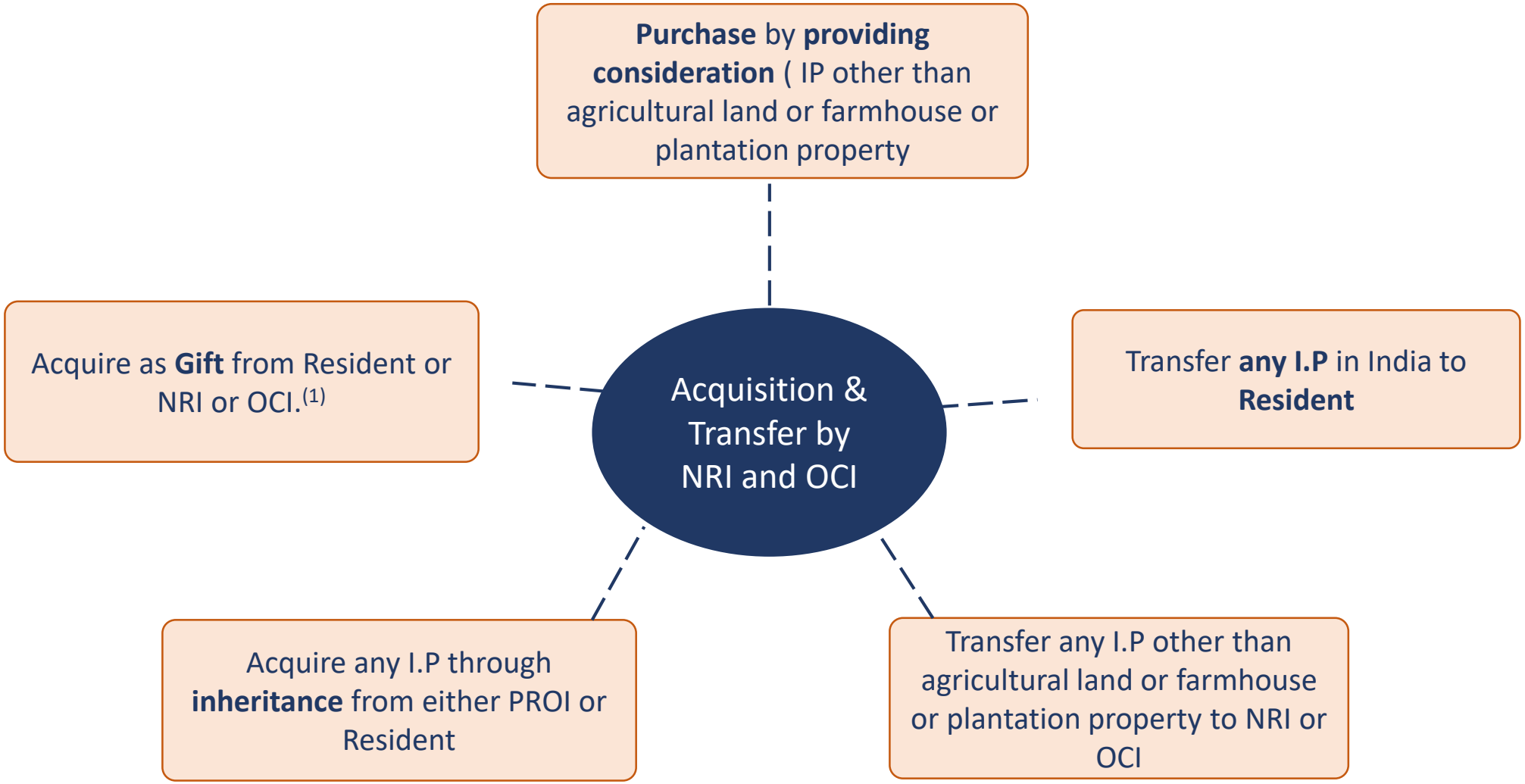
NRI means
"a person resident outside India who is a citizen of India"

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

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

IMMOVABLE PROPERTY IN INDIA

ACQUISITION AND TRANSFER RIGHTS OF NRI AND OCI



(1) Who in any case is a relative as defined under section 2(77) of Companies Act

PURCHASE OF IMMOVABLE PROPERTY BY NRI

Purchase / Acquire as Gift - Immovable Property in India

Type of Property

Ineligible IP

- Agricultural Land
- Plantation Property
- Farmhouse

Eligible IP

- Residential / Commercial Property
- All other IP other than the Ineligible List

Purchase / Gift from

Yes → **NRI / OCI**

Yes → **Resident**

Purchase from Account

- **NRO**
- **NRE**
- **Foreign Bank A/c**

Points to be noted:

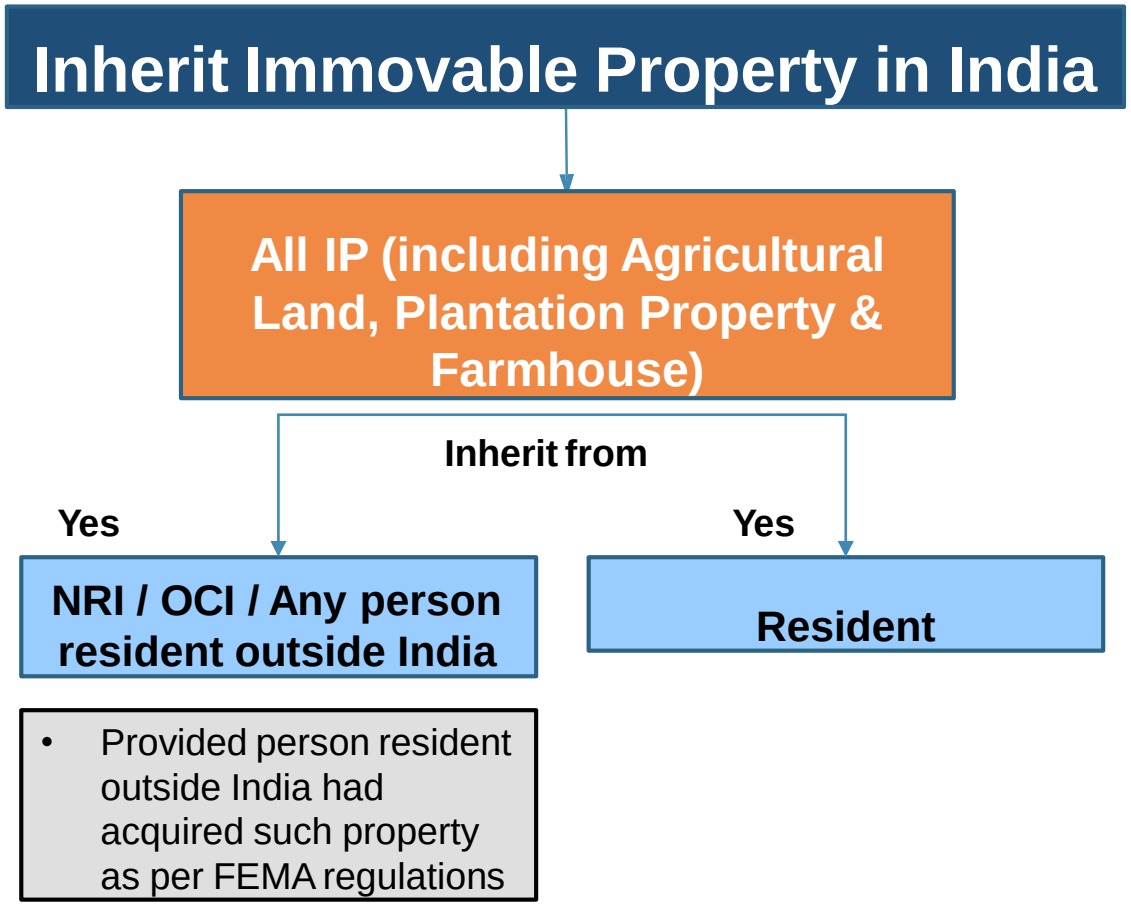
1. Gift can only be received from relative as defined in section 2(77) of Cos Act 2013
2. Purchase of IP is not allowed by way of Traveller's Cheque or Foreign Currency notes or by any other mode other than permitted

GIFT OF IMMOVABLE PROPERTY TO NRI

Case: Gifting to NRI

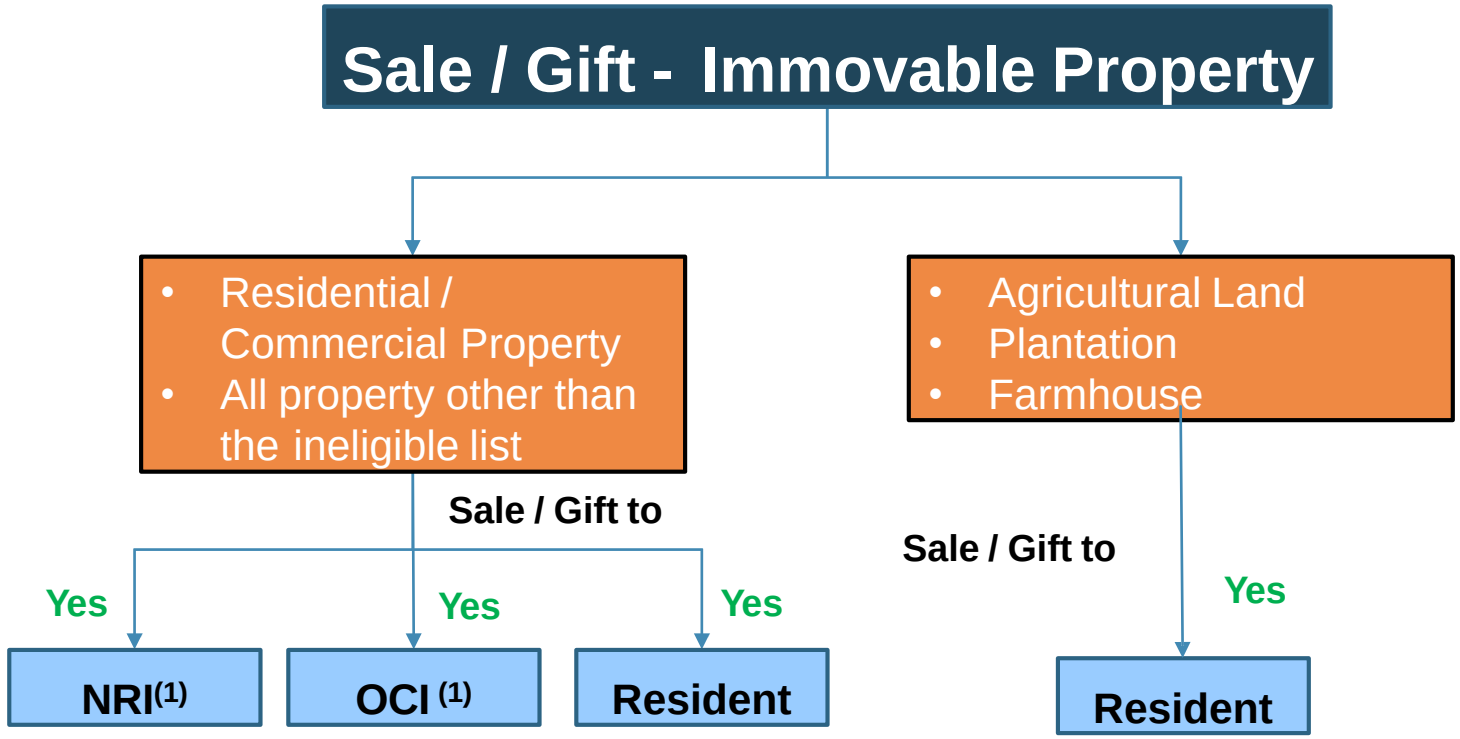
- Resident Purchases flat worth ₹ 10 Crore
- Wants to gift flat to NRI son
- Whether LRS limits will apply or only NDI rules

INHERITANCE OF IMMOVABLE PROPERTY BY NRI / OCI



NRI / OCIs can hold agricultural land received from inheritance or acquired when they were resident but cannot undertake agricultural activities on the same

SALE / GIFT OF IMMOVABLE PROPERTY BY NRI / OCI



(1) Gift can only be received from relative as defined in section 2(77) of Cos Act 2013

HOW AN NRI & OCI ACQUIRE I.P IN INDIA

Action on Property	Resident	NRI	OCI
Purchase*	✔	✔	✔
Acquire as gift*	✔	✔	✔
Acquire any I.P as inheritance	✔	✔	✔
Sell agriculture land to	✔	✘	✘
Gift*	✔	✔	✔
Gift (agriculture land) to	✔	✘	✘

*: other than agricultural land/ farmhouse/ plantation

JOINT ACQUISITION BY THE SPOUSE OF A NRI OR OCI

Jointly with her NRI/OCI spouse

Marriage should be registered and should have subsisted for at least 2 years prior to date of acquisition

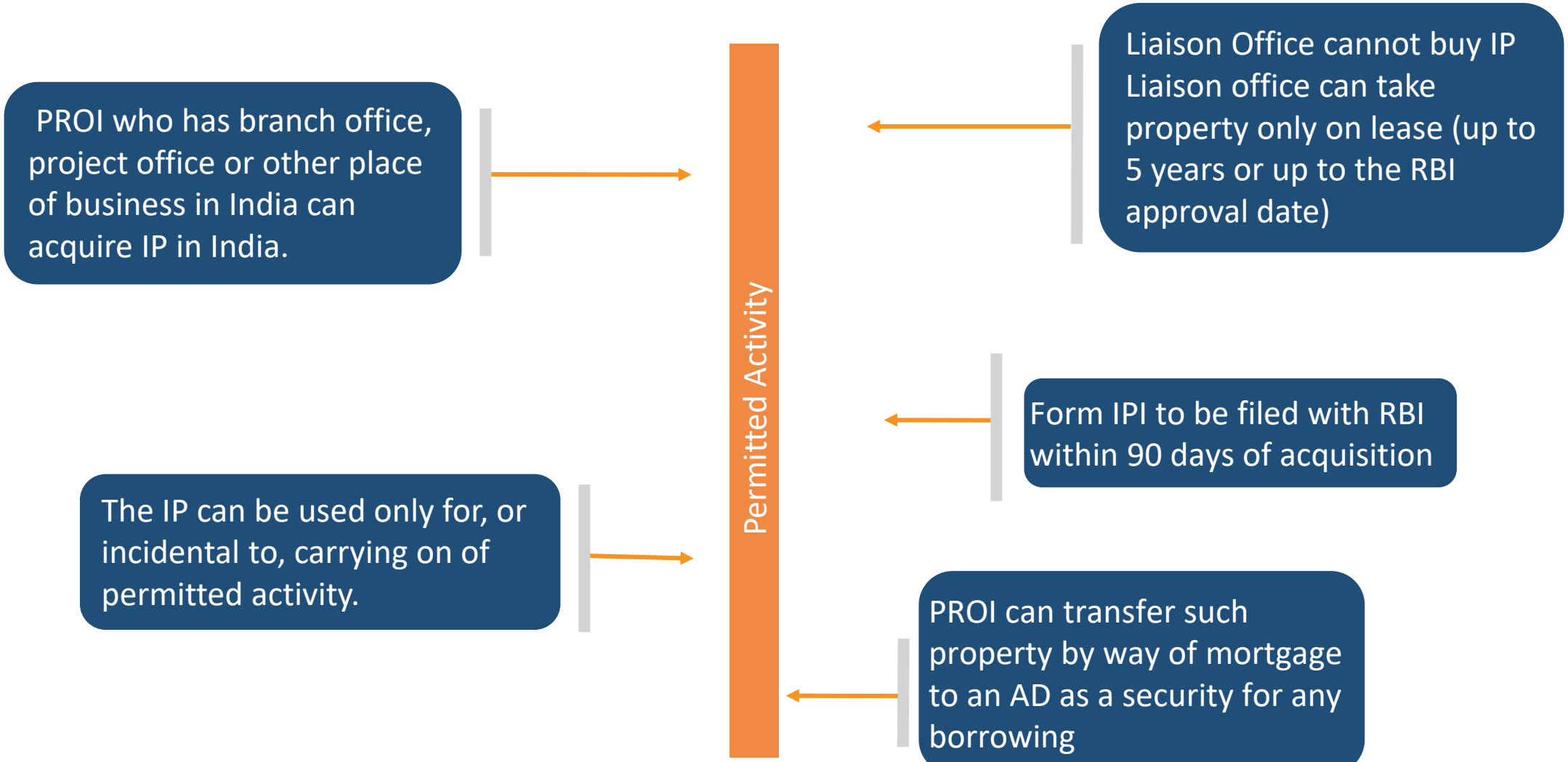


Spouse of NRI/OCI who is PROI and not NRI/OCI can acquire only one IP (other than agricultural land, farm house or plantation property)

Acquisition formalities remain the same as for NRIs/OCIs

The non resident spouse must not be otherwise prohibited from such acquisition

I.P IN INDIA FOR PERMITTED ACTIVITY



PAYMENT / REPATRIATION

Payment for Acquisition

- ✓ Out of 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
- ✓ Payments **cannot** be made by **traveller's cheque** or by **foreign currency notes** or by other mode except those specifically mentioned above

Repatriation of Sale Proceeds

- ✓ Property acquired by way of Sec 6(5) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the RBI
- ✓ Sale of IP (other than agricultural land/ farm house/ plantation property) in India by a NRI/ OCI provided:
  - ✓ IP acquired by the seller in accordance with FEMA
  - ✓ Amount for acquisition of IP has been paid in foreign exchange through normal banking channels or funds held in NRE Account or FCNR Account
  - ✓ In the case of **residential property**, the **repatriation** of sale proceeds is **restricted** to not more than **two** such properties

NRI / OCIs have life time limit of repatriation from sale of two residential properties

Section 6(5) of FEMA states that a person resident outside India may hold, own, transfer or invest in any immovable property situated in India if such 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

CASE 1 BUYING AGRICULTURAL LAND BY NRI

Facts of the case:

- Mr. X, NRI wants to purchase agricultural land on outskirts of Sanand
- Mr. X's father as well as grand father are all farmers holding agricultural land in Sanand
- Mr. X has transferred funds from US to his NRE A/c for purchasing above agricultural land

Questions:

- Whether it is permissible for Mr. X to purchase agricultural land from NRE A/c ?
- Would answer be different if NRO A/c is utilised to purchase agricultural land?
- What to do incase wrongly purchased?

CASE 2

Acquisition of an agricultural land for cultivation purpose in India by a foreign nationals without the prior RBI approval

Facts of the case:

- Applicants: British citizens and UK residents.
- Joint acquisition of immovable property in Goa, India of Rs. 10,00,000.
- Property: Residential house and coconut cultivation.
- No prior RBI approval obtained at the time of acquisition.

Questions:

- What will be the course of action and Compliance required to be done?
- Power of RBI to compound offence committed at the time of FERA?

CASE 3 Self valuation or RBI valuation

Facts of the case:

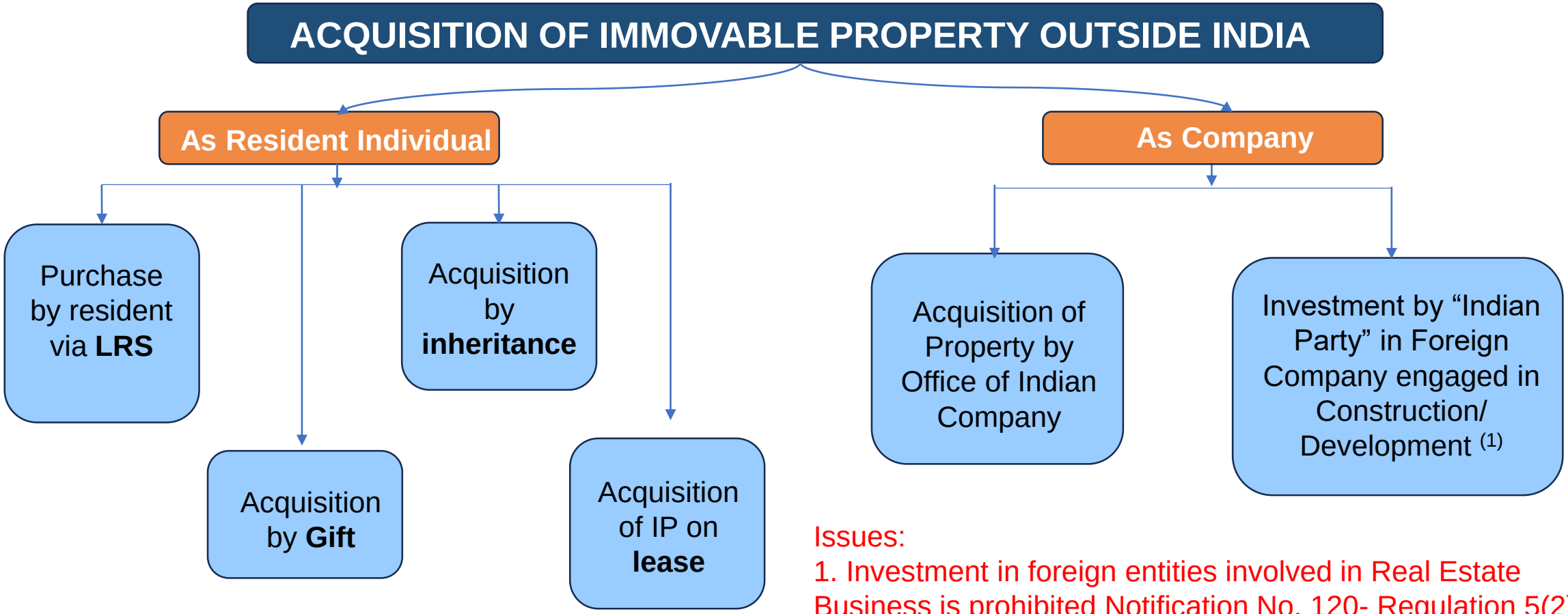
- Non-resident French citizens acquired a plot in Kerala without RBI permission on 16th May 2005; land cost: Rs. 15,00,000; construction cost: Rs. 85,00,000.
- Built a residential building on the plot.
- Advised by RBI to sell the property to a PRI within 6 months; sold on 19th April 2017 for Rs. 75,00,000 to an Indian company.
- Applicants' valuation report: Rs. 84,91,000; RBI's valuation report: Rs. 1,28,75,000.
- RBI calculated undue gains as Rs. 28,75,000 (RBI valuation minus purchase and construction cost).

Questions:

- What will be the course of action and Compliance required to be done?

IMMOVABLE PROPERTY OUTSIDE INDIA

INVESTMENT IN I.P Outside India

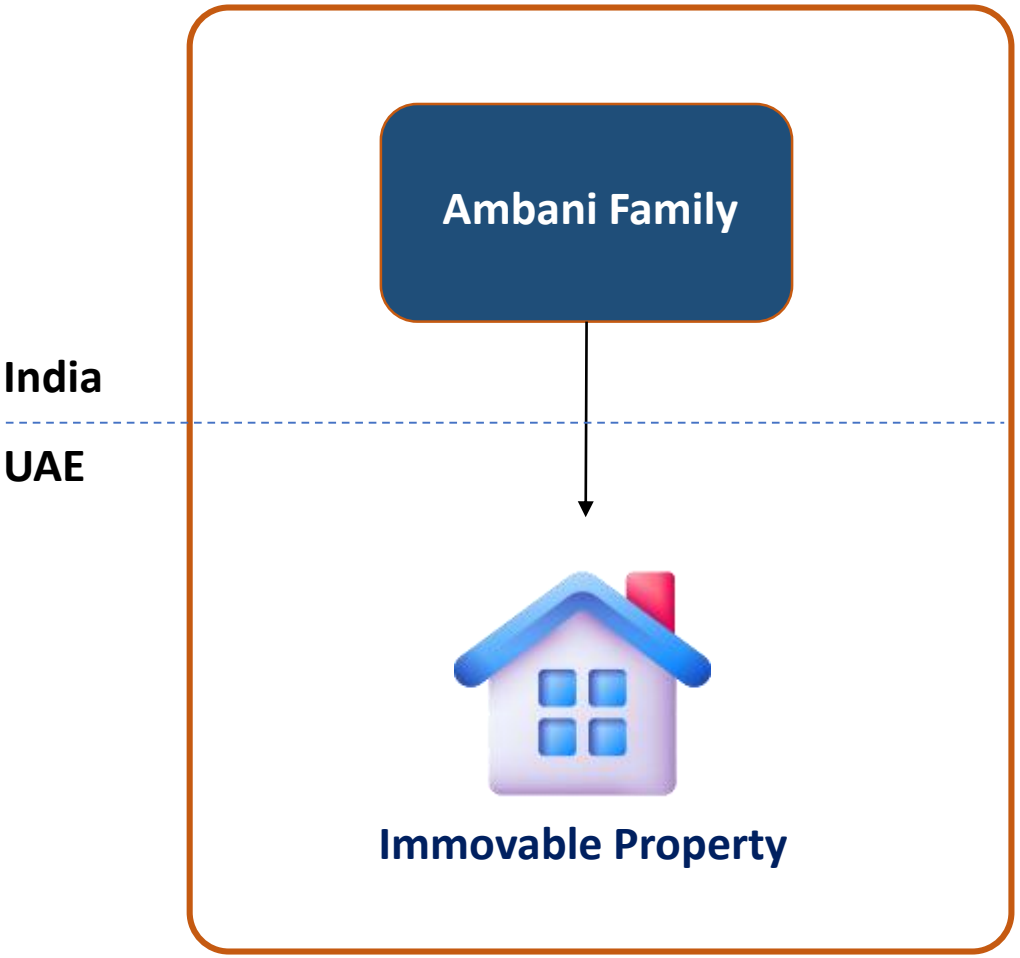


Issues:

1. Investment in foreign entities involved in Real Estate Business is prohibited Notification No. 120- Regulation 5(2).
2. Whether ODI in an entity which is engaged only in leasing of a property abroad permissible ???

(1) = Investment in Real Estate sector not allowed

Case Study 1:Investment in immovable property abroad under LRS



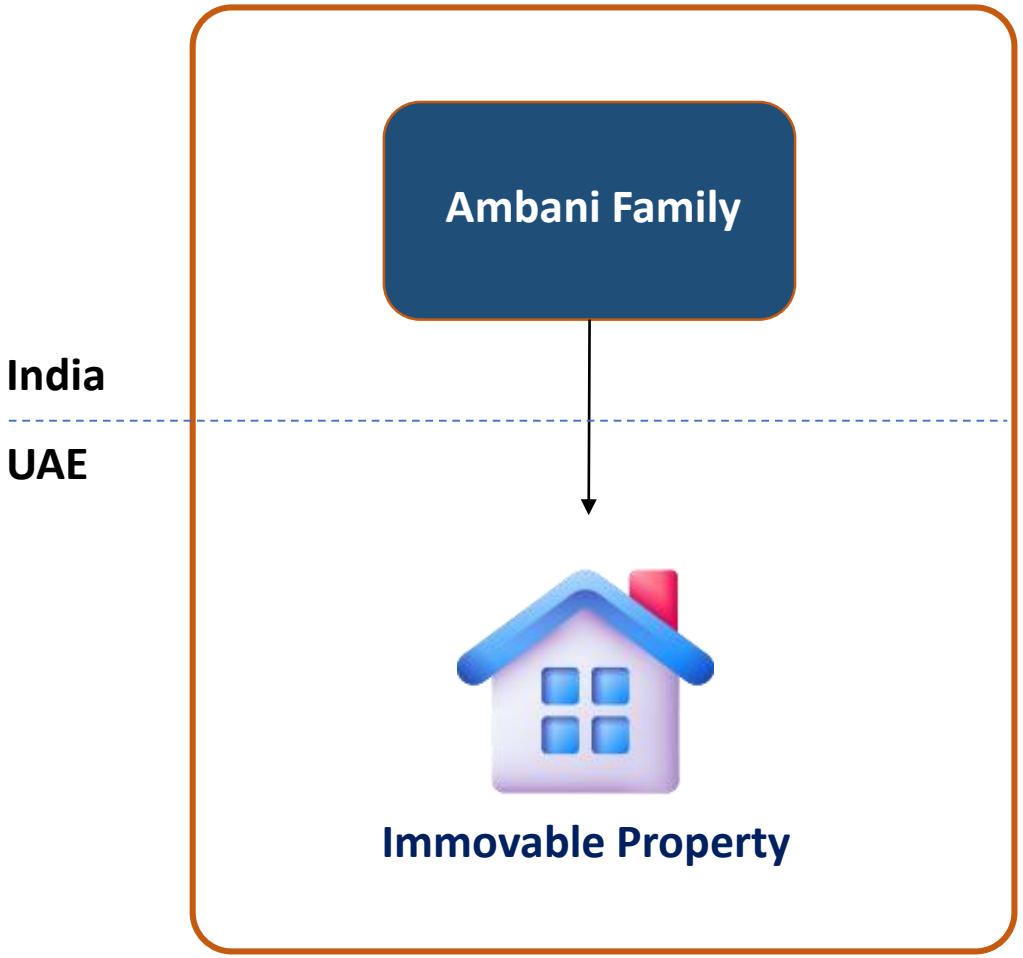
Facts:

- Ambani family intends to purchase immovable property in UAE.
- Property investment is of $1 Million

Queries:

- Can multiple family members invest together?

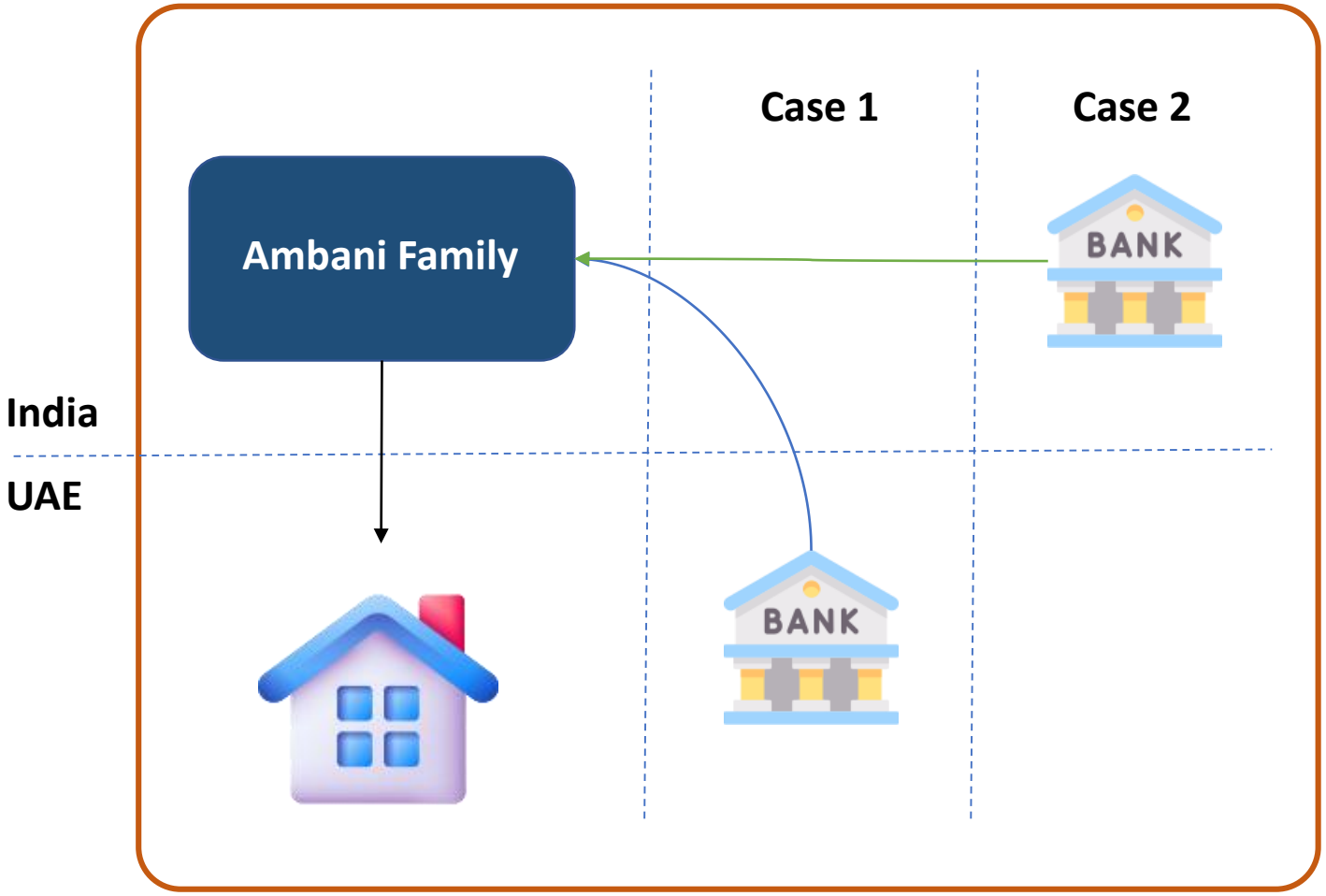
Case Study 1:Investment in immovable property abroad under LRS



Answer

- Ambani Family can jointly purchase property – 4 family members can remit funds of USD 250,000 to invest 1M USD.
- Property has to be in joint name
- Ownership needs to be in proportion to investment made
- Family Members covered No definition for family members

Case Study 2 – Investment in immovable property abroad under LRS



Facts:

- Ambani family intends to purchase immovable property in UAE.
- Property investment is of $1 Million

Queries:

- Can property be purchased on instalment basis?
- Can property be purchased under EMI or mortgage loan?

Case Study 2 – Investment in immovable property abroad under LRS

Answer

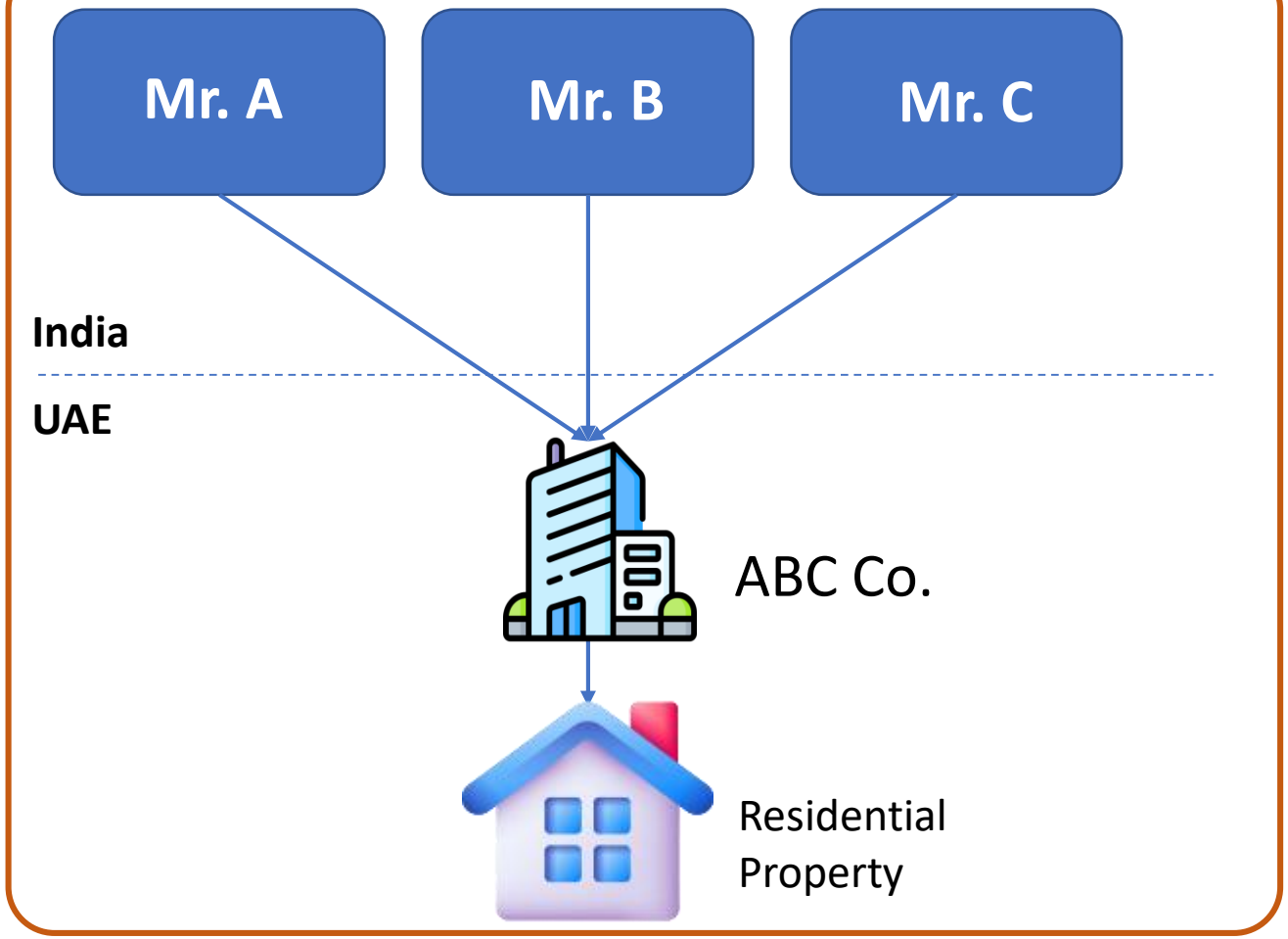
Installments:

- LRS **does not envisage extension** of fund and non-fund based facilities by the AD banks to their resident individual customers to facilitate remittances **for capital account transactions** under LRS.
- However, AD banks **may extend** fund and non-fund based facilities to resident individuals to **facilitate current account remittances** under the Scheme.

Loans:

- Individuals cannot enter into a loan agreement overseas
- (Refer Compounding Order dated 19.07.19 in case of Mr. Dharmpal Agarwal).

Case Study 3 – Investment in immovable property abroad under LRS through company



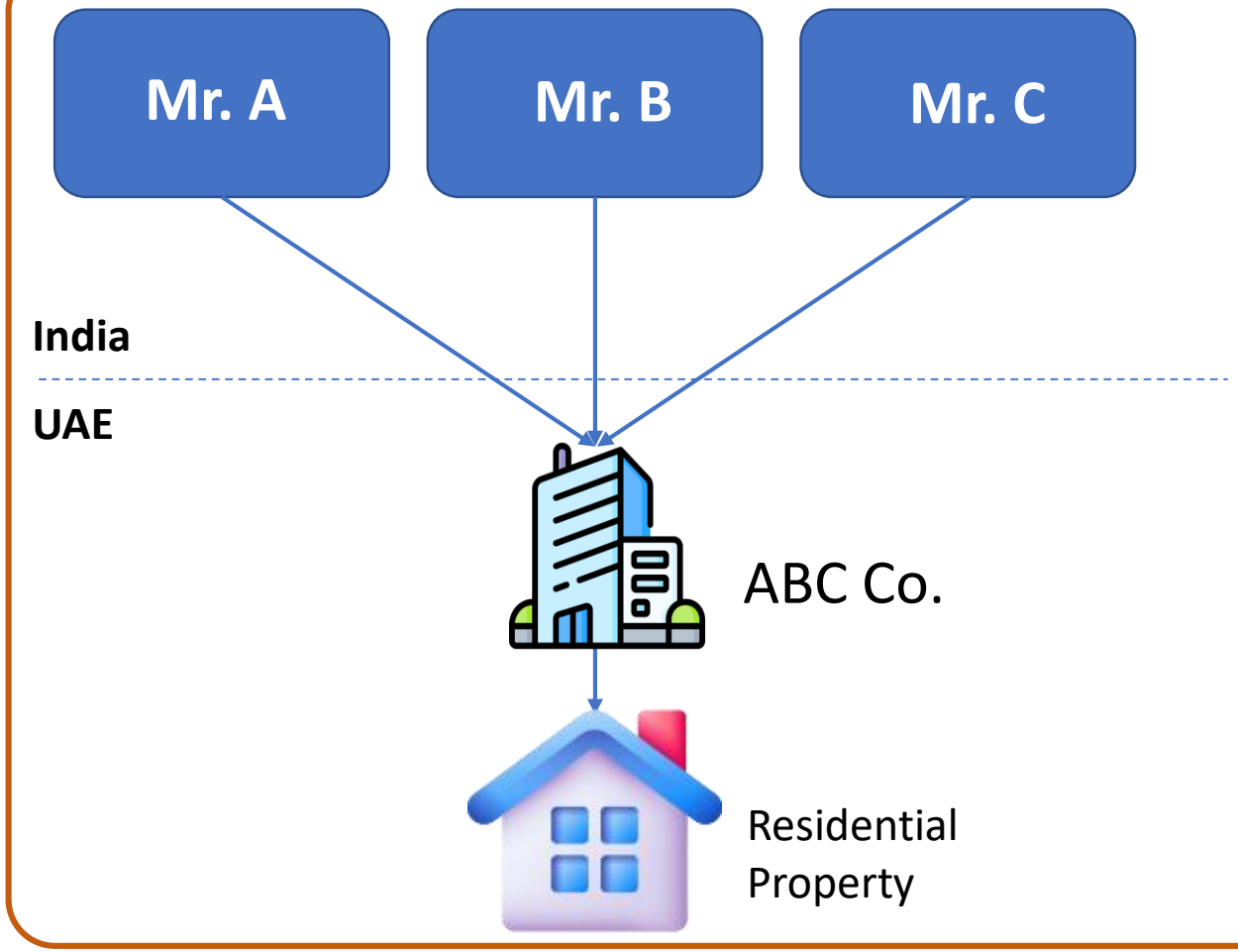
Facts:

- Mr. A, Mr. B and Mr. C incorporate a Co. in UAE through LRS
- ABC Co. purchases immovable property in UAE

Queries:

- Can property be purchased through company under LRS?

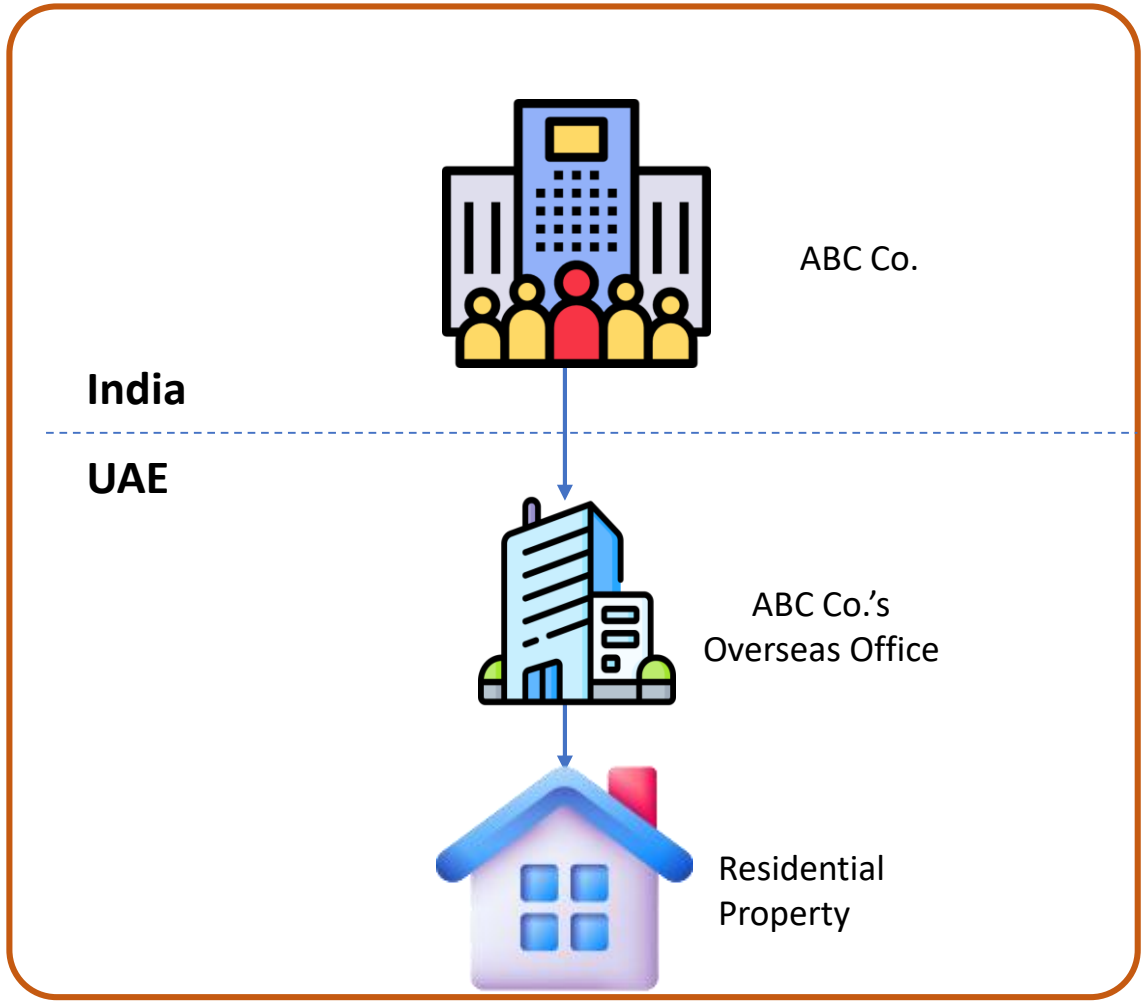
Case Study 3 – Investment in immovable property abroad under LRS through company



Answer

- This type of transaction is out of the purview of Rule 21, therefore not allowed without prior RBI approval

Case Study 4 – Investment in immovable property abroad through overseas office of Indian Entity



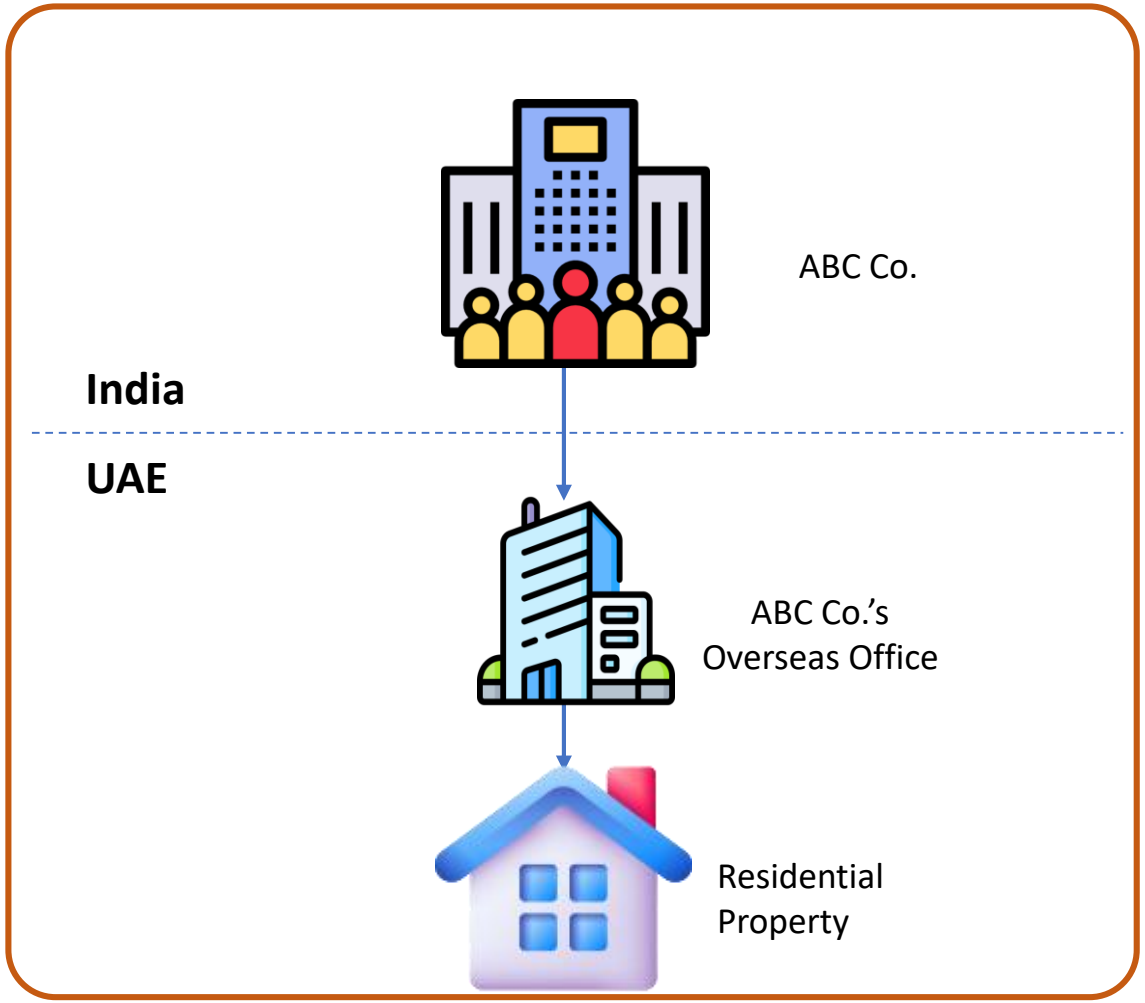
Facts:

- ABC Pvt Ltd incorporated in India has an overseas office in UAE.
- Can that overseas office purchases immovable property in UAE ?

Queries:

- Can property be purchased through the branch office?

Case Study 4 – Investment in immovable property abroad through overseas office of Indian Entity.



Answer

- Overseas branches of an Indian company can acquire IP for its business including **residence of its staff** within the limits for initial & recurring expenses as follows
- Upto 15% of **average annual sales**/ turnover of the Indian party during last two financial years or
- Up to 25% of the **net worth**, whichever is higher for **initial set up**
- Up to 10% of the average annual sales/ income or turnover during last two financial years **towards recurring expenses**.

Immovable Property Outside India – Returning Indian

Section 6(4) Definition:

A person resident in India
(person covered)
may hold, own, transfer or invest in
(transaction permitted)
foreign currency, foreign security or any immovable property situated outside India
(assets specified)
if such currency, security or property was:

1. acquired, held or owned by such person when he was resident outside India or
2. inherited from a person who was resident outside India.

Common Doubts:

- Is he needed to bring funds back to India on sale of such IP?
- Can he retain incomes earned on such property outside India? Can Returning Indian convert such IP to another asset?

Current Scenario:

- Retain funds abroad on sale of assets
- Retain income earned on such assets abroad
- Reinvest the sale proceeds into new assets abroad

CASE STUDIES

CASE 1 Whether immovable property can be acquired on installment basis?

Facts of the case:

- Joint acquisition of a **residential property** in **Singapore** by the applicant and others, all resident individuals.
- Total cost of the property: SG$ 3,032,320.
- Part of the cost met through remittances under LRS.
- Remaining amount paid by a **loan from OCBC Bank, Singapore** in 2015.
- Loan and interest repayments (EMIs) made from lease rental proceeds.
- No gains made from overseas loans for property acquisition.

Questions:

- What will be the course of action and Compliance required to be done?
- Whether immovable property can be acquired abroad on an installment basis?

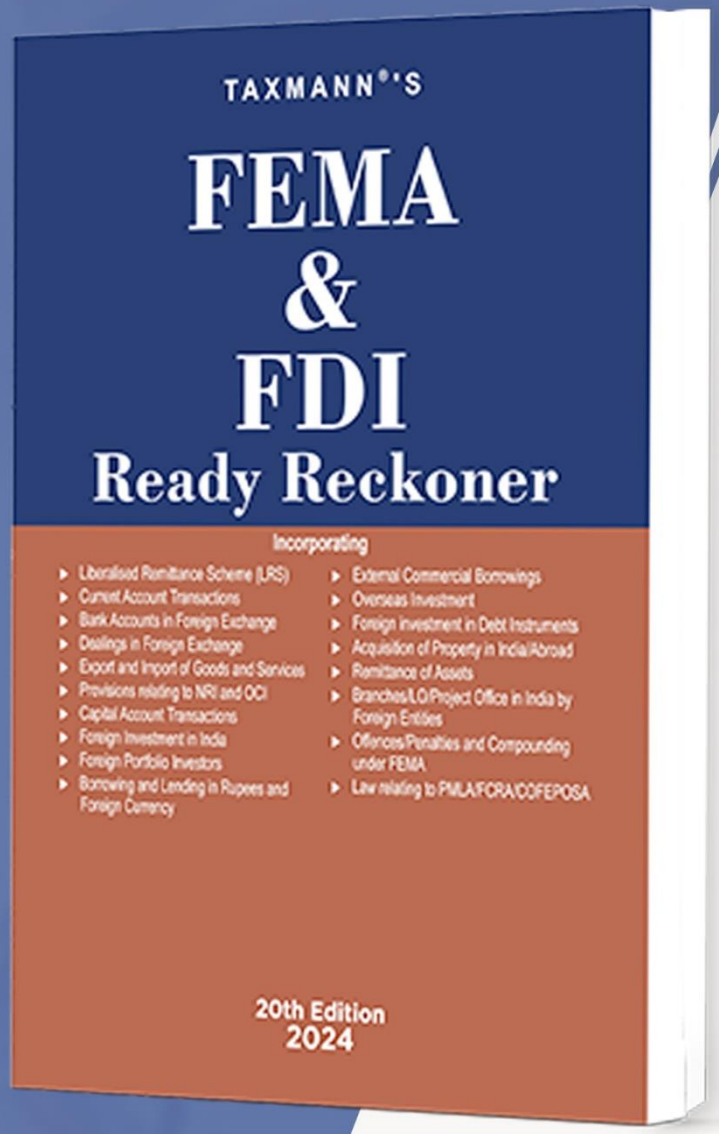
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