



## ERGO

*Analysing developments impacting business*

### OCI CARDHOLDERS - NEW RULES AND SPECIAL RESTRICTIONS

19 March 2021

New rules have been announced recently by the Union Ministry of Home Affairs, Government of India (MHA) for Overseas Citizens of India cardholders (OCI cardholders) vide MHA notification of 4 March 2021 (OCI Notification 2021).

#### OCI Cardholders | Background

Section 7A of the Citizenship Act, 1955 (CZ Act) classifies OCI cardholders as people of Indian origin who are allowed to travel, live, and work in India indefinitely, while still holding a foreign citizenship. While OCI cardholders are not citizens of India, they do enjoy certain benefits courtesy Section 7B of the CZ Act. It is pursuant to powers granted under Section 7B that the MHA has now promulgated the OCI Notification 2021 further clarifying the norms for OCI cardholders.

#### OCI Notification 2021 | Changes in Rights of OCI Cardholders

1. Multiple entry lifelong visa: While the OCI cardholders are permitted lifelong multiple entries in India for any purpose, they will now have to procure a special permission (or a special permit) to undertake the below activities:
  - research activities;
  - missionary / Tabligh / mountaineering / journalist activities;
  - internships or employment with any India based, foreign diplomatic missions or foreign government organisations; and
  - visits to any areas or places notified by the Central Government (or by any relevant authority) as protected / restricted / prohibited space.

The special permission / permit will be granted by a specified competent authority, or the Foreigners Regional Registration Office (FRRO) or the concerned Indian Mission.

2. No more registrations for period of stay in India: While the OCI cardholders need not register with FRRO anymore for any length of their stay in India, they do need to intimate FRRO by email about any change in their permanent residential address or occupation.
3. At-par with Indian nationals:

- Indian domestic sectors air fares; and
  - Applicable entry fees to visit Indian museums, national parks, national monuments, wildlife sanctuaries and historical sites.
4. At-par with Non-Resident Indians (NRIs):
- inter-country adoption of India born children (subject to adherence and compliance with adoption procedure laid down under applicable laws and regulations);
  - appearing for the all-India entrance examinations, such as, JEE (Joint Entrance Examination) Advanced and Mains, NEET (National Eligibility cum Entrance Test), or other tests that makes an OCI card holder eligible for admission to any NRI seat or any supernumerary seat (to clarify, OCI cardholders are not eligible to get admission for seats reserved exclusively for Indian citizens);
  - purchase or sale of immovable properties, except agricultural land, farmhouses, or plantation properties; and
  - pursuing specific profession of a doctor, dentist, nurse and pharmacist, lawyer, architect, or a chartered accountant in India (subject to stipulations under applicable laws and regulations).
5. At-par with foreign nationals:
- educational, economic, or financial fields or aspects not categorically listed in the OCI Notification 2021;
  - rights and privileges not covered under any notification issued by the Reserve Bank of India (RBI) under the Foreign Exchange Management Act 1999 (FEMA).

## Employment Opportunities | Impact

Pursuant to the OCI Notification 2021, any university / establishment / organisation engaging OCI cardholders as research scholars, in journalistic activities, as interns or employees in foreign diplomatic missions / foreign government organisations in India will have to ensure that the concerned cardholders have the necessary permit in place prior to their engagement date. The possibility of penal consequences against employers / establishments in case the aforesaid rule is violated cannot be ruled out. Further, the employers of OCI cardholders will also have to ensure that their employees update their residential address with the FRRO. This may prove to be inconvenient for the employers and employees alike, from an administrative standpoint.

It is imperative to note that the previous notifications had put OCI cardholders in the same category as NRIs when it came to economic, educational, and financial fields. However, as per the OCI Notification 2021, the OCI cardholders now have the same rights as a foreign national in any economic, financial, or educational fields not categorically listed in the OCI Notification 2021. This may further impact employment opportunities available to OCI Cardholders in India.

## Dual citizenship | Restrictions

By amending the CZ Act in August 2005, the Government of India introduced the Overseas Citizenship of India scheme, to address the persistent demands for 'dual citizenship' by Indian origin persons who have taken up foreign citizenship. This had placed OCI cardholders on same footing as NRIs, except without conferring any political

rights (such as the right to vote or hold public office). With the implementation of the OCI Notification 2021, the rights and benefits of the OCI cardholders are further curtailed. While the OCI cardholders can still enter and exit India freely, the OCI Notification 2021 has put additional restrictions on them, as far as employment and educational opportunities are concerned. With the introduction of new set of rules and restrictions and by placing the OCI cardholders in the category of foreign nationals, India appears to have taken a step back from the progress towards dual citizenship.

## Conclusion

It would be imperative to note that the OCI Notification 2021 replaces the 3 prior notifications issued by MHA on 11 April 2005, 5 January 2007, and 5 January 2009 under the CZ Act. These previous notifications that were issued setting out the rights of OCI cardholders did not specify the special permission requirements for OCI cardholders to engage in missionary, Tabligh, mountaineering or journalistic activities, which were only part of the guidelines issued on 15 November 2019 by MHA. As such, the OCI Notification 2021 now formalises the MHA guidelines and places OCI cardholders in the same category as foreign nationals. It may be inferred that the OCI Notification 2021 is more of a consolidation of the previous notifications issued on the subject, albeit with greater restrictions.

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