

ACQUISITION AND TRANSFER OF PROPERTY IN INDIA BY NRIS/PIOS/FOREIGN NATIONALS OF NON-INDIAN ORIGIN

1. INTRODUCTION

The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by certain persons residents outside India. The regulations governing acquisition and transfer of immovable property in India is notified under Notification FEMA No.21/2000-RB of May 3, 2000, as amended from time to time.

2. ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

A Non- Resident Indian (NRI)

(i) Purchase of immovable property

A NRI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.

(ii) Transfer of immovable property

A NRI may transfer any immovable property in India to a person resident in India. He may transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian Citizen resident outside India or a PIO resident outside India.

(iii) Payment for Acquisition of Immovable Property

NRIs can make payment for acquisition of immovable property (other than agricultural land/ plantation property / farm house) out of:

- a. 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.
- b. Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

(iv) A NRI who has purchased residential / commercial property under general permission is not required to file any documents with the Reserve Bank.

B Person of Indian Origin (PIO)

(i) Purchase of immovable property

A PIO can acquire by way of purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.

(ii) Gift/ Inheritance of immovable property

- (a) A PIO may acquire any immovable property (other than agricultural land/ plantation property / farm house) in India by way of gift from a person resident in India or a NRI or a PIO.
- (b) A PIO may acquire any immovable property in India by way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations, at the time of acquisition of the property.

(iii) Transfer of immovable property

A PIO can transfer any immovable property in India (other than agricultural land / farm house / plantation property) by way of sale to a person resident in India. He may transfer agricultural land / farm house / plantation property in India, by way of gift or sale to a person resident in India, who is a citizen of India. He may also transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India, who is a citizen of India or to a Person of Indian Origin resident outside India.

iv) Payment for Acquisition of Immovable Property in India

A PIO can make payment for acquisition of immovable property in India (other than agricultural land / farm house / plantation property):

- a. By way of purchase out of funds received by inward remittance through normal banking channels or by debit to his NRE / FCNR(B) / NRO account.
- b. Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.

(v) A PIO who has purchased residential / commercial property under the general permission, is not required to file any documents with the Reserve Bank.

3. ACQUISITION OF IMMOVABLE PROPERTY BY FOREIGN EMBASSIES/ DIPLOMATS/ CONSULATE GENERALS

In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassy/ Diplomat/ Consulate General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

- i. Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
- ii. The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

4. ACQUISITION OF IMMOVABLE PROPERTY BY PERSON RESIDENT OUTSIDE INDIA FOR CARRYING ON A PERMITTED ACTIVITY

A person resident outside India who has established a Branch, Office or other place of business, excluding a Liaison Office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may –

- a. acquire any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in the form IPI (Annex-2), not later than ninety days from the date of such acquisition; and
- b. transfer by way of mortgage to an Authorized Dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) above.

5. REPATRIATION OF SALE PROCEEDS OF IMMOVABLE PROPERTY

(A) Immovable property acquired by way of purchase

- (a) A person referred to in sub-section (5) of Section 6 of the Foreign Exchange Management Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

- (b) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the Authorized Dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
- (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
 - (ii) the amount to be repatriated does not exceed:
 - the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
 - the amount paid out of funds held in Foreign Currency Non-Resident Account, or
 - the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and
 - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to maximum two such properties.

(B) Immovable property acquired by way of inheritance/ legacy/ out of Rupee funds

A Non-Resident Indian (NRI) / Person of Indian Origin (PIO) may remit an amount, not exceeding US \$ 1,000,000 (US Dollar One million only) per financial year out of the balances held in NRO accounts / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy/ out of Rupee funds. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and a tax clearance / no objection certificate from the Income Tax Authority for the remittance. Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

In cases of deed of settlement made by either of his parents or a close relative (as defined in Section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, the original deed of settlement and a tax clearance / No objection certificate from the Income-Tax Authority should be produced for the remittance.

Where the remittance as above is made in more than one installment, the remittance of all such installments shall be made through the same Authorized Dealer

6. REFUND OF PURCHASE CONSIDERATION

Refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon) may be allowed by the Authorized Dealers by way of credit to NRE/FCNR (B) account, provided the original payment was made out of NRE / FCNR (B) account of the account holder or remittance from outside India through normal banking channels and the Authorized Dealer is satisfied about the bonafides of the transaction.

7. PROHIBITION ON ACQUISITION OR TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY CITIZENS OF CERTAIN COUNTRIES

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years

8. PURCHASE OF IMMOVABLE PROPERTY IN INDIA BY A FOREIGN NATIONAL OF NON-INDIAN ORIGIN RESIDENT OUTSIDE INDIA

- i. Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years without the prior permission of the Reserve Bank.
- ii. Foreign Nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can acquire immovable property in India on becoming resident in India in terms of Section 2(v) of the Foreign Exchange Management Act, 1999. In this connection, he has to satisfy the condition of period of stay. The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status in terms of section 2(v) FEMA, 1999.
- iii. Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

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