

Procedures & Regulations for purchase & sale of Immovable Properties in India & Outside India

May 2018

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- **For Acquisition and Transfer of Immovable Property:**
- Section 6 of **FEM Act** & FEM (Permissible **Capital Account Transactions**) Regulations, 2000 – FEMA 1
- FEM (Acquisition and Transfer of **Immovable Property Outside India**) Regulations, 2015 dated 21 January 2016 – FEMA 7(R)
- FEM (Acquisition and Transfer of **Immovable Property In India**) Regulations, 2018 dated 26 March 2018 – FEMA 21(R)
- Master Direction – Acquisition and Transfer of **Immovable Property** under Foreign Exchange Management Act, 1999 – updated as on April 11, 2018
- FAQs by RBI on ‘Purchase of **Immovable Property**’ updated as on May 07, 2018
- Master Direction - Liberalised Remittance Scheme (**LRS**) Updated as on June 20, 2018
- Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 – FEMA 10(R) read with Master Direction – Export of Goods and Services Updated as on January 12, 2018 – **RFC Account, and Companies having overseas offices**
- FEM (**Remittance of Assets**) Regulations, 2016 – FEMA 13(R) read with Master Direction - Remittance of Assets updated as on April 28, 2016

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- **For Real Estate Business:**
- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – **FEMA 20(R)** read with Master Direction – Foreign Investment in India Updated as on April 06, 2018 and FAQs ‘Foreign Investment in India’ updated as on May 07, 2018
- Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 – **FEMA 120** read with Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad Updated as on January 04, 2018 and FAQs ‘Overseas Direct Investments’ updated as on June 18, 2018

FEM (Acquisition and Transfer of **Immovable Property Outside India**) Regulations, 2015 dated 21 January 2016 – FEMA 7(R)

- Section 6(3)(h) read with subsection (2) of section 47 of the Foreign Exchange Management Act, 1999:
 - RBI may, by regulations, prohibit, restrict or regulate transfer of **immovable property outside India, other than a lease not exceeding five years**, by a person resident in India.
- The restrictions under FEMA 7(R) do not apply to acquisition of property outside India by a person resident in India on a lease not exceeding five years.
- For the purposes of these regulations, '**Relative**' in relation to an individual means **husband, wife, brother or sister or any lineal ascendant or descendant of that individual**.
- FEMA 7(R) shall **not apply** to the property—
 - (a) held by a person resident in India **who is a national of a foreign state**;
 - (b) acquired by a person resident in India **on or before 8th July 1947** and continued to be held by him with the permission of the Reserve Bank.

Modes of acquiring immovable property outside India by a Resident in India.....1/2

- A **person resident in India** may acquire immovable property outside India,—
- (a) **Change of residential status**: According to **section 6(4)** of the FEMA, a person **resident in India can hold**, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned **by him/ her when he/ she was resident outside India** **or** **inherited from a person resident outside India**.
- (b) By **way of gift or inheritance** from a person referred to in subsection (4) of Section 6 of the Act i.e. 'Returning Indians'; **or** from a person resident in India who had acquired such property **on or before 8th July 1947** and continued to be held by him with the permission of the Reserve Bank ;

Modes of acquiring immovable property outside India by a Resident in India.....2/2

- (c) By **way of purchase** out of foreign exchange held in **Resident Foreign Currency (RFC)** account maintained under FEMA 10(R). The balances in the RFC account are free from all restrictions regarding utilisation of foreign currency balances outside India including any restriction on investment in any form, by whatever name called, outside India;
- (d) **Jointly with a relative** who is a **person resident outside India**, provided there is **no outflow** of funds from India;
- (2) A person resident in India may acquire immovable property outside India, by way of **inheritance or gift from a person resident in India** who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

Acquisition under the **Liberalised Remittance Scheme (LRS)** – US\$ **250,000 per financial year (April to March)....1/2**

- A resident individual can send **remittances** under the Liberalised Remittance Scheme for purchasing immovable property outside India.
- AD bank should **not extend any kind of credit facilities** to resident individuals to facilitate remittances for capital account transactions under LRS. Individual **cannot borrow overseas** to fund acquisition of immovable property – directly in individual name or in the name of the overseas company which has underlying immovable property.
- Investment in immovable property under LRS through **overseas company structure** is not permitted. Standalone Buying in overseas company & **then leasing/ letting out** of property to earn rental income is not considered as a **bona-fide business** activity. For any contravention, RBI orders winding-up, bringing back funds and compounding.

Acquisition under the **Liberalised Remittance Scheme (LRS)** – US\$ **250,000 per financial year (April to March)....2/2**

- Remittances under LRS can be **consolidated in respect of family members** subject to individual family members complying with its terms and conditions. ‘Family members’ not defined.
- **Clubbing** is permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are the co-owners/co-partners of the overseas bank account/investment/property. In case members of a family pool their remittances to purchase a property, then the said property should be in the name of all the members who make the remittances (**ownership to be in the same ratio as remittance of funds**).
- Investor, who has remitted funds under LRS can **retain, reinvest the income earned on the investments**. At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme.

Company having overseas office

- A company incorporated in India (other than a firm or a body corporate registered or incorporated in India) having overseas offices,
- for conducting **normal business activities of the Indian entity**,
- may acquire **immovable property outside India for its business and for residential purposes of its staff**,
- provided **total remittances** do not exceed the following limits prescribed for initial expenses and recurring expenses, respectively: (a) 15% of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher; (b) 10% of the average annual sales/ income or turnover during the last two financial years.

Real estate business by Overseas JV/ WOS by an Indian Party under FEMA 120

- Overseas "Joint Venture (JV)" / "Wholly Owned Subsidiary (WOS)" by an Indian Party (a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act 1932 or a Limited Liability Partnership incorporated under the LLP Act, 2008), **under FEMA 120/ODI Regulations can acquire immovable properties outside India for its bona-fide business activity (commensurate with business activities/ requirements).**
- Indian Party is **prohibited from investment in foreign entity engaged in Real Estate business.** "Real estate business" means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges.
- **Standalone Buying & then leasing/ letting out of property to earn rental income is not considered as a bona-fide business activity.**

FEM (Acquisition and Transfer of **Immovable Property In India**) Regulations, 2018 – FEMA 21(R)

- Section 6(3)(i) read with sub-section (2) of Section 47:
- RBI may, by regulations, prohibit, restrict or regulate acquisition or transfer of **immovable property in India, other than a lease not exceeding five years**, by a person resident outside India.
- The restrictions under FEMA 21(R) do not apply to acquisition or transfer of immovable property in India by a person resident outside India on a lease not exceeding five years.
- 'Non-Resident Indian (**NRI**)' means a person resident outside India who is a citizen of India.
- 'Overseas Citizen of India (**OCI**)' means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
- '**Transfer**' includes sale, purchase, mortgage, exchange, pledge, gift, loan or any other form of transfer of right, title, possession or lien.
- '**Relative**' means relative as defined in section 2(77) of the Companies Act, 2013.

Consideration for transfer

- Consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of **inward remittance** from any place outside India **or** (ii) funds held in any non-resident account – **NRO, NRE, FCNR(B)**.
- No payment shall be made either **by traveller's cheque or by foreign currency notes** or by any other mode other than those specifically permitted.
- Any **transaction** involving acquisition or transfer of immovable property under these regulations shall be undertaken:
 - through **banking channels in India**;
 - (b) subject to payment of applicable taxes and other duties/levies in India.

Change of residential status from NR to R

- As per section 6(5) of FEMA, a **person resident outside India** can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her **when he/ she was resident in India, or inherited from a person resident in India.**

How can a NRI and an OCI acquire immovable property in India?

How can a NRI and an OCI acquire immovable property in India?		
Purchase agricultural land/ farm house/ plantation property etc.	:	Not permitted
Purchase (other than agricultural land/ farm house/ plantation property etc.) from	:	Resident/ NRI/ OCI / Non-Resident [3(a)]
Acquire as gift (other than agricultural land/ farm house/ plantation property etc.) from	:	Resident/ NRI/ OCI [3(b)] who is a relative
Acquire as gift agricultural land/ farm house/ plantation property etc.	:	Not permitted
Acquire as inheritance any immovable property from	:	a. Any person resident outside India who has acquired it under laws in force [3(c)]; b. Resident [3(c)]
Sell (other than agricultural land/ farm house/ plantation property etc.) to	:	Resident/ NRI/ OCI [3(e)]
Sell agricultural land/ farm house/ plantation property etc. to	:	Resident [3(d)]
Gift (other than agricultural land/ farm house/ plantation property etc.) to	:	Resident/ NRI/ OCI [3(e)] who is a relative LRS limit do not apply.
Gift (agricultural land/ farm house/ plantation property etc.) to	:	Resident [3(d)] who is a relative
Gift residential/ commercial property to	:	Resident/ NRI/ OCI [3(e)] who is a relative

Can foreign nationals acquire property in India?

- **Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:** Citizens (**natural person, and legal entities**) of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea (DPRK), **irrespective of their residential status, cannot**, without **prior permission** of the Reserve Bank, **acquire or transfer** immovable property in India, other than on lease, not exceeding five years.
- This **prohibition** shall not be applicable to an **OCI**.
- (b) Foreign nationals of **non-Indian origin resident in India** (except 11 countries listed at (a) above) can acquire immovable property in India.
- (c) **Foreign nationals of non-Indian origin resident outside India** can acquire/ transfer immovable property in India, on lease not exceeding five years, and
- (d) **Foreign nationals of non-Indian origin resident outside India** can acquire immovable property in India by way of inheritance from a resident.

Foreign nationals coming to India and staying beyond 182 days on a tourist or other visa meant for a certain period

- As per Government of India Press Release dated February 1, 2009, foreign nationals coming to India and **staying beyond 182 days on a tourist or other visa** meant for a certain period are **illegally acquiring immovable property in India** in violation of the extant rules and regulations under FEMA.
- In order to be considered as a person resident in India, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him should clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with **supporting documentation including visa**.

Joint acquisition by the spouse (who is not NRI/OCI) of an NRI or an OCI

- A person resident outside India, not being NRI/OCI, who is a spouse of NRI/OCI may acquire **one immovable property (other than agricultural land/farm house/plantation property), jointly with his/her NRI/OCI spouse.**
- Consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of **inward remittance** from any place outside India or (ii) funds held in any non-resident account – **NRO, NRE, FCNR(B);**
- **Not via traveller's cheque or by foreign currency notes** or by any other mode other than those specifically permitted;
- The **marriage** has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;
- Non-resident spouse is not otherwise prohibited from such acquisition.

Acquisition by a Long-Term Visa holder

- A person being a citizen of **Afghanistan, Bangladesh or Pakistan** belonging to minority communities in those countries, namely, **Hindus, Sikhs, Buddhists, Jains, Parsis and Christians** who is **residing in India** and has been granted a **Long Term Visa (LTV)** by the Central Government may purchase **only one residential immovable property in India as dwelling unit for self-occupation** and only **one immovable property for carrying out self-employment** subject to the following conditions:
 - the property should **not be located** in and around **restricted/protected areas** so notified by the Central Government and cantonment areas;
 - the person submits a **declaration to the Revenue Authority** of the district where the property is located, specifying the source of funds and that he/she is residing in India on LTV;
 - the registration documents of the property should **mention the nationality** and the fact that such person is on LTV;
 - the property of such person may be attached/confiscated in the event of his/her indulgence in anti-India activities;
 - a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/Foreigners Registration Office (FRO)/Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
 - such person shall be eligible to sell the property only after acquiring Indian citizenship. However, **transfer of the property** before acquiring Indian citizenship shall require **prior approval of DCP/FRO/FRRO** concerned.

Acquisition of Immovable Property by a branch, office or other place of business for carrying on in India under FEMA 22(R) for carrying on a permitted activity

- A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 a branch, office or other place of business for carrying on in India the activity carried on in India by such branch or office, **excluding a liaison office**, may—
 - (a) Acquire any immovable property in India, which is **necessary for or incidental to carrying on such activity**; and files with RBI a declaration in the **Form IPI** not later than ninety days from the date of such acquisition. **Sale would require RBI approval.**
 - (b) **Transfer by way of mortgage** to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).
- No person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, **without prior approval** of RBI.

Repatriation of sale proceeds.....1/2

- (a) A **person** referred to in sub-section (5) of Section 6 of the Act @, **or his successor** shall **not, except** with the general or specific permission of the Reserve Bank, repatriate outside India the **sale proceeds of any immovable property** referred to in that sub-section. However, an **NRI or a OCI** resident outside India, **he/she can utilise the remittance facilities** available under the Foreign Exchange Management (**Remittance of Assets**) Regulations, 2016;
- @ As per section 6(5) of FEMA, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.

Repatriation of sale proceeds.....2/2

- (b) In the event of sale of immovable property other than agricultural land/farm house/plantation property in India by an **NRI or an OCI**, the authorised 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 his acquisition or the provisions of these Regulations;
 - (ii) the amount for acquisition of the immovable property was paid in foreign exchange received **through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account #**;
 - (iii) in the case of residential property, the **repatriation of sale proceeds is restricted to not more than two such properties (in life time – not financial year)**.
- # In case an immovable property in India has been purchased by a PIO resident outside India [who held property in India in terms of the erstwhile FEM (Acquisition and transfer of Immovable Property in India) Regulations, 2000] **or** an NRI or a OCI **out of housing loans** availed in terms of Foreign Exchange Management Borrowing Regulations, and the repayments for such loans are made out of remittances received from abroad through banking channels or by debit to the NRE/ FCNR(B) account of such person, such repayments may be treated as equivalent to foreign exchange received.

Failure in repayment of external commercial borrowing

- In the event of failure in repayment of **external commercial borrowing** availed by a person resident in India under the provisions of the Foreign Exchange Management Borrowing Regulations, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

Remittance of Assets Regulation – FEMA 13(R)

- An **NRI/ OCI** 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 NRO accounts/ 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;

Current income in India

- As per FEMA 5(R)/2016-RB (Foreign Exchange Management (Deposit) Regulations, 2016), permitted debit to NRO account is 'Remittance outside India of current income in India of the account holder net of applicable taxes'; and permitted credits to NRE account is '**Current income in India** due to the account holder, subject to payment of applicable taxes in India (income tax thereon has been deducted/ paid/ provided for, as the case may be)'.

Prohibition on transfer of immovable property in India by a person resident outside India

- The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- **A bank** which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, **permit a person resident in India or on behalf of such person to create charge on his immovable property in India** in favour an **overseas lender** or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management Borrowing Regulations.
- An **Authorized Dealer in India** being the **Indian correspondent of an overseas lender** may, subject to the directions issued by the Reserve Bank in this regard, **create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company** from the said overseas lender.
- Provided
- the funds shall be used by the borrowing company only for its core business purposes overseas;
- in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

Real Estate Business by person resident outside India on a repatriable basis in capital instruments of an Indian company.....1/2

- **FDI is not permitted in the capital of an LLP as real estate business has FDI linked performance conditions.**
- No person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in agricultural or plantation activities, or in real estate business, or construction of farm houses.
- FDI by a person resident outside India is prohibited in Real Estate Business, or Construction of Farm Houses.
- ‘Real estate business’ means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships;

Real Estate Business by person resident outside India on a repatriable basis in capital instruments of an Indian company.....2/2

- Explanation:
- a. Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the Securities and Exchange Board of India (REITs) regulations 2014 shall also be excluded from the definition of “real estate business”.
- b. **Earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business.**
- c. Transfer in relation to real estate includes, (i) the sale, exchange or relinquishment of the asset; or (ii) the extinguishment of any rights therein; or (iii) the compulsory acquisition thereof under any law; or (iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or (v) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.
- An **NRI or an OCI**, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, shall not make any investment, on a **non-repatriation basis**, by way of contribution to the capital of an **LLP, a firm or a proprietary concern** in India provided such firm or proprietary concern is engaged in any agricultural/ plantation activity or real estate business.

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