

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
 2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
 3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
 4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
 5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
 6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
 7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- ***I trust that you will be enriched by reading this book***

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

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Or

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Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
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44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



51 FAQ's on Acquisition and Transfer for Immovable Properties by NRs (in India)

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51 FAQ's on Acquisition and Transfer for Immovable Properties by NRs (in India)

(A) Acquisition for Immovable Properties by Non Residents (NRs)

1. Meaning for Acquisition of Immovable Properties by NRs

- *NRs permitted for acquisition of immovable properties through purchases or gifts or inheritances (any) under FEMA, 1999*

2. Meaning for NRs (in India)

(i) Non-resident + Indian Passport (both) under Indian Citizen Act (ICA) 1955

- *Non-resident + also holding Indian Passport (both) under ICA, 1955 = NRI*

(ii) Foreign Citizen (Indian Origin) with Overseas Citizen of India (OCI) under ICA, 1955

- *Non-resident + foreign citizen + also Indian Origin (all together) = OCI*

(iii) Foreign Citizen (Foreign Origin) under ICA, 1955

- *Non Resident + foreign citizen + also Foreign origin (all together) = NR*

(iv) Provisions (Miscellaneous) for NRs under FEMA, 1999

(a) Residential status to be decided by operation of law under FEMA, 1999 therefore RBI not permitted to decide residential status.

(b) NRs (himself) permitted to decide residential status when questioned by (any) govt.'s authority.

(c) Resident + also foreign citizen (both) treated Not Permanent Resident (NPR in India)

(d) NRs permitted to hold or to own or to transfer or to invest (any) in Indian currency + Indian securities + immovable properties (all) which

located (in India) if acquired or held or owned when NR was resident (in India)

or

(e) When NR inherited from resident (in India) under FEMA, 1999

3. *Meaning for Acquisition for Agricultural Lands or plantation properties or etc.*

(i) NRs not permitted to acquire agricultural lands or plantation properties or farm houses (any in India)

+ (plus)

(ii) Also NRI + OCI (both not) permitted to acquire agricultural lands or plantation properties or farm houses (any in India)

- *NRs permitted for continuing (holding) agricultural lands or plantation properties or farm houses which they acquired or held or owned when they were resident or inherited from resident (any in India)*

4. *Meaning for Repatriations after sale of immovable proceeds by NRs*

(i) NRs not permitted to repatriate (from India) exceeding USD 1 million per financial year through NRO account (in India)

+ (plus)

(ii) Also limit exceeding USD 1 million to include sale proceeds for assets which acquired through inheritance or settlement (any in India)

But

(iii) Exceeding USD 1 million not applicable for repatriations being made (from India) through NRE account when sale proceed for immovable properties previously deposited into (same) account through NRO account (in India)

5. *Meaning for Acquisition for immovable properties through purchases or etc.*

(i) NPR permitted to acquire residential + also commercial properties (both) simultaneously (in India) under RBI's general permission route through purchases (only) not otherwise like not permitted through gift on inheritance (any)

+ (plus)

- (ii) *NRI or OCI from 10 specified countries not permitted to acquire residential + also commercial properties (both) in India through purchases or gifts or inheritances (any) without RBI's permission.*

6. *Meaning for NRs from 10 countries for acquisition of immovable properties*

- (i) *NRs from Afghanistan*
- (ii) *NRs from Bangladesh*
- (iii) *NRs from Bhutan*
- (iv) *NRs from China*
- (v) *NRs from Hong Kong*
- (vi) *NRs from Iran*
- (vii) *NRs from Macau*
- (viii) *NRs from Nepal*
- (ix) *NRs from Pakistan*
- (x) *NRs from Sri Lanka*

7. *Meaning for Documents required for RBI's general permission purpose*

- *NRs not required to file (any) document for acquisition of immovable properties permitted under RBI's general permission route.*

8. *Meaning for Acquisition with restrictions for residential + comm. properties*

- (i) *NRI + OCI permitted to purchase for residential + commercial properties (both) simultaneously without any restriction for number of properties*

But
- (ii) *Purchases for residential + commercial properties (both) simultaneously be for investments purpose (only) therefore not permitted for trading purpose.*
- *Difference between investment purpose and trading purpose always debatable for immovable properties which required reasonable holding period like generally be ranging from 3 to 5 year.*

9. *Meaning for Acquisition for immovable properties by foreign citizens (in India)*

(i) *Resident + Foreign Citizen + also Foreign Origin (all together) who treated NPR (in India) also permitted to purchase immovable properties under RBI's general permission route.*

But

(ii) *Resident + Foreign Citizen + also Foreign Origin (all together) required to obtain permission from respecting state govt. if any required*

10. *Meaning for Acquisition for immovable properties with RBI's permission by NRs*

- *RBI's permission required for purchase of immovable properties by NRs from 10 specified countries.*

11. *Meaning for Acquisition for immovable properties by foreign BO or PO (in India)*

- (i) *Foreign BO + PO (both) permitted for acquisition of immovable properties without RBI's permission when property (deemed) necessary or incidental for carrying business in India*
- (ii) *Foreign companies required to make payments for immovable properties through Direct Foreign Inward Remittances (DFIR) under normal banking channels (only)*
- (iii) *Foreign companies required to file declaration (in Form IPI) with RBI in maximum 90 day from date for purchase of immovable properties in India.*
- (iv) *Foreign companies permitted to mortgage immovable properties with Authorized Dealer (AD) bank towards security for borrowings by foreign BO or PO (any)*
- (v) *Foreign companies permitted to repatriate sales proceeds after winding up of foreign BO or PO with RBI's permission*

12. *Meaning for Acquisition for properties by BO or PO of 10 specified countries*

- *Foreign BO or PO from 10 specified countries permitted with RBI's permission when immovable properties (deemed) necessary or incidental for carrying business in India*

13. Meaning for Acquisition for immovable properties by foreign LO (in India)

(i) Foreign LO not permitted to purchase immovable properties in India

But

(ii) Foreign LO permitted to take immovable properties on lease (rent) for period not exceeding 5 year without RBI's permission

14. Meaning for Acquisition for immovable properties by NRs through gift

(i) Permitted to acquire from Resident (in India)

(ii) Permitted to acquire from NRI

(iii) Permitted to acquire from OCI

15. Meaning for Acquisition for Agricultural lands + etc. by NRs not through gift

(i) Not permitted to acquire any agricultural land

(ii) Not permitted to acquire any plantation Property

(iii) Not permitted to acquire any farm house

16. Meaning for Acquisition of immovable properties by NRI + OCI through gift

- NRI + OCI (both) simultaneously permitted for acquisition of residential + commercial (both) properties through gift.

17. Meaning for Acquisition of properties by Foreign Citizen + Origin through gift

- Foreign Citizen + Foreign Origin (both) simultaneously not permitted for acquisition of immovable properties through gift or inheritance (any)

18. Meaning for Acquisition of properties by NRI + OCI through Inheritance

(i) Permitted from (another) NRI without RBI's permission

(ii) Permitted from (another) OCI without RBI's permission

(iii) Permitted from Foreign Citizen + also Foreign Origin (both) simultaneously without RBI's permission

(B) Transfer for Immovable Properties by Non Residents (in India)

19. Meaning for Transfer through sale of immovable properties by NRIs

- (i) Permitted to transfer to Resident (in India) without RBI's permission*
- (ii) Permitted to transfer to (another) NRI without RBI's permission*
- (iii) Permitted to transfer to OCI without RBI's permission*

20. Meaning for Transfer through sale of immovable properties by OCI

- (i) Permitted to transfer to Resident (in India) without RBI's permission*
- (ii) Permitted to transfer to NRI without RBI's permission*
- (iii) Permitted to transfer to (another) OCI with RBI's permission*

21. Meaning for Transfer through sale of properties by NRs from 10 countries

- (i) Permitted to transfer to Resident (in India) with RBI's permission*
- (ii) Permitted to transfer to NRI with RBI's permission*
- (iii) Permitted to transfer to OCI with RBI's permission*

22. Meaning for Transfer through sale of properties by Foreign Citizen + Origin

- (i) Permitted to transfer to Resident (in India) with RBI's permission*
- (ii) Permitted to transfer to NRI with RBI's permission*
- (iii) Permitted to transfer to OCI with RBI's permission*

23. Meaning for Transfer through sale of Agricultural Land or etc. by NRI + OCI

- *NRI + OCI (both) permitted to sale agricultural lands or plantation properties or farm houses (any) to citizen + also resident both together in India without RBI's permission.*

24. Meaning for Transfer through sale of Agri Lands by Foreign Citizen + Origin

- *Foreign Citizen + Foreign Origin (both) simultaneously permitted to sale agricultural lands or plantation properties or farm houses (any) to citizen + also resident both together in India with RBI's permission*

25. *Meaning for Transfer through gift of immovable properties by NRI + OCI*

- (i) Permitted to transfer to Resident (in India) without RBI's permission*
- (ii) Permitted to transfer to (another) NRI without RBI's permission*

26. *Meaning for Transfer through gift of properties by Foreign Citizen + Origin*

- (i) Permitted to transfer to Resident (in India) with RBI's permission*
- (ii) Permitted to transfer to NRI with RBI's permission*

27. *Meaning for Transfer through gift of agricultural land by NRI + OCI*

- *Permitted to transfer to Citizen + also resident both together without RBI permission*

28. *Meaning for Transfer through gift of agri. land by Foreign citizen + Origin*

- *Permitted to transfer to Citizen + also resident both together with RBI's permission*

29. *Meaning for Transfer through Mortgage for properties by NRI + OCI*

- (i) NRI + OCI (both) simultaneously permitted to transfer through mortgage to AD Bank or Housing Finance Institution (HFI any in India) without RBI's permission*
- (ii) NRI + OCI (both) simultaneously permitted to transfer through mortgage to bank outside India with RBI's permission.*

30. *Meaning for Transfer through Mortgage by Foreign Citizen + Foreign Origin*

- *Foreign Citizen + Foreign Origin (both) simultaneously permitted to transfer with RBI's permission.*

31. *Meaning for Transfer through Mortgage of immovable properties by BO*

- *Foreign BO (in India) permitted to mortgage to AD Bank without RBI's permission*

(C) Payments for immovable properties by Non Resident (in India)

32. Meaning for Payments for purchase of immovable properties by NRI + OCI

- (i) Through direct foreign remittance from outside India + normal banking channel*
- (ii) Through debit to NRO account maintained with AD Bank in India*
- (iii) Through debit to NRE account maintained with AD Bank in India*
- *NRI + OCI (both) simultaneously not permitted to make payment through traveler's cheques or foreign currency notes or other modes (any)*

33. Meaning for Repatriation after non-allotment of immovable properties to NRs

- (i) AD bank permitted to allow credit into NRE account after refund of application money or earnest money against non- allotment of immovable property + also interest on application money or earnest money – (minus) TDS
+ (plus)*
- (ii) Also original payment for application money or earnest money be already debited to NRE account or received through DFIR under banking channel (only)*

34. Meaning for Housing loan for immovable properties from banks by NRI + OCI

- *NRI + OCI (both) permitted for housing loan for purchase of properties (in India) like:*
 - (i) Permitted for housing loan for residential uses*
 - (ii) Permitted for repairs or renovations or improvements (any) for residential uses*

35. Meaning for lender for Housing loan for immovable properties by NRs

- (i) 100% AD banks located in India*
- (ii) 100% HFIs located in India*

36. *Meaning for Terms and Conditions for Housing loans to be taken by NRs*

- (i) Certain terms and conditions be satisfied which specified under Regulation No.08 of Notification No. FEMA 4/2000-RB, dated May 03, 2000*
- (ii) Certain terms and conditions be satisfied which specified under Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000*
- (iii) Certain terms and conditions be satisfied which specified under Master Circular No. 04 dated July 01, 2015*

37. *Meaning for Repayment against loans for Housing loan by NRs*

- (i) Permitted through Direct Inward Foreign Remittance (DIFR) under normal banking channel*
- (ii) Permitted through debit to NRO or NRE account (any) maintained in India*
- (iii) Permitted through rental incomes on immovable properties which purchased through housing loan (only)*
- (iv) Permitted through loans or gifts received from close relatives located in India*

38. *Meaning for Housing Loan for immovable properties from Indian employer*

- (i) Certain terms and conditions be satisfied which specified under Regulation No. 8A of Notification No. FEMA 4/2000- RB, dated May 03, 2000
+ (plus)*
- (ii) Also specified under A.P (DIR Series) Circular No. 27, dated October 10, 2003*
- (iii) Housing loan be granted by Indian employer for purchase of immovable properties (only) in India*
- (iv) Housing loan be granted by Indian employer under general staff welfare scheme or staff housing loan scheme (any) available for 100% resident employees in India*

39. *Meaning for terms and conditions for Housing Loan from Indian employer*

- (i) Employer required to ensure that loan's amount being used for purchase of immovable property (only)*
- (ii) Employer required to ensure that housing loan's amount being credited to NRO account (only) maintained in India*
- (iii) Employer required to ensure that housing loan's repayment being made through DIFR or being debited to NRO or NRE account (any)*

(D) Repatriations after Sale of immovable properties by NRs (from India)

40. Meaning for Repatriations after sale of immovable properties by NRI or OCI

- *AD bank permitted for allowing repatriation after sale of immovable properties with satisfaction of certain terms and conditions like:*
 - (i) *That Immovable properties be originally acquired (by seller) which specified under FERA, 1973 or FEMA, 1999 applicable at time of acquisition + also amount for acquisition (both) received through DIFR or debited to NRO or NRE account (any)*
 - (ii) *That repatriation's amount not to exceed amount originally paid through DIFR or debited to NRO or NRE account (any) at time of acquisition of immovable properties in India.*

41. Meaning for Repatriations after sale of immovable properties through NRO A/c

- *AD banks permitted for allowing repatriation after sale of immovable properties with satisfaction of certain terms and conditions like:*
 - (i) *When proceed (amount) received for sale of immovable properties should have been acquired in INR at time of original acquisition.*

or
 - (ii) *When proceed (amount) received for sale of immovable properties should have been acquired in INR against loans received from close relatives located in India*
 - (iii) *When AD Banks permitted to remit maximum USD 1 million per financial year*
 - (iv) *When AD Banks obtained RBI's permission to remit exceeding USD 1 million per financial year.*

42. Meaning for Repatriations after sale of properties acquired through INR Loan

- *AD banks permitted for allowing repatriation after sale of immovable properties with satisfaction of certain terms and conditions like:*

- (i) That AD Bank permitted after repayment for housing loan for allowing repatriation against sale for residential property originally purchased through loan in INR taken from AD Bank or HFI (any)
+ (plus)
- (ii) That balance (if any) be credited to NRO account maintained in India
+ (plus)
- (iii) That NRI + OCI (both) permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

43. Meaning for Repatriations after sale of properties acquired through gift

- (i) That sale proceeds for immovable properties originally acquired through gift permitted to be credited to NRO account maintained in India
+ (plus)
- (ii) That NRI + OCI (both) permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

44. Meaning for Repatriations after sale properties acquired through Inheritance

- (i) That permitted remittance for maximum USD 1 million per financial year
- (ii) That NRI + OCI (both) required to submit documentary evidences for support of inheritance of assets like undertaking by remitter + also certificate from CA (both)
- (iii) That settlement deed be executed by parents or close relatives (any)
- (iv) That original settlement deed be made available for verifications + also for obtaining Income Tax Clearance (ITC) certificate from Income Tax Deptt. (both)
- (v) That remittance in installment be permitted through same AD Bank (only)
- (vi) That remittance to foreign citizen + foreign origin (both) simultaneously be permitted with RBI's permission
- (vii) That RBI's permission required for repatriation (in foreign currency) after sale of immovable properties by NRs from 8 specified countries like:-

- (a) From Afghanistan*
- (b) From Bangladesh*
- (c) From China*
- (d) From Hong Kong*
- (e) From Iran*
- (f) From Macau*
- (g) From Pakistan*
- (h) From Sri Lanka*

(viii) That RBI's permission not required for repatriation (in Indian currency) after sale of immovable properties by NRs from 2 specified countries like:-

- (a) From Bhutan*
- (b) From Nepal*

45. *Meaning for Repatriations for rental incomes on properties by NRI + OCI*

- (i) NRI + OCI (both) permitted for leasing residential + commercial (both) immovable properties on rent basis without RBI's permission*
- (ii) (a) Rent may also be credited to NRO or NRE (any) account*
Or
(b) Rent may also be remitted outside India
- *NRI + OCI (both) permitted to remit without credit to NRO or NRE (any) account – (minus) TDS*

(E) Acquisition or Transfer for immovable properties by foreign embassies (in India)

46. Meaning for Acquisition & Transfer for immovable properties by embassies

- (i) Acquisition or transfer permitted for immovable properties by embassies or diplomats or consulate general (any) located in India after satisfaction of certain terms and conditions already specified under regulation 5A of Foreign Exchange Management (Acquisition and Transfer of Immovable Properties in India) Regulations 2000 like:*
- (ii) Embassies or etc. required to obtain clearance certificate from Ministry of External Affairs (MEA) for acquisition or transfer of immovable properties in India.*
- (iii) Embassies or etc. required to make payment for acquisition of immovable properties through normal banking channel (only)*

47. Meaning for Acquisition & Transfer for agricultural land or etc. by embassies

- *Embassies or etc. not permitted to acquire agricultural land or plantation property or farm house (any) in India*

(F) Conclusion for Acquisition or Transfer without permission from RBI

48. Meaning for Acquisition & Transfer for Residential or Commercial prop. by NRI

<i>Nature of Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase (from)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Sell (to)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift (from)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift (to)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Inheritance (from)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>

49. Meaning for Acquisition & Transfer for Residential or Commercial prop. by OCI

<i>Nature of Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase (from)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Sell (to)</i>	<i>Yes</i>	No	<i>Yes</i>
<i>Gift (from)</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift (to)</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>

50. Meaning for Acquisition & Transfer for Agricultural land or etc. by NRI or OCI

<i>Nature of Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase (from)</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Sell (to)</i>	<i>No</i>	<i>No</i>	Yes
<i>Gift (from)</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Gift (to)</i>	<i>No</i>	<i>No</i>	Yes

51. Meaning for RBI's permission for acquisition or transfer by NRI or OCI

- (i) RBI's permission required for 100% acquisition or transfer for agricultural lands or plantation properties or farm houses (any).*
- (ii) NRs required to satisfy RBI's terms and conditions for granting permission.*

● **Meaning for Housing loans to NRI + OCI (employees) by Companies in India**

**FEMA 1999 – Grant of Rupee Loans to
NRI/PIO Employees of Indian Body Corporate
A.P.(DIR Series) Circular No.27 (October 10, 2003)**

**Reserve Bank of India
Exchange Control Department
Central Office
Mumbai**

A.P.(DIR Series) Circular No.27

October 10, 2003

To
All Authorised Dealers in Foreign Exchange
Madam/Sirs,

**FEMA 1999 – Grant of Rupee Loans to
NRI/PIO Employees of Indian Body Corporate**

Attention of Authorised Dealers is invited to Regulation 8 of Notification No.FEMA 4/2000 RB dated May 3, 2000, in terms of which an Authorised Dealer or a housing finance institution in India approved by the National Housing Bank may provide housing loan to a Non-Resident Indian or a Person of Indian Origin resident outside India for acquisition of a residential accommodation in India subject to conditions indicated therein.

2. On a review, it has been decided to grant general permission to Indian companies, viz. a body corporate registered or incorporated in India, to grant rupee loans to its employees who are Non-Resident Indians or Persons of Indian Origin, subject to the following conditions :

- The loan shall be granted only for personal purposes including purchase of housing property in India;
- The loan shall be granted in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme and subject to other terms and conditions applicable to its staff resident in India;
- The lender shall ensure that the loan amount is not used for the purposes specified in sub-clauses (i) to (iv) of clause (1) and in clause (2) of Regulation 6 of Notification No.FEMA.4/2000-RB dated May 3, 2000, referred to above;
- The lender shall credit the loan amount to the borrower's NRO account in India or shall ensure credit to such account by specific indication on the payment instrument;
- The loan agreement shall specify that the repayment of loan shall be by way of remittance from outside India or by debit to NRE/NRO/FCNR Account of the borrower and the lender shall not accept repayment by any other means.

Accordingly, Notification No.FEMA.67/2000-RB dated August 20, 2002 has been issued. A copy of the said Notification is enclosed. Necessary amendments to Notification No.FEMA.4/2000 RB dated May 3, 2000 may please be made.

3. Authorised Dealers may bring the contents of this circular to the notice of their constituents concerned.

4. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the FEMA, 1999 (42 of 1999).

Yours faithfully,

**Grace Koshie
Chief General Manager**

● **Meaning for RBI's rules and regulations for acquisition of properties by NRs**

Notification No.FEMA 4 /2000-RB dated 3rd May 2000
RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
Mumbai 400 001

In exercise of the powers conferred by clause (e) of sub-section (3) of Section 6, subsection (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the regulations relating to borrowing and lending in rupees between a person resident in India and a person resident outside India as under, namely:

1. Short title and commencement:-

- (1) These Regulations may be called the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000.
- (2) They shall come into force on 1st day of June, 2000.

2. Definitions:-

In these Regulations, unless the context requires otherwise, -

- a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- b) 'authorised dealer', 'authorised bank', 'Non-resident Indian (NRI)', 'Person of Indian origin', 'Overseas Corporate Body (OCB)', 'NRE account', 'NRO account', 'NRNR account', 'NRSR account', and 'FCNR account' shall have the same meanings as assigned to them respectively in Foreign Exchange Management (Deposits) Regulations, 2000 made by Reserve Bank under clause (f) of sub-section (3) of section 6 of the Act;
- c) 'housing finance institution' and 'National Housing Bank' shall have the meaning assigned to them in the National Housing Bank Act, 1987 (53 of 1987);
- d) 'Transferable Development Rights (TDR)' shall have the meaning as assigned to it in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.
- e) The words and expressions not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Prohibition on borrowing and lending in rupees:-

Save as otherwise provided in the Act, rules or regulations made thereunder, no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India.

Provided that the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India.

Explanation:

For the removal of doubt, it is clarified that use of Credit Card in India by a person resident outside India shall not be deemed as borrowing or lending in rupees.

4. Borrowing in rupees by persons other than companies in India:-

A person resident in India, not being a company incorporated in India, may borrow in rupees on non-repatriation basis from a non-resident Indian or a person of Indian origin resident outside India, subject to the following conditions:

- (i) the amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account of the lender maintained with an authorised dealer or an authorised bank in India,
- (ii) the period of loan shall not exceed three years;
- (iii) the rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of availment of loan;
- (iv) where the loan is made out of funds held in Non-resident Special Rupee (NRSR) account of the lender, payment of interest and repayment of loan shall be made by credit to that account; and in other cases, payment of interest and repayment of loan shall be made by credit to the lender's Non-resident Ordinary (NRO) or Non-resident Special Rupee (NRSR) account as desired by the lender; and
- (v) the amount borrowed shall not be allowed to be repatriated outside India.

5. Borrowing in rupees by Indian companies:-

- (1) Subject to the provisions of sub-regulations (2) and (3), a company incorporated in India may

borrow in rupees on repatriation or non- repatriation basis, from a nonresident Indian or a person of Indian origin resident outside India or an overseas corporate body (OCB), by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions;

- i) the issue of Non-convertible Debentures (NCDs) is made by public offer;
 - ii) the rate of interest on such Non-convertible Debentures (NCDs) does not exceed the prime lending rate of the State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting, plus 300 basis points,
 - iii) the period for redemption of such Non-convertible Debentures (NCDs) is not be less than three years;
 - iv) the borrowing company does not and shall not carry on agricultural /plantation /real estate business/Trading in Transferable Development Rights (TDRs) or does not and shall not act as Nidhi or Chit Fund company;
 - v) the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date -
 - (A) of receipt of remittance for investment in Non-convertible Debentures (NCDs), full details of the remittances received, namely; (a) a list containing names and addresses of Nonresident Indians (NRIs)/Overseas Corporate Bodies (OCBs) who have remitted funds for investment in Non-convertible Debentures (NCDs) on repatriation and/or non-repatriation basis, (b) amount and date of receipt of remittance and its rupee equivalent; and (c) names and addresses of authorised dealers through whom the remittance has been received;
 - (B) of issue of Non-convertible Debentures (NCDs), full details of the investment, namely; (a) a list containing names and addresses of Non-resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) and number of Non-convertible Debentures (NCDs) issued to each of them on repatriation and/or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of Non-convertible Debentures (NCDs) have been duly complied with.
- (2) The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely:
- (a) the percentage of Non-convertible Debentures (NCDs) issued to Nonresident Indians (NRIs)/Overseas Corporate Bodies (OCBs) to the total paid-up value of each series of Non-convertible Debentures (NCDs) issued shall not exceed the ceiling prescribed for issue of equity shares/ convertible debentures for foreign direct investment in India as specified by the Reserve Bank from time to time, under the relevant regulations, and
 - (b) the amount of investment is received by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India;
- (3) The borrowing by issue of non-convertible debentures (NCDs) on non-repatriation basis shall be subject to the following additional conditions, namely:
- a) the amount of investment is received either by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account maintained with an authorised dealer or an authorised bank in India ,
 - b) where the investment is made out of funds held in Non-resident Special Rupee (NRSR) account, the interest on such Non-convertible Debentures (NCDs) shall also not be repatriable outside India; and the maturity proceeds and interest on such debentures are credited only to the Non-resident Special Rupee (NRSR) account of the investor.

6. Restriction on use of borrowed funds:-

No person resident in India who has borrowed in rupees from a person resident outside India,-

- (1) shall use such borrowed funds for any purpose except in his own business other than -
 - (i) the business of chit fund, or
 - (ii) as Nidhi Company , or
 - (iii) gricultural or plantation activities or real estate business; or construction of farm houses or
 - (iv) rading in Transferable Development Rights (TDRs).
- (2) shall use such borrowed funds for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not,

or for relending.

Explanation:

For the purpose of sub-clause (iii) of clause (1), real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

7. Loans in rupees to non-residents against security of shares or immovable property in India :-

Subject to the directions issued by the Reserve Bank from time to time in this regard, an authorised dealer in India may grant loan to a non-resident Indian,

- A) against the security of shares or other securities held in the name of the borrower, or
- B) against the security of immovable property (other than agricultural or plantation property or farm house), held by him in accordance with the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000:

Provided that

- a) the loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes; and
- b) the loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
 - (i) the business of chit fund, or
 - (ii) Nidhi Company, or
 - (iii) agricultural or plantation activities or in real estate business, or construction of farm houses; or
 - (iv) trading in Transferable Development Rights (TDRs).

Explanation:

For the purpose of item (iii) of proviso, real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

- c) the Reserve Bank's directives on advances against shares/ securities /immovable property shall be duly complied with;
- d) the loan amount shall not be credited to Non-resident External (NRE)/Nonresident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Nonresident Non-repatriable (NRNR) account of the borrower;
- e) the loan amount shall not be remitted outside India;
- f) repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to the Non-resident Ordinary (NRO)/Non-resident Special Rupee (NRSR)/Non-resident Non-repatriable (NRNR)/Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

8. Providing housing loan in rupees to a non-resident :-

An authorised dealer or a housing finance institution in India approved by the National Housing Bank may provide housing loan to a non-resident Indian or a person of Indian origin resident outside India, for acquisition of a residential accommodation in India, subject to the following conditions, namely:

- a) the quantum of loans, margin money and the period of repayment shall be at par with those applicable to housing finance provided to a person resident in India;
- b) the loan amount shall not be credited to Non-resident External (NRE) / Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR) account of the borrower;
- c) the loan shall be fully secured by equitable mortgage of the property proposed to be acquired, and if necessary, also by lien on the borrower's other assets in India;
- d) the instalment of loan, interest and other charges, if any, shall be paid by the borrower by remittances from outside India through normal banking channels or out of funds in his Non-resident External (NRE)/Foreign Currency Non-resident(FCNR)/Non-resident Non-repatriable (NRNR)/ Non-resident Ordinary (NRO)/ Non-resident Special Rupee (NRSR) account in India, or out of rental income derived from renting out the property acquired by utilisation of the loan;
- e) the rate of interest on the loan shall conform to the directives issued by the Reserve Bank or, as the case may be, by the National Housing Bank.

9. Continuance of rupee loan/Overdraft to resident who becomes a person resident outside India :-

An authorised dealer or, as the case may be, an authorised bank, may allow continuance of

loan/overdraft granted to a person resident in India who subsequently becomes a person resident outside India, subject to following terms and conditions:

- a) the authorised dealer or the authorised bank is satisfied, according to his/its commercial judgement, about the reasons to continue the loan or overdraft;
- b) the period of loan or overdraft shall not exceed the period originally fixed at the time of granting the loan or overdraft;
- c) so long as the borrower continues to remain a person resident outside India, the repayment shall be made either by inward remittance from outside India through normal banking channels or from the funds held in Non-resident External (NRE)/Foreign Currency Non-resident(FCNR)/Non-resident Non-repatriable (NRNR)/ Non-resident Ordinary (NRO)/ Non-resident Special Rupee (NRSR) account of the borrower.

10. Continuance of rupee loan in the event of change in the residential status of the lender :-

In case a rupee loan was granted by a person resident in India to another person resident in India and the lender subsequently becomes a non-resident, the repayment of the loan by the resident borrower should be made by credit to the Non-resident Ordinary (NRO) or Non-resident Special Rupee (NRSR) account of the lender maintained with a bank in India, at the option of the lender.

11. Overdraft in rupee account maintained with authorised dealer in India by a bank outside India :-

An authorised dealer may permit a temporary overdraft, for value not exceeding Rs five hundred lakhs, in rupee accounts maintained with him by his overseas branch or correspondent or Head Office outside India, subject to such terms and conditions as the Reserve Bank may direct from time to time.

Explanation:

For the purpose of calculating the ceiling of Rupees five hundred lakhs under this Regulation, the aggregate amount of overdrafts permitted by the authorised dealer to all his branches, correspondents and Head Office outside India outstanding in the books of all his branches in India, shall be taken into account.

(P.R. GOPALA RAO)
Executive Director

● **Meaning for Master Circular on Acquisition and Transfer of Properties by NRs**

RBI/2015-16/79
Master Circular No. 4/2015-16

July 1, 2015

To,

All Category - I Authorised Dealer banks

Madam / Sir

Master Circular on Acquisition and Transfer of Immovable Property in India by NRIs/PIOs/Foreign Nationals of Non-Indian Origin

Acquisition and transfer of immovable property in India by NRIs / PIOs / Foreign Nationals of Non-Indian Origin is regulated in terms of Sub-sections (3), (4) and (5) of Section 6 of the Foreign Exchange Management Act, 1999 read with Notification No.FEMA 21/2000-RB dated May 3, 2000. The regulatory framework and instructions issued by the Reserve Bank in this regard have been compiled in this Master Circular. The list of underlying circulars/notifications is furnished in Appendix.

2. This Master Circular may be referred to for general guidance. The Authorised Dealer Category – I banks and Authorised banks may refer to respective circulars / notifications for detailed information, if so needed.

3. This Master Circular is being updated from time to time as and when fresh instructions are issued. The date up to which the Master Circular has been updated is suitably indicated.

Yours faithfully

(A K Pandey)
Chief General Manager

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APPENDIX

List of notifications / A.P (DIR Series)

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 persons residents outside India. The regulations governing acquisition and transfer of immovable property in India are 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)¹

(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.

- 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) An 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)²

(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 Authorised 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, 1947, 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 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 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 payment of applicable taxes in India. 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 should be produced for the remittance. All remittances will be subject to payment of applicable taxes in India.

Where the remittance as above is made in more than one instalment, the remittance of all such instalments shall be made through the same Authorised 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 Authorised 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 Authorised Dealer is satisfied about the bona fides of the transaction.

7. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong cannot, without prior permission of the Reserve Bank, 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, Bhutan, Macau or Hong Kong 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.

(Press Release dated February 1, 2009 issued by Government of India is enclosed as Annex-1).

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.

9. Payment of taxes – Any transaction involving acquisition of immovable property under these regulations shall be subject to applicable tax laws in India.

Annex-2

**Form IPI
(See Regulation 4)**

**Declaration of immovable property acquired in India by a person
resident outside**

**India who has established in India a branch, office or other place of business,
excluding a liaison office**

Instructions:

1. The declaration should be completed in duplicate and submitted directly to the Chief General Manager, Foreign Exchange Department, (Foreign Investment Division), Reserve Bank of India, Central Office, Mumbai – 400001 within 90 days from the date of acquisition of the immovable property.

2. This form is not to be submitted by a person resident outside India who is a citizen of India or a Person of Indian Origin (PIO) acquiring immovable property in India under General Permission in accordance with Regulations 3 and 4 of Notification No. FEMA 21/2000-RB dated May 3, 2000.

Documentation:

Certified copies of letter of approval from Reserve Bank obtained under section 6(6) of FEMA, 1999 (42 of 1999).

1.		Full name and address of the acquirer who has acquired the immovable property		
2.	(a)	Description of immovable property	(a)	
	(b)	Details of its exact location stating the name of the state, town and municipal/survey number, etc	(b)	
3.	(a)	Purpose for which the immovable property has been acquired	(a)	
	(b)	Number and date of Reserve Bank's permission, if any	(b)	
4.		Bank's permission, if any Bank's permission, if any		
5.	(a)	How the immovable property was acquired i.e. whether by way of purchase or lease	(a)	
	(b)	Name, citizenship and address of the seller/lessor	(b)	
	(c)	Amount of purchase price and sources of funds	(c)	

I/ We hereby declare that-

(a) the particulars given above are true and correct to the best of my/our knowledge and belief;

(b) no portion of the said property has been leased /rented to, or is otherwise being allowed to be used by, any other party

Encls:

(Signature of Authorised official)

Stamp

Place: -----

Date:-----

Name:-----

Designation:-----

APPENDIX

**List of notifications / A.P.(DIR Series) circulars
which have been consolidated in this Master Circular**

Sl. No.	Notification / Circular	Date
1	<u>FEMA 21/2000-RB</u>	May 3, 2000
2	<u>FEMA 62/2002-RB</u>	May 13, 2002
3	<u>FEMA 65/2002-RB</u>	June 29, 2002
4	<u>FEMA 64/2002-RB</u>	June 29, 2002
5	<u>FEMA 93/2003-RB</u>	June 9, 2003
6	<u>FEMA 146/2006-RB</u>	February 10, 2006
7	<u>FEMA 200/2009-RB</u>	October 5, 2009
8	<u>FEMA 321/2014-RB</u>	September 26, 2014
9	<u>FEMA 335/2015-RB</u>	February 4, 2015
1	<u>A.P.(DIR Series) Circular No.1</u>	July 2, 2002
2	<u>A.P.(DIR Series) Circular No.5</u>	July 15, 2002
3	<u>A.P.(DIR Series) Circular No.19</u>	September 12, 2002
4	<u>A.P.(DIR Series) Circular No.35</u>	November 1, 2002
5	<u>A.P.(DIR Series) Circular No.46</u>	November 12, 2002
6	<u>A.P.(DIR Series) Circular No.27</u>	September 28, 2002
7	<u>A.P.(DIR Series) Circular No.56</u>	November 26, 2002
8	<u>A.P.(DIR Series) Circular No.67</u>	January 13, 2003
9	<u>A.P.(DIR Series) Circular No.19</u>	September 23, 2003
10	<u>A.P.(DIR Series) Circular No. 5</u>	August 16, 2006
11	<u>A.P.(DIR Series) Circular No.25</u>	January 13, 2010
12	<u>A.P. (DIR Series) Circular No. 79</u>	February 15, 2012
13	<u>A.P (DIR Series) Circular No. 151</u>	June 30, 2014
14	<u>A.P (DIR Series) Circular No. 38</u>	November 20, 2014
15	<u>A.P (DIR Series) Circular No. 83</u>	March 11, 2015

● **Meaning for Clarifications by RBI through FAQ's**

Purchase of Immovable Property

(Updated as on April 06, 2023)

Part I. Purchase of immovable property outside India by Resident Individuals

These FAQs attempt to put in place the common queries that users have on the subject in easy-to-understand language. However, for conducting a transaction, the Foreign Exchange Management Act, 1999 (FEMA) and the rules and regulations made or directions issued thereunder may be referred to. The relevant principal provisions are [Foreign Exchange Management \(Overseas Investment\) Rules, 2022](#) and [Foreign Exchange Management \(Overseas Investment\) Directions, 2022 dated August 22, 2022](#) as amended from time to time.

Q.1 Can a resident continue to hold immovable property outside India which was acquired by him when he was a non-resident?

Q.2 Can a resident individual send remittances and purchase property outside India?

Q.3 To whom do the restrictions of transferring property outside India not apply?

Q.4 How can immovable property be acquired outside India by a resident?

Q.1 Can a resident continue to hold immovable property outside India which was acquired by him when he was a non-resident?

Answer: 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.

Q.2 Can a resident individual send remittances and purchase property outside India?

Answer: A resident individual can send remittances under the Liberalised Remittance Scheme (LRS) for purchasing immovable property outside India. The remittance under the Liberalised Remittance Scheme may be consolidated in respect of relatives¹ if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme.

Q.3 To whom do the restrictions of transferring property outside India not apply?

Answer: The prohibition of a resident acquiring property outside India is not applicable if:

- a. The resident is a foreign national; or
- b. The property was acquired before July 8, 1947 and continued to be held after obtaining permission of Reserve Bank; or
- c. If it is acquired on a lease not exceeding five years

Q.4 How can immovable property be acquired outside India by a resident?

Answer: Immovable property can be acquired outside India:

(i). A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition.

(ii). A person resident in India may acquire immovable property outside India from a person resident outside India—

(a) by way of inheritance;

(b) by way of purchase out of foreign exchange held in RFC account;

(c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

(d) jointly with a relative who is a person resident outside India;

(e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the

directions issued by the Reserve Bank from time to time;

Part II.
Purchase of immovable property in India by Non-Resident Individuals

These FAQs attempt to put in place the common queries that users have on the subject in easy to understand language. However, for conducting a transaction, the Foreign Exchange Management Act, 1999 (FEMA) and the rules made, or directions issued thereunder may be referred to. The relevant principal rules are the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 as amended from time to time. The directions issued are consolidated in Part II of the Master Direction No 12 on Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999.

Q.1 How can Non-resident Indians (NRIs) / Overseas Citizens of India (OCIs) acquire immovable property in India?

Q.2 What are the accepted modes of payment for property acquired in India?

Q.3 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?

Q.4 Can foreign nationals acquire property in India?

Q.5 How can a Long Term Visa (LTV) holder acquire property in India?

Q.6 Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?

Q.7 Can a non-resident repatriate the sale proceeds of immovable property in India?

Q.8 What is the meaning of transfer?

Q.1 How can a Non-resident Indian (NRI)^u and an Overseas Citizen of India (OCI)^u acquire immovable property in India?

Particulars	NRI/ OCI (NDI Rules, 2019)
Purchase (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(b)] who is a relative
Acquire (any IP) as inheritance from	a. Any person who has acquired it under laws in force [24(c)]; b. Resident [24(c)]
Sell (other than agricultural land/ farmhouse/ plantation etc) to	Resident/ NRI/ OCI [24(e)]
Sell (agricultural land) to	Resident [24(d)]
Gift (other than agricultural land) to	Resident/ NRI/ OCI [24(e)]
Gift (agricultural land) to	Resident [24(d)]
Gift residential/ commercial property to	Resident/ NRI/ OCI [24(e)]

Q.2 What are the accepted modes of payment for property acquired in India?

Answer: Payment for immovable property has to be received in India through banking channels and is subject to payment of all taxes and other duties/ levies in India. The payment can also be made out of funds held in NRE/ FCNR(B)/ NRO accounts of the NRIs/ OCIs. Payments should not be made through travellers' cheque and foreign currency notes.

Q.3 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?

Answer: Foreign Embassy/ Diplomat/ Consulate General, can purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

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

Q.4 Can foreign nationals acquire property in India?

Answer:

- a. Citizens 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 can acquire immovable property in India by way of inheritance from a resident.

All other acquisitions/ transfers by foreign nationals will require the prior permission of RBI.

Q.5 How can a Long Term Visa (LTV) holder acquire property in India?

Answer: Citizen of Pakistan, Bangladesh or Afghanistan belonging to minority community (Hindu, Christian, Sikh, Parsi, Buddhist, Jain) in that country and residing in India who has been granted an LTV by the Central government can purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment. However, such acquisition is subject to the conditions as specified under Rule 28 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.6 Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?

Answer: A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to the conditions laid down in Rule 25 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.7 Can a non-resident repatriate the sale proceeds of immovable property in India?

Answer:

(a) A person who has acquired the property U/s 6(5)^{1c} of FEMA or his successor cannot repatriate the sale proceeds of such property without RBI approval.

(b) Repatriation up to USD 1 million per financial year is allowed, along with other assets under (Foreign Exchange Management (Remittance of Assets) Regulations, 2016) for NRIs/ PIOs and a foreign citizen (except Nepal/ Bhutan/ PIO) who has (i) inherited from a person referred to in section 6(5) of FEMA, or (ii) retired from employment in India or (c) is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India.

(c) NRIs/ PIOs can remit the sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) in India subject to the following conditions:

- i. The immovable property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019;
- ii. The amount for acquisition of the property was paid in foreign exchange received through banking channels or out of the funds held in foreign currency non-resident account or out of the 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.

Q.8 What is the meaning of transfer?

Answer: As per section 2(ze) of FEMA transfer means, sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

● **Meaning for Clarifications by Ministry of External Affairs (MEA) through FAQ's**

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

Acquisition and Transfer of Immovable Property in India

A person resident outside India who is a citizen of India (NRI) can acquire by way of purchase, any immovable property in India other than agricultural land/plantation property/farm house. He can transfer any immovable property other than agricultural or plantation property or farm house to:

- a) A person resident outside India who is a citizen of India or b) A person of Indian origin resident outside India or*
- c) A person resident in India.*

He may transfer agricultural land/ plantation property / farm house acquired by way of inheritance, only to Indian citizens permanently residing in India.

Payment for acquisition of property can be made out of:

- i. Funds received in India through normal banking channels by way of inward remittance from any place of India or*
- ii. Funds held in any non-resident account maintained in accordance with the provisions of the Foreign Exchange Management Act, 1999 and the regulations made by Reserve Bank Of India from time to time.*

Such payment can not be made either by traveller's cheque or by foreign currency notes or by other mode than those specially mentioned above.

A person resident outside India who is a person of Indian Origin (PIO) can acquire any immovable property in India other than agricultural land / farm house / plantation property:-

- i. By way of purchase out of funds received by way of inward remittance through normal banking channels or by debit to his NRE/ FCNR(B)/ NRO account.*
- ii. By way of gift from a person resident in India or a NRI or a PIO.*

By way of inheritance from any 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.

A PIO may transfer any immoveable property other than agricultural land / Plantation property / farm house in India

- a) By way of sale to a person resident in India.*
- b) By way of gift to a person resident in India or a Non resident Indian or a PIO.*

A PIO may transfer agricultural land / Plantation property / farm house in India

by way of sale or gift to person resident in India who is a citizen of India.

Purchase/ Sale of Immovable Property by Foreign Embassies / Diplomats / Consulate General

Foreign Embassy / Consulate as well as Diplomatic personnel in India are allowed to purchase / sell immovable property in India other than agricultural land / plantation property / farm house provided (i) clearance from 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 banking channel.

Acquisition of Immovable Property for carrying on a permitted activity

A branch, office or other place of business, (excluding a liaison office) in India of a foreign company established with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such activity provided that all applicable laws, rules, regulations or directions in force are duly complied with. The entity/concerned person is required to file a declaration in the form IPI with Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said the said immovable property to an AD bank as a security for any borrowing.

Repatriation of sale proceeds

In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI / PIO, the authorized dealer will allow repatriation of sale proceeds outside India provided;

- 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 FEMA Regulations;
- ii. The amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of fund held in Foreign currency Non-Resident Account or (b) 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.
- iii. In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

In the case of sale of immovable property purchased out of Rupee funds, ADs may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their Non-resident Rupee (NRO) accounts upto US\$ 1 million per financial year subject to production of undertaking by remitter and a certificate from the Chartered Accountant in the formats prescribed by the CBDT.

Prior permission for acquisition or transfer of immovable property in India by citizen of certain countries

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan shall acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of Reserve Bank. **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. Foreign Nationals of non Indian origin who have

acquired immovable property in India by way of inheritance with the specific approval of RBI can not transfer such property without prior permission of RBI.

Frequently Asked Questions (FAQs) Acquisition

of Immovable Property in India

Q.1 Who can purchase immovable property in India?

A.1 Under the general permission available, the following categories can freely purchase immovable property in India:

- i) Non-Resident Indian (NRI)- that is a citizen of India resident outside India*
- ii) Person of Indian Origin (PIO)- that is an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who*
 - 1. at any time, held Indian passport, or*
 - 2. who or either of whose father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).*

The general permission, however, covers only purchase of residential and commercial property and not for purchase of agricultural land / plantation property / farm house in India.

Q.2. Whether NRI/PIO can acquire agricultural land/plantation property/farm house in India?

A2. No. Since general permission is not available to NRI/PIO to acquire agricultural land/ plantation property / farm house in India, such proposals will require specific approval of Reserve Bank and the proposals are considered in consultation with the Government of India.

Q.3. Do any documents need to be filed with Reserve Bank of India after purchase?

A3. No. An NRI / PIO who has purchased residential/commercial property under general permission, is not required to file any documents with the Reserve Bank.

Q.4. How many residential/commercial properties can NRI/PIO purchase under the general permission?

A4. There are no restrictions on the number of residential/commercial properties that can be purchased.

Q.5. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI/PIO?

A5. No.

Q.6. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?

A6. No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India. But, he/she may take residential accommodation on lease provided the period of lease does not exceed five years. In such cases, there is no requirement of taking any permission of or reporting to Reserve Bank

Q.7 Can a foreign national who is a person resident in India purchase immovable property in India?

A7. Yes, but the person concerned would have to obtain the approvals, and fulfill the requirements if any, prescribed by other authorities, such as the concerned State Government, etc However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank. Such requests are considered by Reserve Bank in consultation with the Government of India.

Q.8 Can an office of a foreign company purchase immovable property in India?

A8. A foreign company which has established a Branch Office or other place of business in India, in accordance with FERA / FEMA regulations, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channel. A declaration in form IPI should be filed with Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for other borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of Reserve Bank. Further, acquisition of immovable property by entities who had set up Branch Offices in India and incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank to acquire such immovable property. However, if the foreign company has established a Liaison Office, it can not acquire immovable property. In such cases, Liaison Offices can take property by way of lease not exceeding 5 years.

Q.9 Whether immovable property in India can be acquired by way of gift?

A9. (a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from

- i) a person resident in India or*
- ii) an NRI or*
- iii) a PIO.*

However, the property can only be commercial or residential. Agricultural land/plantation property/ farm house in India cannot be acquired by way of gift. (b) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India through gift.

Q.10. Whether a non-resident can inherit immovable property in India?

A. 10. Yes, a person resident outside India i.e. i) an

NRI

ii) a PIO and

iii) a foreign national of non-Indian origin can inherit and hold immovable property in India from a person who was resident in India. However, a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan should seek specific approval of Reserve Bank.

Q.11. From whom can the non-resident inherit immovable property?

A.11. A person resident outside India (i.e. NRI or PIO or foreign national of non- Indian origin) can inherit immovable property from

(a) a person resident in India.

(b) a person resident outside India.

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange regulations applicable at that point of time.

Transfer of immovable property in India

(i) Transfer by Sale

Q.12 Can an NRI/ PIO/foreign national sell his residential / commercial property?

A.12. (a) NRI can sell property in India to-

i) a person resident in India or ii) an

NRI or

iii) a PIO.

(b) PIO can sell property in India to- i) a

person resident in India.

ii) an NRI or

iii) a PIO - with the prior approval of Reserve Bank

(c) Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of Reserve Bank to

- i) a person resident in India ii) an NRI
- iii) a PIO

Q.13. Can an agricultural land/plantation property/farm house in India owned/held by a non-resident be sold?

A.13. (a) NRI/ PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.

(b) Foreign national of non-Indian origin resident outside India would need prior approval of Reserve Bank to sell agricultural land/plantation property/ farm house in India

(ii) Transfer by gift

Q.14. Can a non-resident gift his residential/commercial property?

A14. Yes.

(a) NRI/ PIO may gift residential/commercial property to

(i) person resident in India or

(ii) an NRI or

(iii) PIO.

(b) foreign national of non-Indian origin needs prior approval of Reserve Bank.

Q.15. Can an NRI/PIO/Foreign national holding an agricultural land/plantation property/farm house in India gift the same?

A15. (a) NRI/PIO can gift but only to a person resident in India who is a citizen of India.

(b) foreign national of non-Indian origin needs prior approval of Reserve Bank

(iii) Transfer through mortgage

Q.16. Can residential/commercial property be mortgaged?

A16. i) NRI/ PIO can mortgage to:

(a) an authorised dealer/ housing finance institution in India- without the approval of Reserve Bank.

(b) a party abroad - with prior approval of Reserve Bank.

ii) a foreign national of non-Indian origin can mortgage only with prior approval of Reserve Bank

iii) a foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an authorized dealer in India.

Mode of payment for purchase

Q.17. How can an NRI/PIO make payment for purchase of residential/commercial property in India?

A17. Payment can be made by NRI/ PIO out of

(a) funds remitted to India through normal banking channel or

(b) funds held in NRE/ FCNR (B)/ NRO account maintained in India

No payment can be made either by traveller's cheque or by foreign currency notes.

No payment can be made outside India.

Q.18 What shall be the option if there is refund of application money/payment made by the building agencies/seller because of non- allotment of flat/plot/cancellation of bookings/ contracts?

A18. The amount of refund, together with interest (net of income tax) can be credited to NRE account. This is subject to condition that the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account.

Q.19. Can NRI/PIO avail of loan from an authorised dealer for acquiring flat/ house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account/ FCNR (B) account?

A19. Yes, such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5/2000-RB dated May 3, 2000 as amended from time to time. However, banks cannot grant fresh loans or renew existing loans in excess of Rupees 20 lakh against NRE and FCNR(B) deposits either to the depositors or to third parties [cf. A.P. (DIR Series) Circular No. 29 dated January 31, 2007].

Such loans can be repaid

(a) by way of inward remittance through normal banking channel or

(b) by debit to his NRE / FCNR (B) / NRO account or

(c) out of rental income from such property.

(d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

Repatriation

(a). In case the amount has been received from inward remittance or debit to NRE / FCNR (B)/NRO account for acquiring the property or for repayment of the loan, the principal amount can be repatriated outside India.

For this purpose, repatriation outside India means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to

an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency

(b) in case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/PIO. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account.

NRI/PIO are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account for all bonafide purposes to the satisfaction of the authorised dealers, subject to tax compliance.

Q.20. Can NRI/PIO, avail of housing loan in rupees from an authorised dealer or housing finance institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs/renovation/improvement of residential accommodation? How can such loan be repaid?

A20. Yes, NRI/PIO can avail of housing loan in rupees from an Authorised Dealer or housing finance institution subject to certain terms and conditions. (Please refer to Regulation 8 of Notification No. FEMA 4/2000-RB dated 3.5.2000 and AP. (DIR) Series Circular No. 95 dated April 26, 2003).

Such a loan can be repaid

(a) by way of inward remittance through normal banking channel or

(b) by debit to his NRE / FCNR (B) / NRO account or

(c) out of rental income from such property.

(d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

Q.21. Can NRI/PIO avail of housing loan in rupees from his employer in India?

A21. Yes, subject to certain terms and conditions (Please refer to Regulation 8A of Notification

No FEMA 4/2000-RB dated May 3, 2000 and AP. (DIR Series) Circular No.27 dated October 10, 2003).

Repatriation of sale proceeds of residential/commercial property purchased by NRI/PIO

Q.22. Can NRI/PIO repatriate the sale proceeds of immovable property? If so, what are the terms?

A22. NRI/ PIO may repatriate the sale proceeds of immovable property in India

(a) If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels I by debit to 'NRE I FCNR (B) account

The amount to be repatriated should not exceed the amount paid for the property:

- 1. in foreign exchange received through normal banking channel or*
- 2. by debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.*

Repatriation of sale proceeds of residential property purchased by NRI/ PIO out of foreign exchange is restricted to not more than two such properties.

Capital gains, if any, may be credited to the NRO account from where the NRI/PIO may repatriate an amount up to USD one million, per financial year, as discussed below.

(b) If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to USD one million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all the bonafide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance.

Q.23. Can an NRI/PIO repatriate the proceeds in case the sale proceed was deposited in NRO account?

A23. From the NRO account, NRI/PIO may repatriate up to USD one million per financial year (April-March), which would also include the sale proceeds of immovable property.

Q.24. If a Rupee loan was taken by NRI/PIO from Authorised Dealer or housing finance institution for purchase of residential property can an NRI/ PIO repatriate the sale proceeds of such property?

A.24. Yes, provided the loan has been subsequently repaid by remitting funds from abroad or by debit to NRE/FCNR (B) accounts (Please see AP. (DIR) Series Circular No. 101 dated 5.5.2003)

Q.25. If the property was purchased from foreign inward remittance or from NRE / FCNR (B) account, can the sale proceeds of property be repatriated immediately?

A25. Yes.

Q.26. Is there any restriction on number of residential properties in respect of which sale proceeds can be repatriated by NRI/ PIO?

A.26. Yes, sale proceeds of not more than two residential properties can be repatriated.

Q.27. If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale?

A.27. The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

Q.28 If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

A.28. Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a person resident in India. NRIs/PIO may repatriate an amount not exceeding USD one million, per financial year, on production of documentary evidence in support of acquisition / inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No. 10/2002 dated October 9, 2002. [cf. A P. (DIR Series) Circular No.56 dated November 26, 2002].

In case of a foreign national, sale proceeds can also be repatriated even if the property is inherited from a person resident outside India. But this is allowed only with prior approval of Reserve Bank. The foreign national has to approach Reserve Bank with documentary evidence in support of inheritance of the immovable property and the undertaking and the CA Certificate as mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of Reserve Bank.

As FEMA specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

Provisions for Foreign Embassies/Diplomats/Consulate Generals

Q.29. Can Foreign Embassies/Diplomats/Consulate General purchase sell immovable property in India?

A.29. Yes, Foreign Embassies / Diplomats / Consulate Generals can purchase and sell any immovable property other than agricultural land / plantation property / farm house in India with prior clearance from the Government of India, Ministry of External Affairs. The payment should be made by foreign inward remittance through normal banking channel.

Other Issues

Q.30. Can NRI/PIO rent out the residential commercial property purchased out of foreign exchange / rupee funds?

A.30. Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. Rent received can be credited to NRO, NRE account or remitted abroad. Powers have been delegated to the Authorised Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in

India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for. [cf. AP. (DIR Series) Circular No. 45 dated May 14, 2002].

Q.31. Can a person who had bought immovable property when he was a resident, continue to hold such property even after becoming an NRI/PIO?

A.31. Yes, he can continue to hold the residential/commercial property / agricultural land/ plantation property / farm house in India without the approval of the Reserve Bank.

Q.32. In which accounts can the sale proceeds of such immovable property be credited?

A.32. The sale proceeds may be credited to NRO account.

Q.33. Can the sale proceeds of the immovable property referred to in Q.No.31 be remitted abroad?

A.33. Yes, provided the amount to be remitted does not exceed USD one million per financial year, for all bonafide purposes to the satisfaction of Authorised Dealers and subject to tax compliance.

Q.34. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of Reserve Bank continue to hold the same? Can they transfer such property?

A.34. Yes, they may continue to hold the immovable property. However, they can transfer the property only with the prior approval of Reserve Bank.

Q.35. Is a resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

A.35. A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 i.e. he would require prior approval of Reserve Bank for acquisition and transfer of immovable property in India even though he is resident in India. Such requests are considered by Reserve Bank in consultation with the Government in India.

Definitions

Q.36. Where are the terms a 'person resident in India' and a 'person resident outside India' defined?

A.36. Section 2 (v) and Section 2 (w) of the FEMA, 1999 defines 'person resident in India' and a 'person resident outside India' respectively.

Q.37. What is meant by a person resident in India?

A.37. Under FEMA, a person resident in India is defined as a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. In other words, to be treated as 'a person resident in India' under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has also to comply with the condition of the purpose / intention of stay.

Q.38. What is meant by a person resident outside India?

A.38. The Act defines a 'a person resident outside India' as a person who is not a person resident in India' (As defined in Q.No. 37 above)

Q.39. Who can determine whether a person is resident in India or not?

A.39. Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

Q.40. If a foreign national is a person resident in India as per the provisions of Section 2 (v) (i)B of the FEMA, 1999, does he require approval of Reserve Bank to purchase any immovable property in India?

A.40 A foreign national resident in India does not require approval from Reserve Bank from FEMA angle, but approvals if any required in terms of regulations prescribed by other authorities such as the concerned State Government etc. will have to be obtained by him / her. However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan requires specific prior approval of Reserve Bank.

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