

# **MASTER CIRCULAR ON ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY NRIs/PIOs/FOREIGN NATIONALS OF NON-INDIAN ORIGIN**

**MASTER CIRCULAR NO. 4/2011-12, DATED 1-7-2011**

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 is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2012 and be replaced by an updated Master Circular on the subject.

## **1. Introduction**

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

## **2. Acquisition and Transfer of Immovable Property in India**

### **A Non-Resident Indian (NRI)<sup>1</sup>**

#### **(i) Purchase of immovable property**

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

#### **(ii) Transfer of immovable property**

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

#### **(iii) Payment for Acquisition of Immovable Property**

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

- a. Funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE/FCNR(B)/NRO account.
- b. Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

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

### **B Person of Indian Origin (PIO)<sup>2</sup>**

#### **(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<sup>3</sup>, 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 not more than two such properties.

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

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

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

Where the remittance as above is made in more than one 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. Prior permission to the citizens of certain countries for acquisition or transfer of immovable property in India**

A citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, whether resident in India or outside India, cannot acquire or transfer immovable property in India, without the prior permission of the Reserve Bank. This restriction is not applicable where the immovable property is taken on lease for a period not exceeding five years.

#### **8. Purchase of Immovable Property in India by a Foreign National of Non-Indian Origin resident outside India**

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

*ANNEX 1*

**PRESS RELEASE OF GOVERNMENT OF INDIA**

*Government's advice on acquiring land by persons residing outside India*

Government of India has advised State Governments to be extra vigilant in matters of acquisition and transfer of immovable property in India by a person resident outside India and satisfy themselves about the eligibility under FEMA before registering a sale or purchase of immovable property in India. The enquiries may include both the intending buyers and sellers. The relevant travel documents and the nature of visa may also be verified before registering such sale/purchase. Government has further advised all including concerned authorities in the State Governments that wherever appropriate, the authorities may consider reviewing registration of sale/purchase already made to determine their compliance with legal requirements. Further, persons acquiring immovable property have to fulfil the requirements, if any, prescribed by the State authorities.

A foreign company which has established a Branch Office or other place of business in India under the provisions of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 (FEMA 22/2000-RB dated the 3rd May, 2000) can acquire immovable property in India which is necessary for or incidental to carrying on such activity, subject to the conditions stipulated in Regulation 5 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (Notification No. 21/2000-RB, dated the 3rd May, 2000).

Apart from above, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business/vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. 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 preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.

As per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (Notification No. 21/2000-RB dated the 3rd May, 2000), an Indian citizen resident outside India and a Person of Indian Origin resident outside India may acquire immovable property in India other than agricultural land, plantation or a farm house. It has come to the notice of the Central Government that foreign nationals are buying immovable property illegally in some parts of the country, particularly in Goa, which has raised concerns. Many organisations and social groups have also made representations to the Central Government expressing their serious concerns in this regard. It has also been observed that foreign nationals coming to India and staying beyond 182 days on a tourist or other visa meant for a certain period are illegally acquiring immovable property in India in violation of the extant rules and regulations under FEMA.

ANNEX 2

**FORM IPI**

(See Regulation 5)

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

**Instructions:**

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.

**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		Date of acquisition of the immovable property		
5	(a)	How the immovable property was acquired <i>i.e.</i> 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 : .....	Name: .....
Date : .....	Designation: .....

*APPENDIX*

***LIST OF NOTIFICATIONS/A.P.(DIR SERIES) CIRCULARS WHICH HAVE BEEN CONSOLIDATED IN THIS MASTER CIRCULAR***

Sl. No.	Notification/Circular	Date
1.	FEMA 21/2000-RB	May 3, 2000
2.	FEMA 62/2002-RB	May 13, 2002
3.	FEMA 65/2002-RB	June 29, 2002
4.	FEMA 64/2002-RB	June 29, 2002
5.	FEMA 93/2003-RB	June 9, 2003
6.	FEMA 146/2006-RB	February 10, 2006
7.	FEMA 200/2009-RB	October 5, 2009

1.	A.P. (DIR Series) Circular No. 1	July 2, 2002
2.	A.P. (DIR Series) Circular No. 5	July 15, 2002
3.	A.P. (DIR Series) Circular No. 19	September 12, 2002
4.	A.P. (DIR Series) Circular No. 35	November 1, 2002
5.	A.P. (DIR Series) Circular No. 46	November 12, 2002
6.	A.P. (DIR Series) Circular No. 27	September 28, 2002
7.	A.P. (DIR Series) Circular No. 56	November 26, 2002
8.	A.P. (DIR Series) Circular No. 67	January 13, 2003
9.	A.P. (DIR Series) Circular No. 19	September 23, 2003
10.	A.P. (DIR Series) Circular No. 5	August 16, 2006
11.	A.P. (DIR Series) Circular No. 25	January 13, 2010

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1. Non-Resident Indian (NRI) is a citizen of India resident outside India.
2. A 'Person of Indian Origin' means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan) who
  - (i) at any time, held an Indian Passport or

- (ii) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).
3. A person resident outside India may hold, own transfer or invest in Indian currency, security or **immovable property** situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.