

Immovable Properties for the Non Residents of India

(A) Introduction on Immovable Properties for Non Residents

1. Introduction

- (i) (a) Non Residents are permitted for acquisition through purchase, gift or inheritance of the immovable properties in India under FEMA, 1999
 - (b) **And** also Non Residents are permitted for transfer through sale, gift (only to resident of India) or inheritance of the immovable properties under FEMA (Acquisition and Transfer of Immovable property in India) Regulations, 2000 as amended from time to time through Notifications and Circulars of the RBI.
- (ii) The term 'Non resident' is including the followings:-
 - (a) Non resident Indians (NRI's) (as per Indian Citizen Act, 1955)
 - (b) Foreign Citizens of 'Indian Origin' (commonly known as Person of Indian Origin / PIO as per Indian Citizen Act, 1955)
 - (c) Foreign Citizens of 'Non-Indian Origin' (as per Indian Citizen Act, 1955)
- (iii) RBI is 'not' deciding the residential status as same being decided by operation of the law under FEMA, 1999
- (iv) 'Onus to prove' the residential status is on the non resident where it is questioned by the govt. authorities
- (v) Resident of India but foreign citizens is treated as 'Not Permanent Resident of India'
- (vi) (a) Non resident of India is permitted to hold, own, transfer or invest in Indian currency, security or immovable property as situated in India, if these were acquired, held or owned when he was resident of India
 - (b) **Or** he has 'inherited' from a resident of India under FEMA, 1999

2. Acquisition of Agricultural Land, Plantation Property or Farm house

- (i) Non resident of India including NRI / PIO are 'not permitted' to acquire an agricultural land, plantation property or farm house in India
- (ii) However these are permitted to hold, if these were acquired, held or owned when he was resident of India or he has 'inherited' from resident of India

3. Repatriation against Sale Proceeds of Immovable Property from India

- (i)** Non residents are permitted to repatriate maximum USD 1 million per financial year through NRO account as maintained in India
- (ii)** Maximum USD 1 million is also include the sale proceeds of the assets as acquired under 'inheritance or settlement' in India
- (iii)** Maximum USD 1 million limit is 'not applicable' for repatriation through NRE account where sale proceeds of immovable property is 'already deposited' into NRE account through NRO account after TDS within maximum USD 1 million limit per financial year

4. Acquisition of the immovable property through Purchase, Gift or Inheritance

- (i)** 'Not permanent resident of India' including NRI / PIO is permitted to acquire a residential or commercial property in India through purchase, gift or inheritance under 'general permission' route of the RBI
- (ii)** However 'Not permanent resident of India' including NRI / PIO from '10' specified countries are 'not permitted' to acquire a residential or commercial property in India through purchase, gift or inheritance without the 'special permission' from the RBI. List of the '10' specified countries is as following:-
 - (a)** Pakistan
 - (b)** Bangladesh
 - (c)** Sri Lanka
 - (d)** Afganistan
 - (e)** China
 - (f)** Iran
 - (g)** Nepal
 - (h)** Bhutan
 - (i)** Hong Kong
 - (j)** Macau
- (iii) Documents for the 'General Permission' Route**
 - Non residents are 'not required' to file any document for acquisition of immovable properties under general permission route of the RBI.

(iv) Restriction on number of residential or commercial properties as to be purchased in India

- (a)** NRI / PIO is permitted to purchase a residential or commercial property 'without' any restriction on number of the properties 'for investments' purpose.
- (b)** Henceforth NRI / PIO is permitted to purchase 'unlimited' in numbers a residential or commercial property 'for investments' purpose.
- (c)** However NRI / PIO is 'not permitted' to purchase the properties 'for trading' purpose
- (d)** Difference between 'for investments' and 'for trading' purpose of the immovable properties are always debatable as needed 'reasonableness' in period of holding of the properties.

(v) Purchase of Immovable property by the Foreign Citizens of 'Non-Indian Origin'

- (a)** Foreign Citizens of Non-Indian Origin as 'Not permanent resident of India' are permitted to purchase immovable property under 'general permission route' under FEMA, 1999
- (b)** However the above mentioned Foreign Citizens of 'Non-Indian' Origin are required to obtain permission from the state govt., if any permission is prescribed for the Foreign Citizens of Non-Indian Origin as 'Not permanent resident of India'.
- (c)** 'Special permission' **from the RBI for '10 specified countries'**
 - Special permission from the RBI is required for purchase of immovable property by the Foreign Citizen or entity of the '10' specified countries.

5. Purchase of Immovable property by the 'foreign entity' for BO, PO or LO in India

- **Purchase by the BO or PO**

- (i) BO or PO of foreign entity is permitted to purchase an immovable property 'without permission' of the RBI, if property purchase is necessary or incidental to carry on the business in India
- (ii) However foreign entity is required to 'make the payment' against immovable property through foreign inward remittance under normal banking channel
- (iii) Foreign entity is required to 'file a declaration' in Form IPI as to be filed with the RBI within 90 days from the date of purchase of property
- (iv) Foreign entity is permitted to 'mortgaged the property' with AD category I bank as security for the borrowings by BO or PO
- (v) Foreign entity is required to 'repatriate the sale proceeds' on winding up of BO or PO 'with approval' from the RBI
- (vi) **Purchase by the BO or PO belongings to the '10 specified countries'**
 - BO or PO belongings to the 10 specified countries is permitted 'with permission' from the RBI, if property purchase is necessary or incidental to carry on the business in India
- (vii) **Purchase by the LO in India**
 - (a) LO is 'not permitted' to purchase an immovable property in India in any circumstance
 - (b) LO is permitted to purchase an immovable property on lease for a period 'not exceeding' 5 years 'without permission' from the RBI

6. Acquisition of Immovable Property through Gift

- (i) NRI / PIO is permitted to acquire an immovable property in India through gift from the following persons:-
 - (a) Resident of India
 - (b) NRI
 - (c) PIO
- (ii) NRI / PIO is 'not permitted' to acquire the following an immovable property in India through gift:-
 - (a) Agricultural land

(b) Plantation Property

(c) Farm house

(iii) Hence NRI / PIO is permitted to acquire residential or commercial property 'only'

(iv) Foreign Citizens of 'Non-Indian Origin are not permitted' to acquire an immovable property through gift

7. Acquisition of Immovable Property through Inheritance from resident of India

- Following persons are permitted to acquire an immovable property through inheritance:-

(a) NRI

(b) PIO

(c) Foreign Citizens of 'Non-Indian' Origin

(B) Transfer of the Immovable Properties in India

1. Transfer through sale of immovable properties

(i) Transfer by the NRI's

NRI's are permitted to sale the immovable properties to the following persons only:-

- (a)** Resident of India
- (b)** NRI
- (c)** PIO

(ii) Transfer by the PIO's

PIO's are permitted to sale the immovable properties to the following persons only:-

- (a)** Resident of India
- (b)** NRI
- (c)** PIO 'with permission' from the RBI

(iii) Transfer by Foreign Citizens of the '10' specified countries

Foreign Citizens of 'Non-Indian' Origin are permitted to sale the immovable properties to the following persons only 'with permission' from the RBI:-

- (a)** Resident of India
- (b)** NRI
- (c)** PIO

2. Transfer through the sale of Agricultural Land, Plantation Property or Farm house in India

- (i)** NRI / PIO is permitted to sale an agricultural land, plantation property or farm house to citizens **and** resident of India
- (ii)** Foreign Citizens of 'Non-Indian' Origin is permitted to sale an agricultural land, plantation property or farm house to citizens **and** resident of India 'with permission' from the RBI

3. Transfer through the gift of the immovable properties

(i) Transfer by NRI / PIO

NRI's / PIO's are permitted to gift the immovable properties to the following persons only:-

(a) Resident of India

(b) NRI

(ii) Transfer by Foreign Citizens of 'Non-Indian' Origin

Foreign Citizens of 'Non-Indian' Origin are permitted to transfer through gift the immovable properties 'with permission' from the RBI

4. Transfer through the gift of agricultural land, plantation property or farm house

(i) Transfer by the NRI / PIO

NRI's / PIO's are permitted to gift the agricultural land, plantation property or farm house to the following persons only:-

(a) Citizen **and** resident of India

(b) NRI

(c) PIO

(ii) Transfer by the Foreign Citizens of 'Non-Indian Origin'

Foreign Citizens of Non-Indian Origin are permitted to transfer through the agricultural land, plantation property or farm house 'with permission' from the RBI

5. Transfer through Mortgage of the immovable property

(i) Transfer by the NRI / PIO

(a) NRI / PIO is permitted to transfer through mortgage to AD Category - I bank or Housing Finance Institution in India 'without permission' from the RBI

(b) NRI / PIO is permitted to transfer through mortgage to bank 'outside India' with permission from the RBI.

(ii) Transfer by the Foreign citizens of 'Non-Indian origin'

Foreign Citizens of Non-Indian Origin are permitted to transfer 'with permission' from the RBI.

(iii) Transfer by the BO in India

BO of the foreign entity in India is permitted to mortgage to the AD Category-I Bank 'without permission' from the RBI

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(C) Payments for purchase of the immovable properties

1. Payments by the NRI / PIO

(i) NRI / PIO is permitted to make payment through direct remittance from 'outside India' with normal banking channel **or** debit to the following accounts as maintained in India:-

- (a) NRE account
- (b) FCNR account
- (c) NRO account

(ii) NRI / PIO is 'not permitted' to make payment through travelers cheque, foreign currency notes or any 'other' mode

2. Repatriation against 'non allotment' of the immovable property

(i) AD Category I bank is permitted to allow a credit into NRE or FCNR (B) account of the NRI / PIO for refund of application money or earnest money 'against non allotment' of the immovable property along with interest, if any 'after' TDS

(ii) However 'original payment' for application money or earnest money should be debited to NRE, FCNR (B) account or direct inward remittance from outside India

3. Housing Loan for purchase of the immovable properties

(i) **Housing loan for purchase of the immovable properties is including the followings:-**

- (a) For 'purchase' of the residential accommodation
- (b) For 'repair', renovation or improvement of the residential accommodation

(ii) **Lender for housing loan for purchase of the immovable properties is including the followings:-**

- (a) Ad Category -I bank in India
- (b) Housing Finance Institution in India

(iii) **Terms and Conditions include the followings:-**

- (a) Terms and conditions should be in accordance to Regulation No.08 of Notification No. FEMA 4/2000-RB, dated May 03, 2000

(b) And terms and conditions should be in accordance to Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000

(iv) Repayment against the housing Loan

(a) Through inward remittance from 'outside India' with normal banking channel

(b) Or through debit to NRE, FCNR (B) or NRO account as maintained in India

(c) Or through rental income from the immovable property as purchase through bank loan

(d) Or through 'close relatives' as located in India

4. Housing Loan from employer in India

(i) Terms and conditions are including the followings:-

(a) The terms and conditions should be in accordance to Regulation No. 8A of Notification No. FEMA 4/2000- RB, dated May 03, 2000

(b) And also in accordance to A.P (DIR Series) Circular No. 27, dated October 10, 2003

(c) The loan should be granted for 'purchase of housing property' in India

(d) That loan should be granted in accordance to employer's 'staff 'welfare scheme' **or** staff housing loan scheme as applicable to other staff as resident of India

(d) That employer should ensure loan amount is 'not used' for any other purpose

(f) That credit of loan should be to NRO account

(e) That repayment should be through remittance from 'outside India' **or** debit to NRE, NRO or FCNR (B) account

(D) Repatriation against Sale of the immovable properties

1. Repatriation by the NRI / PIO

- (i)** AD Category -I bank is permitted to repatriate the sale proceeds against immovable properties subject to satisfaction of the following terms and conditions:-
 - (a)** That immovable property should be 'acquired' by the seller in accordance to Foreign exchange law at time of acquisition and amount should be paid through direct foreign remittance from 'outside India' **or** debited to NRE, FCNRC(B) **or** NRO account
 - (b)** That amount of repatriation should 'not exceed' the amount as paid at the time of purchase of immovable property in foreign exchange

2. Repatriation through NRO Account

- (i)** Sale proceed should be out of the property as acquired out of rupee resources
- (ii)** **Or** Loan amount is being repaid by the 'close relative' in India
- (iii)** AD Category - I bank is permitted to remit maximum USD **1** million per financial year
- (iv)** Permission from the RBI is required for remitting an amount 'exceeding USD 1 million' per financial year

3. Repatriation of Sale Proceeds of Property Acquired against Rupee Loan

- (i)** NRI / PIO is permitted to repatriate sale proceeds of residential accommodation as purchased through loan from Indian AD Category- I bank or from housing finance institution 'after' repayment of loan through foreign inward remittance
- (ii)** Balance if any be credited to NRO account
- (iii)** NRI / PIO is permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

4. Repatriation of sale proceeds of the property as acquired through Gift

- (i)** Sale proceeds of immovable property as acquired through gift is to be credited to NRO account

- (ii) NRI / PIO is permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

5. Repatriation of sale proceeds of the property as acquired through Inheritance

- (i) NRI / PIO is permitted to repatriate sale proceeds of immovable property as inherited from resident in India subject to satisfaction of the following terms & conditions
 - (a) Amount should not exceed maximum USD 1 million per financial year
 - (b) NRI / PIO is required to submit documentary evidence in 'support' of inheritance of assets like an 'undertaking' by remitter and a 'certificate' from CA
 - (c) 'Deed of settlement' should be made by parent or close relative
 - (d) 'Original deed' of settlement for verification and tax clearance from Income Tax Deptt.
 - (e) Remittance in installment is also permitted through 'same AD category-I bank'
 - (f) Remittance to foreign citizens of 'Non-Indian origin' is permitted 'with permission' from the RBI
- (ii) 'With permission' from the RBI is required for repatriation of sale proceeds of immovable property by the foreign citizens of the '8' specified countries:-
 - (a) Pakistan
 - (b) Bangladesh
 - (c) Sri Lanka
 - (d) China
 - (e) Afghanistan
 - (f) Iran
 - (g) Hong Kong
 - (h) Macau
- (iii) Foreign citizens of the '2' specified countries are permitted a Indian Rupees (INR) only:-
 - (a) Nepal
 - (b) Bhutan

6. Repatriation against the Rental incomes

- (i)** NRI / PIO is permitted to rent out residential or commercial property 'without permission' from the RBI
- (ii)** **(a)** Rent can be credited to NRO or NRE account
(b) Or directly can be remitted 'outside India'
- (iii)** Henceforth NRI / PIO is permitted to remit 'without crediting' to NRO or NRE account 'after' TDS

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(E) Purchase and sale of the immovable property by foreign embassies etc.

- **Purchase or sale of the Immovable Properties**

- (i)** Regulation 5A of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 is applicable for purchase or sale by Foreign Embassies & Diplomats or Consulates general in India
- (ii)** However 'not' permitted to acquire any agricultural land, plantation property or farm house in India
- (iii)** 'Clearance' from the Govt. of India, Ministry of External Affairs is required for purchase or sale
- (iv)** Consideration for acquisition of immovable property in India be paid out of fund as 'remitted from outside India' through normal banking channel

(F) Tabular Summary of Provisions

1. Residential or Commercial Property

(i) By NRI in India

Particulars	NRI	PIO	Resident
Purchase 'from'	Yes	Yes	Yes
Sell 'to'	Yes	Yes	Yes
Gift 'from'	Yes	Yes	Yes
Gift 'to'	Yes	Yes	Yes
Inheritance 'from'	Yes	Yes	Yes

(ii) By PIO in India

Particulars	NRI	PIO	Resident
Purchase 'from'	Yes	Yes	Yes
Sell 'to'	Yes	NO	Yes
Gift 'from'	Yes	Yes	Yes
Gift 'to'	Yes	NO	Yes

2. Agricultural land or plantation Property or Farm House

• By NRI / PIO in India

Particulars	NRI	PIO	Resident
Purchase 'from'	NO	NO	NO
Sell 'to'	NO	NO	Yes
Gift 'from'	NO	NO	NO
Gift 'to'	NO	NO	Yes

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