

TAXPERT PROFESSIONALS PRIVATE LIMITED

Acquisition of Immovable Property in India

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Acquisition of immovable property in India by persons resident outside India (foreign national) is regulated in terms of section 6 (3) (i) of the Foreign Exchange Management Act (FEMA), 1999 as well as by the regulations contained in the [Notification No. FEMA 21/2000-RB dated May 3, 2000](#), as amended from time to time.

Section 2 (v) and Section 2 (w) of FEMA, 1999 defines 'person resident in India' and a 'person resident outside India', respectively. Person resident outside India is categorized as Non- Resident Indian (NRI) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. The 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.

Acquisition by Foreign National

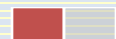
A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, he / she can acquire or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.

*A foreign national can
acquire property on lease
for not exceeding five
years*

A foreign national who is a 'person resident in India' within the meaning of Section 2(v) of FEMA, 1999 can purchase immovable property in India, but the person concerned would have to obtain the approvals and fulfill the requirements, if any, prescribed by other authorities, such as, the State Government concerned, etc. The onus to prove his/her residential status is on the individual as per the extant FEMA provisions, if required by any authority. **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 the Reserve Bank.**

Acquisition by Foreign Company

A foreign company which has established a Branch Office or other place of business in India, in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, 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 the proper banking channels. A declaration in form IPI should be filed with the 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 the purpose of borrowings.



On winding up of the business, the sale proceeds of such property can be repatriated only *with* the prior approval of the Reserve Bank.

Further, acquisition of immovable property by entities incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan and who have set up Branch Offices in India and would require prior approval of the Reserve Bank.

However, if the foreign company has established a Liaison Office in India, it cannot acquire immovable property. In such cases, Liaison Offices can acquire property by way of lease not exceeding 5 years.

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