

Notes on FEMA

(I) Acquisition of immovable property in India by a person resident outside India

i.e. by a NRI / PIO / foreign national of non-Indian origin through -

- i) purchase
- ii) gift
- iii) inheritance

(II) Transfer of immovable property in India by a person resident outside India by -

- i) sale
- ii) gift
- iii) mortgage

(III) Mode of payment for purchase of property in India.

(IV) Repatriation of sale proceeds of property

- i) purchased
- ii) received as gift
- iii) inherited

(V) Provisions for Foreign Embassies / Diplomats / Consulate Generals.

(VI) Other issues.

I 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?

A.2. 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?

A.3. 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?

A.4. 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?

A.5. No.

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

A.6. 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?

A.7. Yes, but the person concerned would have to obtain the approvals, and fulfil 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?

A.8. 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 ?

A.9. (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.

II. 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?

A.14. 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?

A.15. (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?

A.16. 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.

III. Mode of payment for purchase

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

A.17. 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?

A.18. 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. (Please refer to A.P. (DIR) Series Circular No. 46 dated 12.11.2002)

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?

A.19. 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?

A.20. 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 A.P. (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?

A.21. Yes, subject to certain terms and conditions (Please refer to Regulation 8A of Notification No. FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003).

IV 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?

A.22. 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 / by debit to NRE / 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?

A.23. 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 A.P. (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?

A.25. 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 C.A. 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.

V. 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.

VI. 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. A.P. (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 account 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 ie. 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.