

RBI Guidelines

Acquisition and Transfer of Immovable Property in India by a Person Resident outside India

- Acquiring immovable property in India by persons resident outside India 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 Notification issued by RBI viz Notification No FEMA. 21/2000-RB dated May 3, 2000, as amended from time to time. The persons resident outside India are categorized as Non- Resident Indians (NRIs) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. A person resident in India who is not a citizen of India is also covered by the relevant Notifications.
- Statutorily, under the provisions of Section 6(5) of FEMA 1999, a person resident outside India can hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India.
- The regulations under the Notification No FEMA 21 dated May 3, 2000 permit a NRI or a PIO to acquire immovable property in India other than agricultural land or, plantation property or farm house. Further, foreign companies who have been permitted to open an office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. This stipulation is not available to entities which are permitted to open liaison offices in India.
- The relevant regulations covering the transactions in immovable property have been notified vide RBI Notification No. FEMA 21/2000-RB dated May 3, 2000 and this basic notification has been subsequently amended by the notifications detailed below:
 1. Notification No.FEMA 64/2002-RB dated June 29, 2002
 2. Notification No.FEMA 65/2002-RB dated June 29, 2002
 3. Notification No.FEMA 93/2003-RB dated June 9, 2003 and
 4. Notification No. FEMA 146/2006-RB dated February 10 2006 (available with A.P.(DIR Series) Circular No. 5 dated 16.8.2006 on website)

All the above notifications are available on RBI website: www.fema.rbi.org.in

- The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding 5 years or where a person is deemed to be resident in India. In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the criterion for residency as defined in Section 2(v) of FEMA 1999. However, citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan cannot acquire or

transfer immovable property in India, (other than on lease, not exceeding five years) without prior permission of the Reserve Bank.

- NRIs/PIO are allowed to repatriate an amount up to USD one million, per financial year (April-March), out of the balances held in the NRO account subject to tax compliance. This amount includes sale proceeds of assets acquired by way of inheritance or settlement.
- While the statutory and regulatory provisions are indicated above, we have been receiving several queries from individuals on operational procedures regarding acquisition, holding and transferring of immovable property in India and repatriating / remitting the proceeds arising from sale of such property. In order to clarify these issues, we have attempted a set of FAQs on various issues relating to acquisition and transfer of immovable property in India by a person resident outside India and a person resident in India who is not a citizen of India.

In case there are other issues to be resolved, a reference may be made to the

Chief General Manager-in-Charge,

Foreign Exchange Department,

Foreign Investment Division,

Reserve Bank of India,

Central Office,

Mumbai- 400 001.