

Sale and purchase of immovable property in India:

The Foreign Exchange Management Act, 1999 (FEMA), came in force with effect from June 1, 2000. Section 6 (3) (i) of the Act empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by certain persons mainly residents outside India. The restrictions under this clause are not applicable to a lease of immovable property for a period not exceeding five years.

The regulations made by the Reserve Bank are called Foreign Exchange management (Acquisition and Transfer of Immovable property in India) Regulations, 2000, and have been notified vide Notification FEMA No. 21/2000-RB of May 3, 2000.

A synopsis of the said Regulations is as under:

- All persons, whether resident in India or outside India, who are citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, require prior permission of Reserve Bank for acquiring or transferring any immovable property in India.
- A person resident outside India, who has been permitted by Reserve Bank to establish a branch, or office, or place of business in India (excluding a Liaison Office), has general permission of Reserve Bank to acquire immovable property in India, which is necessary for, or incidental to, the activity. However, in such cases a declaration, in prescribed form (IPI), is required to be filed with the Reserve Bank, within 90 days of the acquisition of immovable property.
- An Indian citizen resident outside India does not require any permission to acquire any immovable property in India other than agricultural/plantation property or a farm house.
- An Indian citizen resident outside India does not require any permission to transfer any immovable property, to a citizen of India who is resident in India.
- An Indian citizen resident outside India does not require any permission to transfer any immovable property other than agricultural or plantation property or farm house, to a person who: is a citizen of India resident outside India, or is a person of Indian origin resident outside India.
- A person of Indian origin resident outside India does not require any permission to acquire any immovable property other than agricultural land/farm house/plantation property in India by purchase, from out of funds: received in India by way of inward remittance through banking channel from any place outside India, or held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank under the Act.
- A person of Indian origin resident outside India does not require any permission to acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India.
- A person of Indian origin resident outside India does not require any permission to acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property 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 or from a person resident in India.
- A person of Indian origin resident outside India does not require any permission to transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India.

- A person of Indian origin resident outside India does not require any permission to 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.
- A person of Indian origin resident outside India does not require any permission to 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
- Repatriation outside India, including credit to RFC, NRE or FCNR account, of sale proceeds of any immovable property situated in India, requires prior permission of the Reserve Bank except in circumstances stated in paragraph 13 below.

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 authorized dealer may allow repatriation of the sale proceeds outside India, provided all the following conditions are satisfied:

- * the immovable property was acquired by the seller in accordance with the provisions of the Exchange Control Rules/Regulations/Law in force at the time of acquisition, or the provisions of the Regulations framed under the Foreign Exchange Management Act, 1999.
- * the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in foreign currency non-resident account or (b) the amount paid where such payment was made from the funds held in non-resident external account for acquisition of the property; and
- * In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Authorized Dealers have been permitted to allow the facility of repatriation of funds by NRIs/PIOs in their Non-Resident Ordinary Rupee (NRO) account upto US\$ 100,000 per year representing sale proceeds of immovable property held by them for a period of not less than 10 years subject to payment of applicable taxes.

* All requests for acquisition of agricultural land/plantation property/farm house by any person resident outside India or foreign nationals may be made to The Chief General Manager, Reserve Bank of India, Central Office, Exchange Control Department, Foreign Investment Division (III), Mumbai 400 001.

The NRIs/PIOs can freely rent out their immovable property in India without seeking any permission from the Reserve Bank. The rental income being a current account transaction is freely repatriable outside India.

NOTES:

A. For the purposes of transactions, i.e., transfer, sale, purchase etc., dealing with immovable property in India, a person of Indian origin is defined as under:
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 Indian passport; or
- (ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955)

B. For further details please contact the nearest Regional Office of the Reserve Bank of India (Exchange Control Department)

<http://www.gandhirealities.com>

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