

LÉGALÍCS

Acquisition and Transfer of Immovable Property in India

The information provided herein is of general nature and not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and updated insight, there can be no guarantee that such information is accurate as on date.

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

The acquisition and transfer of immovable property in India by Non-resident Indians / persons of Indian origin / foreign nationals of non-Indian origin is regulated in terms of the Foreign Exchange Management Act, 1999 ('**FEMA**') read with Notification No.FEMA 21/2000-RB dated May 3, 2000. FEMA empowers the Reserve Bank of India ('**RBI**') to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by persons residents outside India.

A. Acquisition and Transfer of Immovable Property in India by Non-resident India ('NRI')

An NRI i.e. a person resident outside India who is a citizen of India can, by way of purchase, acquire any immovable property in India other than agricultural land / plantation property / farm house.

An NRI can also transfer any immovable property other than agricultural land / plantation property / farm house to:

- ✓ NRI; or
- ✓ person of Indian origin resident outside India ('**PIO**'); or
- ✓ person resident in India

Payment for acquisition of property can be made out of:

- ✓ Funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE / FCNR (B) / NRO account.
- ✓ Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

An NRI who has purchased residential / commercial property under general permission is not required to file any documents with the Reserve Bank.

B. Acquisition and Transfer of Immovable Property in India by Person of Indian Origin ('PIO')

A PIO can acquire by way of purchase any immovable property in India other than agricultural land / farm house / plantation property.

A PIO may acquire any immovable property (other than agricultural land/ plantation property / farm house) in India by way of gift from:

- ✓ a person resident in India; or
- ✓ a NRI; or
- ✓ a PIO.

A PIO may acquire any immovable property in India by way of inheritance from:

- ✓ a person resident in India; or
- ✓ a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations, at the time of acquisition of the property.

A PIO may transfer any immovable property other than agricultural land /Plantation property / farm house in India by way of sale to a person resident in India. He may also 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. He may also 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.

A PIO can make payment for acquisition of immovable property in India (other than agricultural land / farm house / plantation property):

- ✓ By way of purchase out of funds received by inward remittance through normal banking channels or by debit to his NRE / FCNR (B) / NRO account.
- ✓ Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.

A PIO who has purchased residential / commercial property under the general permission, is not required to file any documents with the Reserve Bank.

C. Repatriation of sale proceeds of immovable property

(i) Immovable property acquired by way of purchase:

- (a) a person¹, or his successor shall not, except with the prior permission of the RBI, repatriate outside India the sale proceeds of any immovable property situated in India if such property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India;
- (b) in the event of sale of immovable property other than agricultural land / farm house / plantation property in India by an NRI or a PIO, the authorised dealer bank may allow repatriation of the sale proceeds outside India, subject to certain conditions.

(ii) Immovable property acquired by way of inheritance/ legacy/ out of Rupee funds:

A NRI / PIO may remit an amount, not exceeding US\$ 1,000,000 (US Dollar One million only) per financial year out of the balances held in NRO accounts

¹Referred to in Section 6(5) of FEMA

/ sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy / out of Rupee funds².

Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the RBI.

D. Prohibition on acquisition or transfer of immovable property in India

The citizens of certain countries i.e. Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong cannot, without prior permission of the RBI, acquire or transfer immovable property in India, other than lease, not exceeding five years.

E. Purchase of Immovable Property in India by a Foreign National of Non-Indian Origin resident outside India

- i. Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years without the prior permission of the RBI.
- ii. Foreign Nationals of non-Indian origin, other than citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong can acquire immovable property in India on becoming resident in India in terms of Section 2(v) of the FEMA and subject to certain conditions.
- iii. Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the RBI or have purchased the immovable property with the specific approval of the RBI cannot transfer such property without the prior permission of the RBI.

F. Payment of taxes

Any transaction involving acquisition of immovable property under the aforesaid shall be subject to applicable tax laws in India.

²This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and payment of applicable taxes in India.