

NRI Guide

Acquisition of Immovable Property in India through purchase / gift/ inheritance

Who can purchase immovable property in India ?

Under the general permission available, the following categories can purchase immovable property in India:

- i) Non-Resident Indian (NRI)¹^[1]^[1]^[1]
- ii) Person of Indian Origin (PIO)²^[2]^[2]

The general permission, however, covers only purchase of residential and commercial property and is not available for purchase of agricultural land / plantation property / farm house in India.

Can NRI/PIO acquire agricultural land/ plantation property / farm house in India?

No.

Are any documents required to be filed with the Reserve Bank after the purchase?

No. An NRI / PIO who has purchased residential / commercial property under general permission, is not required to file any documents/reports with the Reserve Bank.

How many residential / commercial properties can NRI / PIO purchase under the general permission?

There are no restrictions on the number of residential / commercial properties that can be purchased.

Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?

No.

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

No. 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.

Can a foreign national who is a person resident in India purchase immovable property in India?

Yes, 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 fulfil 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.

Can the branch / liaison office of a foreign company purchase immovable property in India?

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.

Can a NRI/PIO acquire immovable property in India by way of gift? Can a foreign national acquire immovable property in India by way of gift?

(a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from

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

However, the property can only be commercial or residential in nature. 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 by way of gift.

Can a non-resident inherit immovable property in India?

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.

From whom can a non-resident person inherit immovable property?

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 law in force or FEMA regulations, applicable at the time of acquisition of the property.

Transfer of immovable property in India

Transfer by way of sale

Can an NRI/ PIO/foreign national sell his residential / commercial property?

(a) NRI can sell property in India to

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

(b) PIO can sell property in India to

- a person resident in India; or
- an NRI; or
- a PIO – with the prior approval of the 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 the Reserve Bank to

- a person resident in India
- an NRI
- a PIO

Can a non-resident owning / holding an agricultural land / a plantation property / a farm house in India sell the said property?

(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 the Reserve Bank to sell agricultural land/plantation property/ farm house in India.

Transfer by way of gift

Can a non-resident gift his residential / commercial property?

Yes.

(a) NRI / PIO may gift residential / commercial property to –

- (i) person resident in India or
- (ii) an NRI or
- (iii) PIO.

(b) A foreign national of non-Indian origin requires the prior approval of the Reserve Bank for gifting the residential / commercial property.

Can an NRI / PIO / foreign national holding an agricultural land / a plantation property / a farm house in India, gift the same?

(a) NRI / PIO can gift an agricultural land / a plantation property / a farm house in India only to a person resident in India who is a citizen of India.

(b) A foreign national of non-Indian origin would require the prior approval of the Reserve Bank to gift an agricultural land / a plantation property / a farm house in India.

Transfer through mortgage

Can residential / commercial property be mortgaged by NRI/ PIO?

i) NRI / PIO can mortgage a residential / commercial property to:

(a) an Authorised Dealer / the housing finance institution in India without the approval of Reserve Bank

(b) a bank abroad, with the prior approval of the Reserve Bank.

ii) A foreign national of non-Indian origin can mortgage a residential / commercial property only with prior approval of the 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 Authorised Dealer in India.

Mode of payment for purchase of immovable property in India

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

Payment can be made by NRI / PIO out of:

(a) funds remitted to India through normal banking channels 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 or by other mode except those specifically mentioned above.

Is repatriation of application money for booking of flat / payment made to the builder by NRI/ PIO allowed when the flat or plot is not allotted or the booking / contract is cancelled?

The Authorised Dealers can allow NRIs / PIOs to credit refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings/ deals for purchase of residential, commercial property, together with interest, if any, net of income tax payable thereon, to NRE/FCNR account, provided, the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the Authorised Dealer is satisfied about the genuineness of the transaction.

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? How the loan can be repaid?

Yes, such loans are permitted subject to the terms and conditions laid down in Schedules 1 and 2 to the Notification No. FEMA 5/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time. Banks cannot grant fresh loans or renew existing loans in excess of Rs. 100 lakhs against NRE and FCNR (B) deposits, either to the depositors or to third parties. The banks should also not undertake artificial slicing of the loan amount to circumvent the ceiling of Rs. 100 lakh.

Such loans can be repaid in the following manner:

(a) by way of inward remittance through normal banking channel or

(b) by debit to the NRE / FCNR (B) / NRO account of the NRI/ PIO 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.

Can NRI / PIO, avail of housing loan in Rupees from an Authorised Dealer or a 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?

Yes, NRI/PIO can avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution subject to certain terms and conditions laid down in Regulation 8 of Notification No. FEMA 4/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, as amended from time to time. Authorised Dealers/ Housing Finance Institutions can also lend to the NRIs/ PIOs for the purpose of repairs/renovation/ improvement of residential accommodation owned by them in India. Such a loan can be repaid (a) by way of inward remittance through normal banking channel or (b) by debit to the NRE / FCNR (B) / NRO account of the NRI / PIO or (c) out of rental income from such property; or (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.

Can NRI/PIO avail of housing loan in Rupees from his employer in India?

Yes, subject to certain terms and conditions given in 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, i.e.,

(i) The loan shall be granted only for personal purposes including purchase of housing property in India;

(ii) The loan shall be granted in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme and subject to other terms and conditions applicable to its staff resident in India;

(iii) The lender shall ensure that the loan amount is not used for the purposes specified in sub-clauses (i) to (iv) of clause (1) and in clause (2) of Regulation 6 of [Notification No.FEMA.4/2000-RB dated May 3, 2000](#).

(iv) The lender shall credit the loan amount to the borrower's NRO account in India or shall ensure credit to such account by specific indication on the payment instrument;

(v) The loan agreement shall specify that the repayment of loan shall be by way of remittance from outside India or by debit to NRE/NRO/FCNR Account of the borrower and the lender shall not accept repayment by any other means.

Repatriation of sale proceeds of residential / commercial property purchased by NRI / PIO

Can NRI / PIO repatriate outside India the sale proceeds of immovable property held in India?

(a) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by a NRI / PIO, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:

(i) the immovable property was acquired by the seller 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;

(ii) the amount to be repatriated does not exceed:

- the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
- the amount paid out of funds held in Foreign Currency Non-Resident Account, or
- the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for

acquisition of the property; and

(iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

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 / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and a tax clearance / no objection certificate from the Income Tax Authority for the remittance. Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

(c) A person referred to in sub-section (5) of Section 6 of the Foreign Exchange Management Act 3[3][3], or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

Can an NRI/PIO repatriate the proceeds in case the sale proceeds were deposited in the NRO account?

Please refer to the answer at Q.22 above. NRI/PIO may repatriate up to USD one million per financial year (April-March) from their NRO account which would also include the sale proceeds of immovable property. There is no lock in period for sale of immovable property and repatriation of sale proceeds outside India.

If a Rupee loan was taken by the NRI/ PIO from an Authorised Dealer or a Housing Finance Institution for purchase of residential property can the NRI / PIO repatriate the sale proceeds of such property?

Yes, Authorised Dealers have been authorised to allow repatriation of sale proceeds of residential accommodation purchased by NRIs/ PIOs out of funds raised by them by way of loans from the authorised dealers/ housing finance institutions to the extent such loan/s repaid by them are out of the foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts. The balance amount, if any, can be credited to their NRO account and the NRI/PIO may repatriate up to USD one million per financial year (April-March) subject to payment of applicable taxes from their NRO account balances which would also include the sale proceeds of the immovable property.

If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale of such property?

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.

If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

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 subject to the following conditions:

(i) The amount should not exceed USD one million, per financial year (ii) This is subject to production of documentary evidence in support of acquisition / inheritance of assets and 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.4/2009 dated June 29, 2009 (iii) In cases of deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler (iv) the original deed of settlement and a tax clearance / No Objection Certificate from the Income-Tax Authority should be produced for the remittance (v) Where the remittance as above is made in more than one installment, the remittance of all such installments shall be made through the same Authorised Dealer (vi) In case of a foreign national, sale proceeds can be repatriated if the property is inherited from a person resident outside India with the prior approval of the Reserve Bank. The foreign national has to approach the Reserve Bank with documentary evidence in support of inheritance of the immovable property and the undertaking and the C.A. Certificate 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 the Reserve Bank.

As FEMA, 1999 specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan. Therefore, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

Provisions for Foreign Embassies / Diplomats / Consulates General

Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?

In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassies/ Diplomats/ Consulates General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

(i) Clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale; and

(ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

Other Aspects

Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?

Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. The 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.

Can a person who had bought immovable property, when he was a resident, continue to hold such property even after becoming an NRI/PIO? In which account can the sale proceeds of such immovable property be credited?

Yes, a person who had bought the residential / commercial property / agricultural land/ plantation property / farm house in India when he was a resident, continue to hold the immovable property

without the approval of the Reserve Bank even after becoming an NRI/PIO. The sale proceeds may be credited to NRO account of the NRI /PIO.

Can the sale proceeds of the immovable property referred to in Q.No. 29 be remitted abroad ?

Yes, 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.

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 the Reserve Bank continue to hold the same? Can they transfer such property?

Yes, they may continue to hold the immovable property under holding license obtained from the Reserve Bank. However, they can transfer the property only with the prior approval of the Reserve Bank.

Is a resident in India governed by the provisions of the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

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, as amended from time to time, i.e. she/he would require prior approval of the Reserve Bank for acquisition and transfer of immovable property in India even though she/he is resident in India. Such requests are considered by the Reserve Bank in consultation with the Government in India.

The citizens of countries other than those listed above can be PIOs who are covered under the general permission (please refer to Q.No.1). The provisions relating to foreign national of non-Indian origin are covered in detail in Q Nos. 6 and 7.

Note:

The relevant regulations covering the transactions in immovable property have been notified via RBI [Notification No. FEMA 21/2000-RB dated May 3, 2000](#) and this basic notification has been subsequently amended by the notifications detailed below:

- i) [Notification No.FEMA 64/2002-RB dated June 29, 2002;](#)
- ii) [Notification No.FEMA 65/2002-RB dated June 29, 2002;](#)
- iii) [Notification No.FEMA 93/2003-RB dated June 9, 2003;](#)
- iv) [Notification No. FEMA 146/2006-RB dated February 10, 2006](#) read with [A.P.\(DIR Series\) Circular No. 5 dated 16.8.2006;](#) and
- v) [Notification No. FEMA 200/2009-RB dated October 5, 2009](#)

All the above notifications and A.P. (DIR Series) Circulars are available on the RBI website: www.fema.rbi.org.in. The Master Circular on Acquisition and Transfer of Immovable Property in India by NRIs/PIOs/Foreign Nationals of Non-Indian Origin is also available on the website under the link "www.rbi.org.in".

1 [1][1] Non-Resident Indian (NRI) is a citizen of India resident outside India.

2 [2][2] A 'Person of Indian Origin' means 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 an Indian Passport or
- ii. who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

3 [3][3] A person resident outside India may hold, own, transfer or invest in Indian currency,

security or **immovable property** situated in India if such currency, security or 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.

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