

INVESTMENT IN PROPERTY

BY

NRI/PIO

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INDIAN PROPERTY SHOW AT LONDON

APRIL 2016

INVESTMENT IN PROPERTY BY NRI/PIO

The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank of India to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by certain persons residents outside India. The regulations governing acquisition and transfer of immovable property in India is notified under Notification FEMA No.21/2000-RB of May 3, 2000, as amended from time to time.

‘Non-Resident Indian’ (NRI) means an individual resident outside India who is a citizen of India or is a person of Indian origin.

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‘Person of Indian Origin’ (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

- (i) he at any time held Indian Passport; or
- (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

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'Repatriation outside India' means the buying or drawing of foreign exchange from an authorized 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 authorized dealer from which it can be converted in foreign currency.

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Acquisition and Transfer of Immovable Property in India by Non- Resident Indian (NRI)

Purchase of immovable property

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

Transfer of immovable property

A NRI may transfer any immovable property in India to a person resident in India. He may transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian Citizen resident outside India or a PIO resident outside India.

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Payment for Acquisition of Immovable Property

NRIs can make payment for acquisition of immovable property (other than agricultural land/ plantation property / farm house) 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 Non-Resident External (NRE) / Foreign Currency Non Resident (FCNR) / Non-Resident Ordinary (NRO) account.
- Such payments cannot be made either by traveler's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

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

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Transfer of immovable property

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

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Payment for Acquisition of Immovable Property in 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 Non-Resident External (NRE) / Foreign Currency Non Resident (FCNR) / Non-Resident Ordinary (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.

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

Acquisition of immovable property by person resident outside India for carrying on a permitted activity

A person resident outside India who has established a Branch, Office or other place of business, excluding a Liaison Office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may –

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- acquire any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in the form IPI (Annex-2), not later than ninety days from the date of such acquisition; and
- transfer by way of mortgage to an Authorized Dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) above.

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- 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

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iii. in the case of residential property, the repatriation of sale proceeds is restricted to maximum two such properties.

Immovable property acquired by way of inheritance/ legacy/ out of Rupee funds

A Non-Resident Indian (NRI) / Person of Indian Origin (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 / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy/ out of Rupee funds.

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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. 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, the original deed of settlement and a tax clearance / No objection certificate from the Income-Tax Authority should be produced for the remittance.

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.

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CONCLUSION

The RBI along with the Foreign Exchange Management Act (FEMA) has become lenient in terms of rules and regulations for non-residents who are looking for an investment in real estate. They are not only simplifying the rules but also providing the benefit of repatriation of the capital involved. The government is planning some investment growth activities through their investment promotional council, to create an environment appropriate for non-residents to put money.

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DISCLAIMER

These are the broad guidelines meant for ready reference with respect to acquisition and transfer of immovable property in India by NRI/PIO and in each case prospective buyer or seller of property in India must consult his/her own legal/finance/tax advisor and obtain suitable advise for their specific transaction. We assume no responsibility or legal liability for transactions entered into by placing reliance on this presentation.

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