

# INVESTMENT IN IMMOVABLE PROPERTIES BY NON-RESIDENT (INDIVIDUALS)



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## 1.0 Introduction

NRIs/OCIs play a very important role in our economy, considering the same in mind, RBI has allowed the investment in immovable property by NRIs/OCIs in India, subject to certain conditions.

NRI/OCIs are permitted to invest in both residential and commercial properties. However, there are a few restrictions as to the investment in (a) agricultural land or (b) plantation property or (c) farmhouse property; (hereinafter called “**Restricted Property**”). The immovable property in India can be acquired by the NRI/OCIs either by direct purchase or a gift or inheritance. The rules governing the acquisition of immovable property in different modes are listed below:

## 2.0 Relevant Definitions

### 2.1 Non-Resident Indian

“NRI” or “Non-Resident Indian” means an individual resident outside India who is a citizen of India<sup>1</sup>

Non-Resident Indian (NRI) is a citizen of India, who stays abroad for employment /carrying on business or vocation outside India or stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad.

### 2.2 Overseas Citizen of India

Overseas Citizen of India (OCI)<sup>2</sup> means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

Following categories of foreign nationals are eligible for registration as OCI Cardholder:

- *Who was a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or*
- *who was eligible to become a citizen of India on 26.01.1950; or*
- *who belonged to a territory that became part of India after 15.08.1947; or*
- *who is a child or a grandchild or a great grandchild of such a citizen; or*
- *who is a minor child of such persons mentioned above; or*
- *who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or*
- *spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.*

<sup>1</sup>Sub-clause (aj) to clause 2, Foreign Exchange Management (Non-debt Instruments) Rules, 2019

<sup>2</sup>Sub-clause (ak) to clause 2, Foreign Exchange Management (Non-debt Instruments) Rules, 2019

However, no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.

### 2.3 **Transfer**<sup>3</sup>

“Transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

### 2.4 **Person of Indian Origin (PIO)**<sup>4</sup>

'Person of Indian Origin (PIO)' means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- b) Who belonged to a territory that became part of India after the 15th day of August 1947; or
- c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: for the purpose of this sub-regulation, the expression 'Person of Indian Origin' includes an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

### 3.0 **Nature of the transaction**

Investment in immovable properties (IP) by a Non-Resident is a capital account transaction. And as a rule, all capital account transactions are prohibited unless specifically permitted.

### 4.0 **Prohibition on transfer of immovable property in India**<sup>5</sup>

Save as otherwise provided in the Act or rules, no person resident outside India shall transfer any immovable property in India. However,

- (a) the Reserve Bank may, for sufficient reasons, permit the transfer subject to such conditions as may be considered necessary.
- (b) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000;
- (c) an authorised dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender :

<sup>3</sup>Section 2(ze) of the Foreign Exchange Management Act (the Act)

<sup>4</sup>Clause 2(x), Notification No. FEMA 5(R)/2016-RB

<sup>5</sup>Rule 30, Foreign Exchange Management (Non-debt Instruments) Rules, 2019

Provided further that :- (i) the funds shall be used by the borrowing company only for its core business purposes overseas; (ii) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.

## 5.0 General Permission

From time to time, general permissions are given to certain non-resident person to acquire immovable property in India and those permissions were enshrined in following regulation and rules.

- Notification No. FEMA 21 /2000-RB, Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000 dated 3rd May 2000
- Notification No. FEMA 21(R)/2018-RB, Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 dated 26/03/2018
- Chapter X titled Acquisition and transfer of immovable property in India in the rules called Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated 17/10/2019

Each subsequent regulation/rule superseded previous regulation.

## 6.0 Restrictions in acquiring IP in India

- **Property Based restriction** - Agricultural land /plantation property/farmhouse in India cannot be acquired by a Non-Resident.
- **Citizenship based restriction-**
  - Citizens of **eleven countries** (viz. Citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan or Macau or Hong Kong or Democratic People's Republic of Korea (DPRK) cannot acquire IP in India irrespective of their residential status unless they obtain prior RBI approval. However, this prohibition shall not apply to an OCI card holder.
  - They can acquire IP on lease for a period not exceeding five years.
- 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 (Sec 6(5) of the Act). However, to sell the said inherited property he will have to obtain prior permission of the RBI.

## 7.0 Change in residential status from Resident to Non-Resident

Section 6(5) reads as - A person resident outside India may 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 resident in India or inherited from a person who was resident in India.

Section 6(5) permits a Non-Resident individual to hold, transfer or reinvest IP in India when his residential status changes from resident to nonresident subject to fulfillment of the conditions stated in the section.

## 8.0 Acquisition of the Immovable Property in India

As per Chapter X of Foreign Exchange Management (Non-debt Instruments) Rules, 2019, several types of Non-Resident can acquire /Transfer IP in India under automatic route subject to certain conditions to be fulfilled. Let's discuss in detail.

**8.1 Acquisition of the Immovable Property by way of Purchase other than Restricted Properties**

A NRI or an OCI may acquire immovable property in India other than an agricultural land or farmhouse or plantation property.

Provided that the consideration, if any, for transfer, shall be made out of

- (i) funds received in India through banking channels by way of inward remittance from any place outside India ; or
- (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

**8.2 Acquisition of the Immovable Property by way of Gift other than Restricted Properties**

NRI or OCI can acquire any immovable property in India **other than** agricultural land or farm house or plantation property **by way of gift** from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013

**8.3 Acquisition of the Immovable Property by way of Inheritance (Including Restricted Properties)**

NRI or OCI can 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 rules ;or from a person resident in India.

**8.4 Transfer of Immovable Property in India**

NRI or OCI can

- (i) Transfer any immovable property in India to a person resident in India.
- (ii) Transfer any immovable property other than agricultural land or farmhouse or plantation property to an NRI or an OCI.

**8.5 Summary**

RI = A person resident in India

ROI = A person resident outside India

Restricted Properties = agricultural land or farmhouse or plantation property

Following transactions are permitted under automatic route.

Transferor	Transferee	Type of the property	By way of	Regulation No.
RI or NRI or OCI*	NRI/OCI	Property in India other than Restricted Properties.	Purchase	24(a)
RI /NRI/ OCI, who is a relative as defined in sec 2(77) the Companies Act, 2013	NRI/OCI	Property in India other than Restricted Properties.	Gift	24(b)
RI or ROI	NRI/OCI	Any property including Restricted Properties.	Inheritance	24(c)
NRI/OCI	A person resident in India	Any property including Restricted Properties.	Any form of transfer	24(d)
NRI/OCI	NRI/OCI	Property in India other than Restricted Properties.	Any form of transfer	24(e)

\* The rule 24(a) silent about whether the nonresident must be NRI or OCI. However, FAQ published by the RBI on its website states transferor as NRI/OCI.

### 8.6 Joint acquisition of the Immovable Property by the spouse of a NRI or an OCI<sup>6</sup>

The joint acquisition has also been allowed by the spouse of an NRI/OCI of immovable property other than restricted property i.e. (a) agricultural land or (b) plantation property or (c) farmhouse property, subject to the following conditions:

**Consideration:** shall be paid from (i) funds received in India through banking channels, or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act;

**Marriage:** the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.

**Other condition:** The non-resident spouse is not otherwise prohibited from such acquisition.

<sup>6</sup>Rule 25, Foreign Exchange Management (Non-debt Instruments) Rules, 2019



### 8.7 Acquisition by a long-term visa holder residing in India

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions subject to certain conditions.

### 9.0 **Repatriation/Remittance of sale proceeds of the property.**

#### 9.1 Repatriation of the sale proceeds of the property (other than restricted properties) outside India.<sup>7</sup>

Repatriation means sending money back. When an NRI/OCI have invested in IP in India by sending money from abroad or using NRE or FCNR Account, they can repatriate sale proceeds of the said property back to their home country. Following are the rules.

In the event of sale of immovable property other than agricultural land or farm house or plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:-

- (a) 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 or the provisions of these rules;
- (b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External Account;
- (c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

#### 9.2 Remittance upto USD 1 million<sup>8</sup>

A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year,

- (i) out of the balances held in the Non-Resident (Ordinary) Accounts (NRO accounts) opened in terms of Foreign Exchange Management (Deposit) Regulations, 2016/ sale proceeds of assets/ the assets acquired by him by way of inheritance/ legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter;
- (ii) Under a deed of settlement made by either of his parents or a relative (relative as defined in Section 2(77) of the Companies Act, 2013) and the settlement taking effect on the death of the settler, on production of the original deed of settlement;

Where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that:

The said remittance is sought to be made out of the remitter's balances held in the account arising from his/ her legitimate receivables in India and **not by borrowing** from any other person or **a transfer from any other NRO account** and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA.

<sup>7</sup>Rule 29, Foreign Exchange Management (Non-debt Instruments) Rules, 2019

<sup>8</sup>Clause 4(2), Notification No. FEMA 13 (R)/2016-RB

**9.3 Remittance exceeding USD1 million**

The Reserve Bank may, for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person.

**9.4 In a nutshell**

Following are broad rules related to the IP In India to be held by a person resident outside India

Citizen of eleven neighboring countries and resident outside India unless they hold OCI Card	RBI approval required.
Foreign nationals of non-Indian origin resident outside India and resident outside India	Prohibited in acquiring property in India but can inherit it. However, they will require RBI approval at the time of sale.
Foreign nationals of Indian origin who have obtained OCI Card and resident outside India	General Permission
Indian national and resident outside India	General Permission

