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All Category - I Authorised Dealer banks and Authorised Banks

Madam/ Sir

**Master Direction – Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999**

Acquisition and transfer of immovable property by Indian residents outside India and Non-residents in India is regulated in terms of sub-sections (3), (4) and (5) of section 6 of the Foreign Exchange Management Act, 1999 (FEMA) read with <sup>1</sup>[Notification No. FEMA 7\(R\)/2015-RB dated January 21, 2016](#) and [Notification No. FEMA 21/2000-RB dated May 3, 2000](#), respectively. These Regulations are amended from time to time to incorporate the changes in the regulatory framework and published through amendment notifications.

2. Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

3. Instructions issued on acquisition of immovable property have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in the Appendix. Reporting instructions can be found in Master Directions on reporting ([Master Direction No. 18 dated January 1, 2016](#))

4. It may be noted that, whenever necessary, Reserve Bank shall issue directions to Authorised Persons through A.P. (DIR Series) Circulars in regard to any change in the Regulations or the manner in which relative transactions are to be conducted by the Authorised Persons with their customers/ constituents. The Master Direction issued herewith shall be amended suitably simultaneously.

Yours faithfully

(A K Pandey)  
Chief General Manager

\* Since this Master Direction has been significantly amended, it has been replaced rather than showing the changes in track mode for reader convenience. The changes are listed at the end of Master Direction in any case.

<sup>1</sup> FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 was repealed and replaced by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016.

## **<sup>2</sup>Master Direction 12/ 2015-16 - Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999**

### **Part I - Acquisition and Transfer of Immovable Property outside India by a person resident in India**

#### **1. Introduction**

1.1 The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property outside India by persons residents in India. The regulations governing acquisition and transfer of immovable property outside India are notified under <sup>3</sup>[Notification No. FEMA 7\(R\)/2015-RB dated January 21, 2016](#), as amended from time to time.

1.2 A person resident in India can, acquire property outside India if so permitted under the FEMA or the regulations framed thereunder or with the general or special permission of the Reserve Bank. These restrictions, however, do not apply to the property held by a person resident in India who is a foreign national or if the property was acquired by a person resident in India on or before July 8, 1947 and continued to be held by him with the permission of the Reserve Bank. The restrictions also do not apply to acquisition of property outside India by a person resident in India on a lease not exceeding five years.

#### **2. Definitions**

Some key terms used in the regulations are given below:

2.1 'Relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

2.2 'Liberalised Remittance Scheme' is a facility available to resident individuals for making remittances outside India as per the conditions mentioned in the Master Direction on Liberalised Remittance Scheme.

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<sup>2</sup> Updated up to February 4, 2016 (cf. [AP \(DIR Series\) circular No 43/2015-16/ \[\(1\)/7\(R\)\] dated February 4, 2016](#). The Original Master Direction No. 12/2015-16 was issued on January 1, 2016.

<sup>3</sup> FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 was repealed and replaced by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016.

### **3. Modes of acquiring property outside India by a resident**

3.1 According to section 6(4) of the FEMA, a person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.

3.2 A resident can acquire immovable property outside India by way of gift or inheritance from:

- (a) a person referred to at 3.1 above; or
- (b) a person resident in India who had acquired such property on or before July 8, 1947 and continued to be held by him with the permission of the Reserve Bank.
- (c) <sup>4</sup>a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

3.3 A resident can purchase immovable property outside India out of foreign exchange held in his/ her Resident Foreign Currency (RFC) account.

3.4 <sup>5</sup>A resident can acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

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### **4. Acquisition under the Liberalised Remittance Scheme (LRS)**

A resident individual can send remittances under the Liberalised Remittance Scheme for purchasing immovable property outside India.

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<sup>4</sup> Inserted by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016.

<sup>5</sup> Inserted by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016.

<sup>6</sup> Omitted by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016. Prior to omission, the clause read as "If a person resident in India has acquired immovable property outside India as per the provisions listed at 3.1 to 3.3, above, he may transfer it by way of gift to his relative who is a person resident in India."

## **5. Companies having overseas offices**

A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, provided total remittances <sup>7</sup>do not exceed the following limits prescribed for initial and recurring expenses, respectively:

- a) 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher;
- b) 10 per cent of the average annual sales/ income or turnover during the last two financial years.

## **Part II - Acquisition and Transfer of Immovable Property in India**

### **1. Introduction**

1.1 The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by persons resident outside India. The regulations governing acquisition and transfer of immovable property in India are notified under [Notification No. FEMA 21/2000-RB dated May 3, 2000](#), as amended from time to time. These restrictions do not apply to acquisition or transfer of immovable property in India by a person resident outside India on a lease not exceeding five years.

1.2 As per section 6(5) of FEMA, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.

### **2. Definitions**

Some key terms used in the regulations are given below:

2.1 A 'Non-Resident Indian' (NRI) is a citizen of India resident outside India.

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<sup>7</sup> Inserted by [AP \(DIR Series\) Circular No. 43/2015-16 \[1/7\(R\)\]](#). Prior to insertion it read as "in accordance with the direction issued by the Reserve Bank of India from time to time."

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 at any time, held an Indian Passport or 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).

2.3 'Repatriation outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through 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.

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

### **3. Acquisition/ transfer by a Non- Resident Indian (NRI)**

#### **3.1 Purchase of immovable property**

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

#### **3.2 Transfer of immovable property**

(a) An NRI may transfer any immovable property in India to a person resident in India;

(b) An NRI may transfer any immovable property (other than agricultural land or plantation property or farm house) to an NRI or a PIO resident outside India.

#### **3.3 Payment for Acquisition of Immovable Property**

(a) 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 NRE/ FCNR (B)/ NRO account;

(b) Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

## **4. Acquisition/ transfer by a Person of Indian Origin (PIO)**

### **4.1 Purchase of immovable property**

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

### **4.2 Gift/ Inheritance of immovable property**

A PIO resident outside India may acquire

- (a) any immovable property (other than agricultural land/ plantation property/ farm house) in India by way of gift from a person resident in India or an NRI or a PIO resident outside India;
- (b) 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 or FEMA regulations, at the time of acquisition of the property or from a person resident in India.

### **4.3 Transfer of immovable property**

A PIO resident outside India can transfer

- (a) by way of sale, any immovable property in India (other than agricultural land/ farm house/ plantation property), to a person resident in India;
- (b) by way of gift or sale, agricultural land/ farm house/ plantation property in India, to a person resident in India who is a citizen of India;
- (c) by way of gift, residential or commercial property in India, to a person resident in India or to an NRI or to a PIO resident outside India.

### **4.4 Payment for Acquisition of Immovable Property in India**

- (a) A PIO resident outside India 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;

- (b) 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.

## **5. Acquisition of immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals**

Foreign Embassy/ Diplomat/ Consulate General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

- (a) Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
- (b) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

## **6. Acquisition of immovable property by person resident outside India for carrying on a permitted activity**

6.1 A branch or office in India established by a person resident outside India, other than a liaison office, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office.

6.2 Such a person is required to file with the Reserve Bank a declaration in the form IPI (as given in the Master Direction on Reporting), not later than ninety days from the date of such acquisition.

6.3 The immovable property so acquired can be mortgaged to an Authorised Dealer as a security for any borrowing.

6.4 However, acquisition of immovable property in India by a branch, office or other place of business, of entities of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan origin/ nationality/ ownership requires the prior approval of the Reserve Bank.

## **7. Repatriation of sale proceeds of immovable property**

7.1 A person acquiring property in accordance with section 6(5) of FEMA (reference para 1.2 of Part II) or his successor cannot repatriate outside India the sale proceeds

of such immovable property without the prior permission of the Reserve Bank. However, if such a person is an NRI or a PIO resident outside India, he can make a remittance under the facilities available under the Foreign Exchange Management (Remittance of Assets) Regulations, 2000, as amended from time to time.

7.2 In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by a NRI/ PIO resident outside India, 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 by him or the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000;
- (b) the amount to be repatriated does not exceed the amount paid for acquisition of the immovable property received through normal banking channels or out of funds held in FCNR(B) account or NRE account.

In case an immovable property in India has been purchased by an NRI/ PIO out of housing loans availed in terms of Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, as amended from time to time, and the repayments for such loans are made out of remittances received from abroad through banking channels or by debit to the NRE/ FCNR(B) account of the NRI, such repayments may be treated as equivalent to foreign exchange received.

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

#### **8. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries**

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years.

## **9. Miscellaneous**

9.1 Authorized Dealer Category-I banks may convey no objection for creation of charge on immovable assets of a person resident in India either in favour of the external commercial borrowing (ECB) lender or the security trustee subject to the following conditions:

- (a) 'No objection' shall be granted only to a resident ECB borrower;
- (b) The period of such charge on immovable assets has to be co-terminus with the maturity of the underlying ECB;
- (c) Such 'no objection' should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee;
- (d) In the event of enforcement/ invocation of the charge, the immovable asset (property) will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

9.2 Any transfer of property not covered in these directions will require the prior permission of the Reserve Bank.

9.3 As per Government of India Press Release dated February 1, 2009, (given in the annex) in order to be considered as a person resident in India, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him should clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.

**10. Payment of taxes** – Any transaction involving acquisition of immovable property under these regulations shall be subject to applicable tax laws in India.

## APPENDIX

### List of notifications / A.P.(DIR Series) circulars which have been consolidated in this Master Circular

Notification / Circular	Date
<a href="#">FEMA 21/2000-RB</a>	May 3, 2000
<a href="#">FEMA 65/2002-RB</a>	June 29, 2002
<a href="#">FEMA 93/2003-RB</a>	June 9, 2003
<a href="#">FEMA 146/2006-RB</a>	February 10, 2006
<a href="#">FEMA 186/2009-RB</a>	February 3, 2009
<a href="#">FEMA 200/2009-RB</a>	October 5, 2009
<a href="#">FEMA 321/2014-RB</a>	September 26, 2014
<a href="#">FEMA 335/2015-RB</a>	February 4, 2015
<sup>8</sup> <a href="#">FEMA 7(R)/2015-RB</a>	January 21, 2016
<a href="#">A.P.(DIR Series) Circular No.35</a>	November 1, 2002
<a href="#">A.P.(DIR Series) Circular No.19</a>	September 23, 2003
<a href="#">A.P.(DIR Series) Circular No. 5</a>	August 16, 2006
<a href="#">A.P.(DIR Series) Circular No. 1</a>	July 11, 2008
<a href="#">A.P.(DIR Series) Circular No. 25</a>	January 13, 2010
<a href="#">A.P (DIR Series) Circular No. 38</a>	November 20, 2014
<a href="#">A.P (DIR Series) Circular No. 83</a>	March 11, 2015
<a href="#">A.P (DIR Series) Circular No. 43</a>	February 4, 2016

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<sup>8</sup> Issued in the Gazette of India vide G.S.R.95(E) dated January 21, 2016

**Press Release of Government of India**

**Ministry of Finance**

**February 1, 2009**

**Government's advice on acquiring land by persons residing outside India**

**15:8 IST**

Government of India has advised State Governments to be extra vigilant in matters of acquisition and transfer of immovable property in India by a person resident outside India and satisfy themselves about the eligibility under FEMA before registering a sale or purchase of immovable property in India. The enquiries may include both the intending buyers and sellers. The relevant travel documents and the nature of visa may also be verified before registering such sale / purchase. Government has further advised all including concerned authorities in the State Governments that wherever appropriate, the authorities may consider reviewing registration of sale / purchase already made to determine their compliance with legal requirements. Further, persons acquiring immovable property have to fulfil the requirements, if any, prescribed by the State authorities.

A foreign company which has established a Branch Office or other place of business in India under the provisions of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 ([FEMA 22/2000-RB dated the 3rd May, 2000](#)) can acquire immovable property in India which is necessary for or incidental to carrying on such activity, subject to the conditions stipulated in Regulation 5 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 ([Notification No. 21/2000-RB dated the 3rd May, 2000](#)).

Apart from above, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business / vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.

As per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation 21/2000 ([Notification No.](#)

[21/2000-RB dated the 3rd May, 2000](#)), an Indian citizen resident outside India and a Person of Indian Origin resident outside India may acquire immovable property in India other than agricultural land, plantation or a farm house.

It has come to the notice of the Central Government that foreign nationals are buying immovable property illegally in some parts of the country, particularly in Goa, which has raised concerns. Many organisations and social groups have also made representations to the Central Government expressing their serious concerns in this regard. It has also been observed that foreign nationals coming to India and staying beyond 182 days on a tourist or other visa meant for a certain period are illegally acquiring immovable property in India in violation of the extant rules and regulations under FEMA.

BSC/BY/GN-1/09