

Introduction

Acquisition of immovable property in India by persons resident outside India (foreign national) is regulated in terms of section 6 (3) (i) of the Foreign Exchange Management Act (FEMA), 1999 as well as by the regulations contained in the [Notification No. FEMA 21/2000-RB dated May 3, 2000](#), as amended from time to time. Section 2 (v) and Section 2 (w) of FEMA, 1999 defines 'person resident in India' and a 'person resident outside India', respectively. Person resident outside India is categorized as Non-Resident Indian (NRI) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. The Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

[A person resident in India who is not a citizen of India is also covered by the relevant Notifications.](#)

2. In terms of the provisions of Section 6(5) of FEMA 1999, a person resident outside India can 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 a resident in India or inherited from a person who was a resident in India.

3. The regulations under Notification No. FEMA 21/2000-RB dated May 3, 2000, as amended from time to time, permit a NRI or a PIO to acquire immovable property in India, other than agricultural land or, plantation property or farm house. Further, foreign companies who have been permitted to open a Branch or Project Office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. Such dispensation is however not available to entities which are permitted to open liaison offices in India.

4. The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding 5 years or where a person is deemed to be resident in India.

In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the provisions of Section 2(v) of FEMA 1999. The Press Release dated February 1, 2009 issued by Government of India in this regard is enclosed as Annex.

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

5. NRIs/ PIOs are allowed to repatriate an amount up to USD one million, per financial year (April-March), out of the balances held in the Non-Resident (Ordinary) Rupee (NRO) account, subject to compliance with applicable tax requirements. This amount includes sale proceeds of assets acquired by way of inheritance or settlement.

Document Sources: <http://www.rbi.org.in/scripts/faqview.aspx?id=33>