

The Foreign Exchange Management (Acquisition And Transfer Of Immovable Property In India) Regulations, 2000

UNION OF INDIA

India

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Rule

THE-FOREIGN-EXCHANGE-MANAGEMENT-ACQUISITION-AND-TRANSFER-REGULATIONS-2000

- Published on 3 May 2000
- Commenced on 3 May 2000
- [This is the version of this document from 3 May 2000.]
- [Note: The original publication document is not available and this content could not be verified.]

The Foreign Exchange Management (Acquisition And Transfer Of Immovable Property In India) Regulations, 2000 Published vide G.S.R. 407(E), dated 3.5.2000, published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 8.5.2000.

11.

/560 In exercise of the powers conferred by clause (i) of sub-section (3) of section 6, sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following regulations, namely:--

1. Short title and commencement .-(i) These regulations may be called The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.

(ii) They shall come into force on 1st day of June, 2000.

2. Definitions .-In these regulations, unless the context otherwise requires,--

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999); (b) "an authorised dealer" means a person authorised as an authorised dealer under sub-section (1) of section 10 of the

Act;(c)"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 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);](d)"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;(e)the words and expressions used but not defined in these regulations shall have the same meanings respectively assigned to them in the Act.

3. Acquisition and transfer of property in India by an Indian citizen resident outside India .-A person resident outside India who is a citizen of India, may--

(a)[acquire immovable property in India other than an agricultural property, plantation, or a farm house:-Provided that in case of acquisition of immovable property, payment of purchase price, if any, shall be made out of (i) funds received in India through normal 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 and the regulations made by the Reserve Bank:Provided further that no payment of purchase price for acquisition of immovable property shall be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically permitted by this clause;](b)transfer any immovable property in India to a person resident in India,(c)transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.

4. Acquisition and transfer of property in India by a person of Indian origin .-A person of Indian origin resident outside India, may--

(a)[acquire immovable property in India other than an agricultural property, plantation, or a farm house:Provided that in case of acquisition of immovable property, payment of purchase price, if any, shall be made out of (i) funds received in India through normal 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 and the regulations made by the Reserve Bank:Provided further that no payment of purchase price for acquisition of immovable property shall be made either by traveller's cheque or currency notes of any foreign country or any mode other than those specifically permitted by this clause;](b)acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India;(c)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 regulations or from person resident in India;(d)transfer any immovable property in India other than

agricultural land/farm house/plantation property, by way of sale to a person resident in India;(e)transfer agricultural land/farm house/plantation property in India, by way of gift or sale to person resident in India who is a citizen of India;(f)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.

5. Acquisition of immovable property for carrying on a permitted activity .-A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may--

(a)acquire any immovable property in India, which is necessary for or incidental to carrying on such activity:Provided that--(i)all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and(ii)the person files with the Reserve Bank a declaration in the Form IPI annexed to these regulation not later than ninety days from the date of such acquisition;(b)transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).[5-A. Purchase/sale of immovable property by Foreign Embassies/ Diplomats/Consulate Generals.-A Foreign Embassy/Diplomat/Consulate General may purchase/sell immovable property in India other than agricultural land/plantation property/farm house provided (i) clearance from Government of India, Ministry of External Affairs is 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 banking channel.]

6. Repatriation of sale proceeds .--(a) A person referred to in sub-section (5) of section 6 of the Act, 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;

(b)In the event of sale of immovable property other than agricultural land/farm house/plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, 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)[[Condition Nos. (iii) and (iv) renumbered as Condition Nos. (ii) and (iii) respectively by G.S.R. 578(E), dated 29.6.2002 (w.e.f. 19.8.2002).] the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or (b) 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;(iii)[[Condition Nos. (iii) and (iv) renumbered as Condition Nos. (ii) and (iii) respectively by G.S.R. 578(E), dated 29.6.2002 (w.e.f. 19.8.2002).] in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.(c)[In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA 3/2000-RB, dated 3-5-2000) a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured on to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.] [Inserted by Notification No. G.S.R. 299 (E) dated 3.2.2009 (w.e.f. 11.7.2008)][7. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries .-No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.]

8. Prohibition on transfer of immovable property in India .-Save as otherwise provided in the Act or regulations, no person resident outside India shall transfer any immovable property in India:

Provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.[Provided further that 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 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 (Notification No. FEMA 3/2000-RB, dated 3-5-2000).]

9. [Any transaction involving acquisition of immovable property under these regulations shall be subject to the applicable tax laws in India.]

FORM IPI(See regulation 5)Declaration Of Immovable Property Acquired In India By A Person Resident Outside IndiaInstructions. - The declaration should be completed in duplicate and submitted directly to the Chief General Manager, Exchange Control Department, (Foreign Investment Division - III), Reserve Bank of India, Central Office, Mumbai-400001 within 90 days from the date of acquisition of the immovable property.Documentation. - Certified copies of letter of approval from Reserve Bank obtained under section 6(6) of FEMA, 1999 (42 of 1999).

- 1 Full name and address of the acquirer who has acquired the immovable property
- 2 (a) Description of immovable property (a)
- (b) Details of its exact location stating the name of the state, town and municipal/survey number, etc. (b)

- 3 (a) Purpose for which the immovable property has been acquired (a)
(b) Number and date of Reserve Bank's permission, if any, (b)
4 Date of acquisition of the immovable property
5 (a) How the immovable property was acquired i.e., whether by way of purchase or lease (a)
(b) Name, citizenship and address of the seller/lessor (b)
(c) Amount of purchase price and sources of funds. (c)

I/We hereby declare that -(a)the particulars given above are true and correct to the best of my/our knowledge and belief ;(b)no portion of the said property has been leased/rented to, or is otherwise being allowed to be used by, any other party.Encls:.....(Signature of Authorised

official)STAMPPlace.....Date.....Name

.....Designation