

Part 3 CN-9 Module A

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ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY IN

INDIA BY NON-RESIDENT INDIANS (NRIs)

India allows NRIs, PIOs, and OCIs to buy and sell properties under FEMA guidelines. However, there are **some restrictions**, especially on agricultural land, plantation property, and farmhouses.

Acquisition of Immovable Property

NRIs, PIOs, and OCIs can **buy and hold property** in India in the following ways:

#1

Purchase/Gift: From a **resident in India, NRI, or OCI** (only from relatives as per the Companies Act 2013).

#2

Inheritance: From an **Indian resident** or another **NRI/PIO/OCI** who **acquired the property legally** under Indian law.

X

Cannot Buy: Agricultural land, plantation property, or a farmhouse.

Example: Raj, an NRI in the UK, buys a flat in Mumbai from his uncle (who is also an NRI) using money sent from his NRE account.

denomination

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Joint Acquisition by Spouse

(NRI) +

(A)

A foreign spouse (who is NOT an NRI/OCI) can jointly buy property with an NRI/OCI spouse.

Conditions:

Only one property can be acquired (except farm/agricultural/plantation land).

Payment must be from funds remitted abroad or an NRI bank account.

Marriage must be legally registered and continue for at least 2 years.

The foreign spouse must not be prohibited from such transactions.

Example: Arjun (an OCI) and his American wife, Emily, jointly buy an apartment in Bengaluru using funds from Arjun's NRE account.

Acquisition by Long-Term Visa (LTV) Holders

Minority communities from Pakistan, Afghanistan, or Bangladesh (Hindus, Sikhs, Jains, Buddhists, Parsis, Christians) with an LTV can buy property for:

- One residential house for living
- One property for self-employment

Restrictions:

Cannot buy in restricted/protected areas

Property **can be seized** if used for anti-India activities

Can **sell only after getting Indian citizenship**

Example: A Hindu refugee from Pakistan with LTV buys a house in Delhi for residence. Later, after getting Indian citizenship, they can freely sell it.

Transfer of Immovable Property

Who Can Transfer?

NRIs/PIOs/OCIs can sell or gift their property to:

- ✓ Residents of India
- ✓ Other NRIs/PIOs/OCIs (only relatives)

Restrictions:

Cannot transfer agricultural land, farmhouses, or plantation property to NRIs/PIOs

Transactions must be through banking channels in India

Example: Sonia, an OCI in Canada, gifts her apartment in Pune to her brother, who is also an OCI.

Abroad

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Repatriation of Sale Proceeds

NRI/PIOs can remit sale proceeds of property abroad, but there are conditions:

Allowed if:

- Property was legally acquired as per FEMA
- Payment was made in foreign exchange or NRE/FCNR(B) accounts
- Housing loan repayments (if any) were made using foreign income/NRE/FCNR(B) accounts

Restrictions:

- Max repatriation allowed: Sale proceeds of **only 2 residential properties** per person
- Prior RBI approval needed** for repatriation under certain cases

Example: Amit, an NRI in the US, sells his Delhi flat and repatriates the sale proceeds of ₹2 crore to his US bank account through his NRE account

Prohibited Transactions

People from these countries need prior RBI approval to buy or sell property in India:

Restricted Countries	Exceptions
Pakistan	<u>OCI cardholders are allowed</u>

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Bangladesh	OCI cardholders are allowed
Sri Lanka	-
Afghanistan	-
China	-
Iran	-
Nepal	-
Bhutan	-
Macau	-
Hong Kong	-
North Korea	-

Example: A Chinese national wants to buy a house in Mumbai. He must apply for RBI approval before proceeding.

Quick Summary - Property Rules for NRIs/PIOs/OCIs

Feature	Rule
Can Buy?	Residential & commercial property
Cannot Buy?	<u>Agricultural land, farmhouse, plantation</u>
Who Can Sell To?	Residents, NRIs, PIOs (relatives only)
Joint Purchase with Spouse?	<u>Yes (only 1 property, funds must come from NRI/OCI spouse)</u> <i>Legal/2 years</i>
Inheritance Allowed?	Yes, from both residents & non-residents
Repatriation Limit?	<u>Max 2 residential properties</u>
Approval Needed?	<u>Yes, for citizens of restricted countries</u>



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Pakistan/Bangla/Afgania

Long-Term Visa Holders?	<u>Can buy 1 house + 1 commercial property</u>
Foreign Exchange Payment?	<u>Must be from NRE/FCNR(B) account or remittances</u>

Final Takeaways

NRIs/PIOs/OCIs can freely buy and sell residential & commercial properties in India

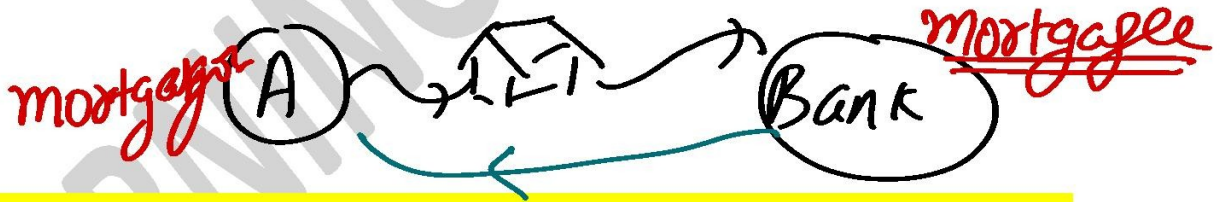
Cannot buy agricultural land, plantation property, or farmhouses

Foreign spouses can co-own properties with NRI/OCI partners

Sale proceeds can be repatriated up to 2 properties per person

Citizens of restricted countries need RBI approval to buy/sell

Have more questions on NRI property transactions? Ask away!



CHARGE CREATION & REPATRIATION OF FOREIGN ASSETS

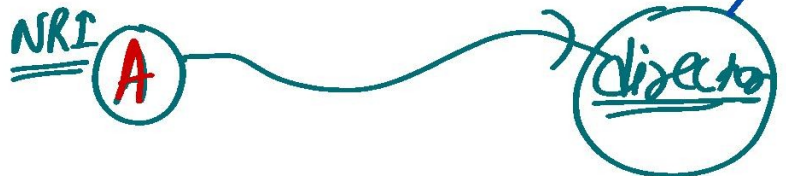
ASSETS

Creation of Charge on Immovable Property in India

NRIs and OCIs can mortgage their property in India to take a loan abroad
only in specific cases.

Conditions for Mortgage:

The NRI/OCI should be a director in a foreign company.



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Foreign Country

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The loan should be taken outside India from an overseas lender.

The money must be used for business purposes abroad.

In case of default, the AD (bank in India) must sell the property and send the sale proceeds to the lender abroad.

Example: Rehan, an OCI living in the US, is a director of a startup in Silicon Valley. He mortgages his flat in Mumbai with his US bank to secure funding for his business expansion.

Repatriation of Income & Sale Proceeds of Foreign Assets

When NRIs return to India permanently, they become residents under FEMA. They can:

✓ Keep their foreign assets abroad

✓ Repatriate their foreign assets to India if they wish

Holding of Foreign Assets After Returning to India

A returning NRI can own and manage the following foreign assets without RBI approval:

✓ 1 Foreign bank accounts held when they were NRIs.

2 Income earned abroad from:

- Foreign job/business/investments made while staying abroad.

3 Foreign exchange earnings or any income generated from it.

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Example: Neha, an NRI working in Canada for 10 years, has savings in her Canadian bank account. After moving back to India, she can keep her foreign savings in the same account or transfer them to India as per her wish.

Using Foreign Assets After Returning to India

Returning NRIs **can use foreign funds freely** for investments or payments abroad.

No RBI approval needed, as long as funds were legally acquired.

Example: Amit, an NRI in Dubai, owns a house there. After shifting back to India, he can either:

Keep the house and earn rental income

Sell it and transfer the money to India

Quick Summary - NRI/OCI Foreign & Indian Assets

Feature	Allowed?
Mortgage Indian property for foreign loan?	Yes, but only for <u>business loans taken abroad</u>
Repatriate foreign assets to India after returning?	Yes, but not mandatory <i>As per will</i>
Hold foreign bank accounts after returning?	Yes, <u>without restrictions</u>

Use foreign earnings for new investments abroad?	Yes, freely
Sell foreign property and bring money to India?	Yes, freely
Keep inherited foreign assets after returning?	Yes, without RBI approval

Final Takeaways

NRIs/OCIs can mortgage their Indian property for business loans abroad.

Returning NRIs can keep or repatriate their foreign earnings/assets.

No RBI approval needed if foreign funds were legally acquired.

Repatriation of foreign income is completely flexible under FEMA.

Sectors Prohibited for Investments

NRIs, OCIs, and foreign investors cannot invest in these sectors:

Lottery Business & Online Gambling

Chit Funds (except NRIs on non-repatriation basis)

Real Estate Business or Farmhouses

Cigar & Tobacco Product Manufacturing

~~X~~ NRI/OCI

Private Investment in Atomic Energy & Railways



Foreign collaborations for Lottery/Gambling

Example: Amit, an NRI from the US, wants to invest in a real estate business in Mumbai. Unfortunately, he **CANNOT** invest in a company dealing with property sales but can invest in **construction projects like hotels & hospitals.**

Permitted Investments

NRI/OCIs can invest in India in the following ways:

- ✓ **1 Capital Instruments:** Buying shares, debentures, and units of Indian companies.
- ✓ **2 Securities & Bonds:** Investing in government securities, PSU bonds, debt instruments, and mutual funds.
- ✓ **3 Foreign Venture Capital Investment (FVCI):** Investing in startups & early-stage businesses.
- ✓ **4 Limited Liability Partnership (LLP):** NRIs can invest in LLP firms in India.
- ✓ **5 Depository Receipts (IDRs):** Investing in Indian Depository Receipts.

Example: Meera, an NRI in Canada, wants to invest in Indian stocks. She can buy shares *through an NRE account (on repatriation basis) or an NRO account (on non-repatriation basis).*

Buying/ Selling Capital Instruments of Indian Companies

Ways to Invest:

Buy shares through Stock Exchange or IPOs.

Invest in **unlisted companies** as per FEMA guidelines.

Get shares **against money due to an investor** in an Indian company.

Mode of Payment:

✓ NRE/FCNR(B) accounts

✓ Direct remittance from abroad [*inward remittance*]

✓ Escrow account (if applicable)

Example: Raj, an NRI in the UK, invests in Tata Motors through his NRE account. He can repatriate the sale proceeds abroad (after paying taxes) or keep them in his NRE account.

Buying Shares of Listed Companies on a Stock Exchange

NRIs can buy/sell shares on a stock exchange via a designated NRE (PIS) account.

Investment Limits:

Investor Type	Max Holding in a Company
Single NRI/OCI	5% of total equity or debentures
All NRIs/OCIs Combined	10% (Can be raised to 24% with shareholder approval)

Example: Priya, an OCI living in Dubai, wants to invest in Infosys shares. She can buy stocks through her **NRE (PIS) account** but cannot own more than 5% of the total shares.

Investing in LLPs & Firms

1mm USD

NRIs/OCIs can invest in LLPs on a non-repatriation basis.

Cannot invest in LLPs dealing with agriculture, real estate, or print media.

Example: Rahul, an NRI in Singapore, starts an **LLP consulting firm in India.** He invests from his **NRO account** and reinvests the profits in the business (without repatriation).

Buying/ Selling Securities & Bonds

NRIs can buy government bonds, PSU bonds, and infrastructure debt bonds on a repatriation/non-repatriation basis.

Int Principal

Example: *Sonia, an NRI in Australia, invests in **SBI Bonds** via her NRE account. She can repatriate the interest earned on these bonds to Australia.*

Investments in Startups & Convertible Notes

NRIs can **buy convertible notes** issued by Indian startups.

If a **sector requires government approval**, RBI's permission is needed before buying/selling such notes.

Example Vikram, an OCI in the US, invests in an Indian EdTech startup via convertible notes. His investment **automatically converts into shares** when the startup gets funding.

Gifts & Transferring Shares

NRIs/OCIs can **gift** shares to other NRIs/OCIs with RBI approval.

Shares can be transferred via stock exchange or direct transfer.

Example: *Ramesh, an NRI in Canada, gifts **100 shares of Reliance Industries** to his son, also an NRI, after RBI approval.*

Quick Summary - NRI/OCI Investments

Investment Type	Allowed?	Repatriation Allowed?
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Stock Market (PIS Scheme)	Yes	Yes
Mutual Funds	Yes	Yes
Government Bonds	Yes	Yes
LLPs & Firms	Yes	No
Real Estate Business	No	No
Startups (Convertible Notes)	Yes	Yes
Nidhi Companies	No	No
Agriculture & Plantation	No	No

Final Takeaways

NRIs/OCIs can invest in stocks, startups, LLPs & bonds in India.

Certain high-risk sectors like gambling, real estate, and agriculture are prohibited.

Repatriation is allowed only for approved investments and through proper banking channels.

NRIs must use an NRE (PIS) account for stock trading.

Gift of shares is possible with RBI approval.