Acquisition and Transfer of Immovable Property under FEMA

1️⃣ INTRODUCTION & KEY TERMS

🔷 Term	📖 Meaning
Repatriation	Sending foreign exchange abroad or crediting to an FCY/INR account convertible to FCY.
Transfer	Any sale, purchase, mortgage, pledge, gift, exchange, loan, or rights transfer.
Relative	As per Section 2(77), Companies Act 2013 (e.g., spouse, siblings, children, HUF members).

Legal Basis:

1. FEMA Master Directions (Property A/T rules)
2. FEMA Overseas Investment Rules, 2022
3. RBI MD on Overseas Investment (2024)
4. FEMA Non-Debt Instruments Rules, 2019

2️⃣ PROPERTY OUTSIDE INDIA BY INDIAN RESIDENTS

(See Unit 9 “Overseas Investment” Section 8.)

3️⃣ PROPERTY IN INDIA – GENERAL (Non-Residents)

🔶 Rule	🔍 Details
Applicable Law	FEMA (Non-Debt Instruments) Rules, 2019 (excl. leases ≤5 yrs)
Section 6(5), FEMA	NRIs/OCIs may hold/own/transfer/invest if property was
– acquired when they were resident, or	
– inherited from a resident.	

4️⃣ NRI/OCI ACQUISITION & TRANSFER

🏠 Acquisition

Method	Allowed?	Notes
Purchase	✅ Yes	Except agricultural land, plantation, farmhouse.
Gift	✅ Yes (from resident/NRI/OCI if relative)	Same exclusions as above.

Inheritance	✅ Yes	Includes any property (even agri/plantation/farmhouse) if inherited per law.

🔄 Transfer

To Whom	Allowed?	Notes
Resident	✅ Yes	
NRI/OCI	✅ Yes (except agri/plantation/farmhouse)	Can gift to another NRI/OCI if relative.

💰 Payment Modes

Mode	Permitted?
Inward remittance	✅
Debit to NRE/FCNR(B)/NRO	✅
Traveller's cheques/FC notes	❌
Other modes	❌

Example:

Sunita (NRI) buys a Mumbai flat by remitting USD from her NRE account.

5️⃣ JOINT ACQUISITION WITH SPOUSE

Condition	Details

Marriage	Registered & subsisting ≥ 2 years
Property Type	Any non-agri/plantation/farmhouse property
Payment	Inward remittance or debit to non-resident account only
Prohibited Modes	Traveller's cheques, foreign currency notes

Tip: Your spouse's name can go on title only if you meet the 2-year rule!

6️⃣ LONG-TERM VISA (LTV) HOLDERS

Pak – Bangla – Afgn

Criteria	Rule
Who	Minority-community citizens of AFG/BD/Pak on LTV (Hindu, Sikh, Jain, Buddhist, Parsi, Christian)
Can Buy	1 residential home + 1 property for self-employment
Cannot Buy	Property in restricted/protected/cantonment areas
Registration Docs	Must mention nationality & LTV status
Notify	DCP/FRO/FRRO and MHA (Foreigners Division)
Sale	Only after acquiring Indian citizenship (else need prior FRO approval)

Example:

Mr. Das (Bangladeshi Sikh on LTV) buys one Delhi flat for living, one plot for shop – and submits docs to FRRO & MHA.

7️⃣ Embassies / Diplomats / Consulates

🔷 Who	🔷 Can Do	🔷 Conditions
Foreign Mission	Buy or sell property (🏢 commercial/residential)	❌ Not agri land/plantation/farmhouse ✅ MEA clearance ✅ Paid with funds from abroad

Example: The British High Commission clears purchase of its Delhi office, paying in USD from London.

8️⃣ Branch/Office of Foreign Company

🔷 Rule	🔷 Details
Who	BO/LO/PO (except LO) of foreign company in India
Can Acquire	Property needed for their India business
Must File	Form IPI with RBI within 90 days of purchase
Can Mortgage	Yes, to AD I bank for business loans
RBI Approval Needed	If ultimate parent is from Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan, DPRK

Tip: Liaison Offices (LO) cannot buy property—only branches or POs.

9️⃣ Repatriation of Sale Proceeds

🔷 Scenario	🔷 Rule
Sale under Sec. 6(5)	Prior RBI approval needed
Repatriation Rules	As per FEMA Remittance of Assets Regulations, 2016
Limits	Up to 2 residential properties
ECB Default Sale	AD bank can let lender sell to resident & repatriate up to loan dues

Example: An NRI sells their Mumbai flat and, with RBI nod, repatriates ₹10 L net (within the two-property cap).

🔟 Prohibition for Certain Nationals

🔷 Country List	🔷 Rule
Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong, DPRK	❌ Cannot buy or transfer property without RBI permission ✅ Lease ≤5 years is OK

Note: OCIs are excluded from this prohibition.

1️⃣1️⃣ Miscellaneous Provisions

🔷 Topic	🔷 Highlights
Charge Creation #1	AD bank “No Objection” for ECB security charge—sale on default only to residents
Mortgage by AD Bank #2	For NRI/OCI director’s property to secure abroad loan—sale on default, proceeds to lender
Sale by Non-Resident #3	Can sell RBI-approved property to resident via banking channels
RBI Approval	Needed for any transfers not covered above
Resident Definition #5	Stay >182 days in India
All Transactions	Must go through proper banking channels

1️⃣2️⃣ Taxes & Duties

- **All foreign-resident property deals** (purchase, sale, gift) are subject to **Indian taxes** (Stamp Duty, TDS, capital gains tax, etc.) and any **local duties/levies**.
- **Example:** An NRI selling property in Delhi pays TDS at 20% (plus cess) and pays capital gains tax before remittance.

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