

## N.R.I / P.I.O / FOREIGN NATIONALS GUIDELINES

### •INTRODUCTION

- 1.Non-Resident Indians are allowed to make real estate investments in India without any cap on the quantity or the number of investments.
- 2.All the Purchases and sales are bound by the rules and regulations under the FEMA (Foreign Exchange Management Act, 1999)
- 3.To determine whether a person is non-resident or not Purpose of stay abroad is the prime criterion and the duration of stay in India is of limited significance.
- 4.FEMA stipulates that before making a purchase a specified form called the IPI 7 needs to be filed with the central office of the RBI alongwith the title deed or any other Certified copy of the document proving that the NRI has executed an agreement to purchase property within the country
- 5.The form has to be filed within 90 days of the purchase of the property and has to be accompanied with a Bank Certificate stating the consideration paid for the purchase.
- 6.NRI under FEMA regulations are allowed to sell property only after three years from the date of acquisition of property or from the date of payment of final installment of consideration for its acquisition, whichever is later.

### •DEFINITIONS

#### 1.Non Resident:

A person is a non-resident if,

- \* He stays abroad because he is employed there, or
- \* Carries on a business or pursues a vocation there, or
- \* If his stay outside India is for an indefinite period,

If there is any ambiguity regarding the above criteria, he will probably be considered a resident of India if he stays in India for more than 182 days during the course of the preceding financial year.

## **2. Non Resident Indian**

A Non Resident Indian (NRI) is person who is ,

- \* a non-resident Indian citizen, or
- \* a non-resident foreign citizen of Indian origin.

## **3. Person of Indian Origin (PIO)**

A person is of Indian origin for acquiring immovable property in India if,

- \* He at any time, held Indian passport, or
- \* He or either his father or grandfather was a citizen of India,

(Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan are not considered to be of Indian origin).

## **•BANK ACCOUNTS**

The various kinds of non-resident bank accounts.

### **Repatriable (Rupee)**

- 1.SB
- 2.CA
- 3.FD
- 4.FCNR (FD)

### **Non-repatriable**

- 1.NRO (SB, CA)
- 2.FCNR (NR)
- 3.NRNR
- 4.FCNR (B)

NRIs can maintain accounts in rupee as well as foreign currency. Accounts in foreign currencies can, however, be maintained with authorized dealers only. NRO and NRE accounts can be maintained in current/ savings/ fixed deposits form while NRNR account can be only in fixed term deposits.

## •**PROPERTY**

NRI's (being Indian citizens) are allowed to invest in immovable property, without RBI's permission in India. For foreign nationals of Indian origin (whether resident in India or not), RBI has granted general permission to acquire or dispose off any immovable property, other than agriculture land/ farm house/ plantation property, subject to certain conditions.

### **1. Residential property**

The notification issued by RBI dated 26<sup>th</sup> May, 1993 gives **general permission** to foreign citizens of Indian origin

- 1. to acquire by way of purchase or inheritance
- 1. to dispose off by way of sale

any immovable property, other than agriculture land/ farm house/ plantation property.

- 1. to acquire by way of gift, and
- 2. to dispose off by way of sale or gift

any residential property, subject to certain conditions.

#### **□ In case of purchase, the conditions are:**

1. The consideration is paid out of foreign remittance or out of NRE or FCNR account.
2. Purchases of residential property is only for *bona fide* residential purpose.

#### **□ In case of acquisition by way of gift, the conditions are:**

1. It is effected between "relatives" (as defined under Companies Act, 1956).
2. In case of persons resident outside India, they can acquire a maximum of two properties, without RBI permission.
3. Gift-tax liability, if any, has been paid.

In either case, a declaration in form IPI-7 with certified copy of conveyance deed and a certificate from bank regarding payment particulars has to be filled by the purchaser within 90 days of acquisition to the Controller, Exchange Control department, foreign Investment division (III), RBI, Central office, Mumbai.

### **2. Commercial property**

Foreign citizens of Indian origin could acquire and sell commercial property in India

subject to certain conditions.

1. Purchase consideration is paid out of foreign remittance or out of funds in NRE/ FCNR account.
2. Declaration in form IPI7 is to be submitted within 90 days to RBI.
3. Repatriation (form IPI to be used) to the extent of original investment made shall only be permitted subject to fulfillment of following conditions:
  - i. Property has been purchased on or after May 26, 1993.
  - ii. The property is not transferred before three years from the date of purchase deed or from the date of payment of final installment, whichever is later.
  - iii. The balance sale proceed should be credited to NRO account.

### **3. Letting out of the property**

Letting of the property is allowed through the general permission given by the RBI.

### **4. Repatriation**

Repatriation of sale proceeds is permitted with prior approval of RBI, provided

- Such property is purchased on or after May 26, 1993.
- Such sales take place after three years from the date of acquisition or from the date of payment of final installment of consideration, whichever is later.
- Repatriation is limited to the extent of foreign exchange paid for acquisition of immovable property (in case of sale of residential properties, the amount equivalent in foreign exchange paid for acquisition of maximum two properties).

Applications for necessary permission for remittance of sale proceeds should be made in form IPI 8 to the Central Office of Reserve Bank of India at Mumbai within 90 days of the sale of the property.

**Note** - An Overseas Corporate Body even if it remits fund from abroad would still require RBI permission to acquire property in India.

### **5. Loans to NRIs for acquisition of a flat/ house.**

Authorized dealers can grant loans/ overdrafts to NRIs holding Indian passport against security of immovable property proposed to be acquired by them.

Certain financial institutions also provides housing finance eg HDFC, LIC Housing Finance Ltd. Repayment of the loan should be made within a period not exceeding

15 years out of inward remittance through banking channels or out of funds held in the investors' NRE/ FCNR/ NRO accounts

## **FREQUENTLY ASKED QUESTIONS**

### **1.How do I know if I am a Non Resident?**

**A.** Under the present rules, your non-resident status, for exchange control purposes, is determined by the **purpose** of stay abroad. **Duration** of stay in India is of limited significance.

Generally,

\*If you stay abroad because you are employed there, you are a non-resident.

\*If you stay abroad because you carry on a business or pursue a vocation there, you are a non-resident.

\*If you are in a situation where your stay outside India is for an indefinite period, you are a non-resident.

If there is any ambiguity regarding the above criteria, for example, if you carry on business in India as well as abroad, you will probably be considered a resident of India if you stay in India for more than one hundred and eighty two days during the course of the preceding financial year

**(This definition is for exchange control purposes only. For income tax there is a different definition based on period of stay).**

### **2.How do I know if I am a Non Resident Indian (NRI)?**

**A.** \* If you are a non-resident and are an Indian citizen, you are a NRI.

\* If you are a non-resident foreign citizen and if you are of Indian origin, you are a NRI.

### **3.How do I know if I am a person of Indian origin?**

**A.**

**a.** If you are a foreign citizen and want to **open bank accounts or invest in Indian shares and securities**, you are considered to be of Indian origin if,

i. You, at any time in your life held an Indian passport, or

ii. You or any one of your parents or any one of your grand parents was a citizen of India, or

iii. You are not of Indian origin but your spouse is an Indian citizen or is a person of Indian origin. (Your bank accounts and investments should be held jointly with your spouse).

**Note:** If you are a citizen of Pakistan or Bangladesh, you are not considered to be of Indian origin even if you meet the above criteria.

**b.** If you want to **acquire immovable property in India**, you are considered to be of Indian origin if,

- (i) You, at any time, held Indian passport, or
- (ii) You or either your father or grandfather was a citizen of India,

If you are a citizen of Pakistan, Bangladesh, Sri Lanka Nepal, Bhutan, Afghanistan, China or, Iran you are not considered to be of Indian origin even if you meet the above criteria.

#### **4. If I am a NRI, what happens to my status when I come to India?**

**A.** You become resident in India only when you come back to India for employment, to carry on business or pursue a vocation. You also become a resident if you return to India to stay for an indefinite period. If you continue to have a business or employment abroad, you will probably be considered a resident of India if you stay in India for more than one hundred and eighty two days during the course of a financial year

#### **5. What if I come to India for a holiday?**

**A.** You continue to be a NRI when you visit India for on holiday, leave etc.

#### **6. What if I come to India on a business trip?**

**A.** You continue to be a NRI when you visit India for short periods on business as long as you continue to be employed or have a business abroad.

#### **7. If I am an NRI, what are the investment opportunities available to me in India?**

**A.** There is a whole range of investment opportunities is open to you. Bank Deposits, Government Securities, Public Sector Bonds, Primary Share Issues (both public and private placement), Secondary Equity Markets, Convertible And Non-Convertible Debentures, Partnership And Proprietary Concerns, Start Ups, Mutual Funds, Company Deposits, Immovable Property Etc.

#### **8. If I invest in India, can I take my money back?**

**A.** If your investment is originally made on "repatriation basis", either under the general or specific permission of the Reserve Bank/Government of India, you can take back abroad the principal and the income. If your investment is on non-repatriation basis you can take back only the income.

#### **9. Do I need permission to invest in India on repatriation basis?**

**A.** The Reserve Bank of India and the Government have granted general permission for some kinds of investment. In other cases you need permission.

You do not need prior permission to invest in Bank Deposits. If you want to invest in new issues of shares or debentures, the issuing company will normally get the necessary approval. Mutual Funds will also get the clearance from the RBI for new issues.

**10. What are the different kinds of Bank Accounts that I, as an NRI, can maintain in India?**

- A.** If you are keen on repatriation of both principal and interest, you can open a Non Resident External (NRE) account or a Foreign Currency Non Resident (FCNR) account.

On non-repatriation basis you can maintain a Non Resident Ordinary (NRO) account, a Non Resident (Special) Rupee (NRSR) account or a Non Resident Non repatriable (NRNR) account.

**11. What are Non-resident (External) (NRE) Accounts?**

- A.** These are Indian Rupee accounts, which you can maintain as Saving Bank, Current or Term Deposits.

You can hold the account jointly with another non- resident Indian.

You can authorize a resident to operate the account for all local payments except gifts.

**12. Are there any special features?**

- A.** The principal and interest can be taken back abroad. You don't have to pay income tax on the interest earned on these deposits. You need not pay wealth tax on the deposits.

**13. Are there any restrictions on operations in NRE accounts?**

- A.** Yes there are. For example, you cannot credit local funds to your NRE account. Some, not all, of the sources from which you can credit funds to your NRE Account are given below:

1. Inward remittance from abroad
2. Transfer from other repatriable accounts (NRE/ FCNR accounts)
3. Proceeds of foreign currency traveler's cheques or currency notes during visits to India.
4. Income from investments made on repatriable basis.
5. Sale proceeds of investments made on repatriable basis.

**14. Can I borrow against these accounts?**

- A.** You can take a loan or overdraft in India against your NRE deposit for some

approved purposes. You can also borrow overseas against these deposits. Your relatives and friends in India can get credit facilities in India against the security of your NRE fixed deposits subject to some conditions.

**15. What is a FCNR account?**

**A.** FCNR (Foreign Currency Non Resident) Account is similar to the NRE account. The difference is that unlike the former, which is maintained in Rupees, you can have a FCNR account in US Dollars, Pound Sterling, Euro, Deutsche Mark or Yen.

**16. Are there any stipulations regarding the maturity of a FCNR account?**

**A.** Unlike the NRE account, which can be a savings, current or term deposit, your FCNR deposits has to be a fixed deposit for one of these three maturities: (a) one year and above but less than 2 years, (b) two years and above but less than 3 years and (c) three years.

**17. Between FCNR and NRE accounts, how do I decide where to place my money?**

**A.** If the rupee depreciates the NRE holder loses while the FCNR holder is protected. If the Foreign currency depreciates the FCNR holder loses while the NRE holder is protected. The NRE account pays a higher rate of interest than the FCNR account.

Depending on your personal situation, investment objectives and appetite for risk you should be able to decide where to put your money. However, it may be a good idea to get professional advice.

**18. Under the FEMA Regulations to whom is general permission available for purchase immovable property in India?**

**A.** General Permission is available to purchase only a residential/commercial property in India to a person resident outside India who is a citizen of India (NRI) and who is a Person of Indian Origin (PIO).

**19. Can a name of a foreign national of non-Indian origin be added as a second holder to a residential/commercial property purchased by NRI/PIO?**

**A.** No.

**20. Can a person resident outside India (i.e. a NRI or a PIO or a foreign national of non-Indian origin) acquire agricultural land/plantation property/farm house in India by way of purchase?**

**A.** No. A person resident outside India cannot acquire by way of purchase agricultural land/plantation property/farm house in India.

**21. Can NRI/PIO transfer by way of mortgage his residential/commercial property to an authorized dealer/housing finance institution in India?**

**A.** Yes.

**22. Can NRI/PIO transfer by way of mortgage his residential/commercial property in India to a party abroad?**

**A.** No. He should seek prior approval of RBI.

**23. Can a person resident outside India who has established a Liaison Office in India in accordance with FERA/FEMA regulations purchase immovable property?**

**A.** No.

**24. Can Foreign Embassies/Diplomats/Counsel General purchase/sell immovable property in India?**

**A.** Yes. Under general permission available Foreign Embassies/Diplomats/Counsel General may acquire any immovable property other than agricultural land/plantation property/farm house in India. Such property may be purchased/sold provided prior clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale. The consideration for purchase of such property should be paid by way of inward remittance through normal banking channel.

**25. Can NRI/PIO rent out the residential/commercial property purchased out of foreign exchange/rupee funds, if not required for immediate use?**

**A.** Yes. Rent received, being current income may be credited to NRO/NRE account or remitted abroad.

**26. Is a person resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?**

**A.** A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000.

**27. Non-resident Indians are staying abroad can the property be purchased through the agent or through the Power of Attorney?**

**A.** The non-resident Indians who are staying abroad may enter into an agreement through their relatives and/or by executing the Power of Attorney in their favour as it is not possible for them to be present for completing the formalities of purchase (negotiating with the builder or Developer, drafting and signing of agreements, taking possession, etc.) These formalities can be completed through some known person who can be given the Power of Attorney for this purpose. Power of Attorney should be executed on the stamp paper before the proper authorities in foreign countries. Power of Attorney cannot be drafted on the stamp paper bought in India.