

## Acquiring Immovable Property Outside India by Resident Individuals

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The Enforcement Directorate has issued notices to several Indian residents who purchased properties outside India using credit cards. Authorities suspect violations of FEMA provisions, particularly around misuse of credit cards for capital account transactions and structuring of payments bypassing the Liberalised Remittance Scheme (LRS) framework [popularly known as the \$ 250,000 scheme]. In another case, ED uncovered a foreign property purchased through layered remittances, highlighting concerns around undisclosed assets and routing of funds abroad by misusing the LRS Scheme.

Under FEMA, not just the transaction but the mode and route of execution also determine its legality. In this backdrop, let us look at what is permissible and what is not under FEMA when it comes to the transaction of purchase of immovable property (**IMP**) outside India by a resident individual (**RI**).

### Permitted Sellers

A RI cannot freely buy or sell property outside India. Such transactions are allowed only if specifically permitted by RBI. As per rule 21 of the Foreign Exchange Management (Overseas Investment) Rules, 2022 (**Rules**), IMP outside India can be acquired by a RI, either from

- a. A RI, or
- b. A person resident outside India (**PROI**) - (Foreign Person / NRI).

### Mode of acquisition

A RI can buy or receive property abroad through the following permitted routes:

- a. From Another RI
  - Property can be acquired by:
    - Purchase,
    - Gift, or
    - Inheritance
  - Condition:
    - The seller must have originally acquired the property legally under FEMA.

- b. From a PROI<sup>1</sup>

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<sup>1</sup> Rule 21(2)(ii) of Rules

- By inheritance,
- By using foreign currency already held in a Resident Foreign Currency (RFC) account,
- Under Liberalised Remittance Scheme (LRS)
  - Property can be purchased using funds remitted abroad under LRS limits.
  - LRS limits of relatives<sup>2</sup> can be combined<sup>3</sup>.
- Joint purchase with a non-resident relative,
- Using foreign income or sale proceeds of assets held outside India (except sale proceeds of ODI investments).

## Exceptions

The following scenarios of purchase of overseas IMP by RI are not subject to the above conditions:

- If the purchaser is a foreign national living in India,
- If the property was acquired by him before 8 July 1947 and continued to be held with RBI permission,
- If the property is taken on short-term lease (up to 5 years).

## Violations while Purchasing Overseas Property

Having understood the provisions related to purchase of overseas IMP, let us look at the common violations that are often encountered in such transactions

- a. **Payment through banking channels:** IMP can be purchased majorly under LRS and from income and sale proceeds received abroad. Remittance under LRS can be only through AD Bank<sup>4</sup>. Amounts received as income or sale proceeds abroad are also to be through banking channels. Thereby indicating that IMP purchase abroad should be only through banking channels. Hence, payment by way of cash cannot be a valid mode of payment for purchasing immovable property, however small it may be.
- b. **No credit card payments:** Payment through credit cards towards meeting expenses while a RI is on a visit outside India will not be counted towards LRS limit. Payment through credit cards is not a permitted mode for purchase of IMP as per the Rules. Hence, making payment through credit cards for purchase of IMP a violation.
- c. **No borrowings:** Taking a loan from a relative or any person (say a friend) for making remittance under LRS to purchase the overseas IMP is a violation as remittance abroad under LRS scheme is not allowed using borrowed funds<sup>5</sup>.

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<sup>2</sup> A Relative includes Husband, Wife, Mother, Father, Son, Son's wife, Daughter, Daughter's husband, Brother, Sister

<sup>3</sup> Proviso to rule 21(2)(ii)(c) of Rules

<sup>4</sup> Para 15 of the **Master Direction - Liberalised Remittance Scheme (LRS)**

<sup>5</sup> FAQ 16 of FAQ on LRS

- d. **Financial arrangements not permitted:** Purchase of overseas IMP cannot be structured as a deferred payment or instalment arrangement with a foreign seller or lender, where payments continue over time even after completion/possession. Such arrangements effectively amount to availing credit / borrowing facilities, which is not permitted for LRS.
- e. **Joint purchase with non-relative:** A RI purchasing IMP abroad jointly with a non-resident non-relative (say a friend), even with proportionate contribution of funds, is not permitted under Rule 21 *ibid*.
- f. **OI disinvestment funds used:** Overseas IMP procured from proceeds received on sale of overseas direct investments<sup>6</sup>
- g. **PROI relative not being co-owner:** Also using funds of relatives' who are PROI for the purchase of the IMP, but the IMP is wholly in the name of the RI, without the relative being the co-owner.
- h. **Initial transaction violative:** Buying from a RI but whose purchase itself was not as per FEMA provisions.
- i. **Gift:** Acquiring overseas IMP by way of a gift from a PROI (either relative or otherwise) as it is not specifically permitted under the Rules.

If one were to think that direct investment in real estate is not allowed and hence a way out would be to purchase capital in an entity abroad that is into real estate business, then it would be relevant to note that rule 19 of the Rules prohibits making an overseas direct investment into an entity engaged in the real estate trading business.

In conclusion, it is imperative to recognise that all the aforementioned restrictions and stipulations pertain specifically to individuals seeking to acquire immovable property abroad. Individuals must exercise the highest degree of caution when engaging in any foreign exchange transaction, especially those involving capital account transactions such as the purchase of overseas immovable property. Under FEMA, capital account transactions are strictly prohibited unless expressly permitted, and it is crucial to understand that what cannot be done directly is equally impermissible if attempted indirectly. Therefore, due diligence and compliance are essential to avoid inadvertent violations and ensure that all actions remain within the framework of the law.

*The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to [shilpijain@hnaindia.com](mailto:shilpijain@hnaindia.com) and [harshithasajjaca@gmail.com](mailto:harshithasajjaca@gmail.com).*

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<sup>6</sup> Rule 2(1)(q) of the Rules