



Key Amendments to FEMA Regulations
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Introduction

The Government of India, Ministry of Finance, vide Notification No.GSR(371)(E) dated 1st May, 2000 has notified that the Foreign Exchange Management Act, 1999 shall come into force on the 1st June, 2000. The Reserve bank has also made Regulations/ issued Notifications under various provisions of the Act.

Authorised Dealers (AD) are required to carefully evaluate the provisions of the Act, since all foreign exchange transactions taking place with effect from 1st June 2000, will be governed by the provisions of the Foreign Exchange Management Act, 1999. The Foreign Exchange Regulation Act, 1973 stands repealed from 1st June, 2000, however, again with Circular A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] dated 4th February 2016, attention of Authorised Dealers (ADs) is invited to A.D.(M.A. Series) Circular No. 11 dated May 16, 2000 in terms of which ADs were advised of various Rules, Regulations, Notifications/ Directions issued under the Foreign Exchange Management Act, 1999 (the "Act"). On a review it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000 and accordingly, in consultation with the Government of India, the said regulations have been repealed and replaced by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.

Key Amendments

The regulation specifies that acquisition and transfer of any Immovable Property outside India by a person resident in India would require prior approval of Reserve Bank of India except in few cases. The revision made in this regulation has expanded the scope of exception where approval of RBI not required and this results in repealment and replacement of earlier regulation issued in 2000. The below mentioned table specifies the exception where approval from RBI is NOT required:

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S. No.	FEMA (Acquisition and transfer of Immovable Property Outside India) Regulations, 2000	FEMA (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015
1.	Property held outside India by a foreign citizen resident in India	Property held outside India by a foreign citizen resident in India;
2.	Property acquired by a person on or before 8th July 1947 and held with the permission of Reserve Bank;	Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve Bank;
3.	Property acquired by way of gift or inheritance from persons referred to in above	Property acquired by way of gift or inheritance from: (i). persons referred to in above; (ii). persons referred to in section 6(4) of the Act;
4.	Property purchased out of funds held in RFC account	Property purchased out of funds held in Resident Foreign Currency (RFC) account held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015;
5.	NA	Property acquired jointly with a relative who is a person resident outside India provided there is no outflow of funds from India;
6.	NA	Property acquired by way of inheritance or gift from a person resident in India who acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition

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7.	NA	An Indian company having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the following limits prescribed for initial and recurring expenses, respectively:- a) 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher; b) 10 per cent of the average annual sales/ income or turnover during the last two financial years.
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Relative

For the purpose of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Conclusion

The revised regulations has expanded the scope of exceptions. This is a welcome gesture, particularly in case of inheritance and acquisition along with relatives resident outside India. Additionally, respite to the Indian Companies for acquisition or overseas offices for business and residential purposes has also ensured support to such corporates. With ever evolving global scenarios, it is important the further amendments are undertaken to other regulations under FEMA.

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