

Other laws relating to Wills – Part II

SUCCESSION PLANNING SERIES #18



Foreign exchange regulations

In continuation to our previous alert, we will understand the implications of Foreign Exchange Management Act, 1999 ('FEMA') on Wills. The implications would vary depending on the **residential status of an individual** and hence a summary of the **provisions relating to residential status is provided below:**

| Residential Status | Provisions |
|---|---|
| Person resident in India ('PRII') | <p>A person residing in India for more than 182 days during preceding financial year but does not include –</p> <ul style="list-style-type: none">• A person who has gone out of India or who stays outside India for or taking up employment outside India or for carrying on a business outside India or for any other purpose, indicating his intention to stay outside India for uncertain period.• Person who has come to or stays in India for or on taking up employment in India or for carrying on a business in India or for any other purpose, indicating his intention to stay in India for uncertain period. |
| Person resident outside India ('PROI') | <p>A person who is not resident in India.</p> |

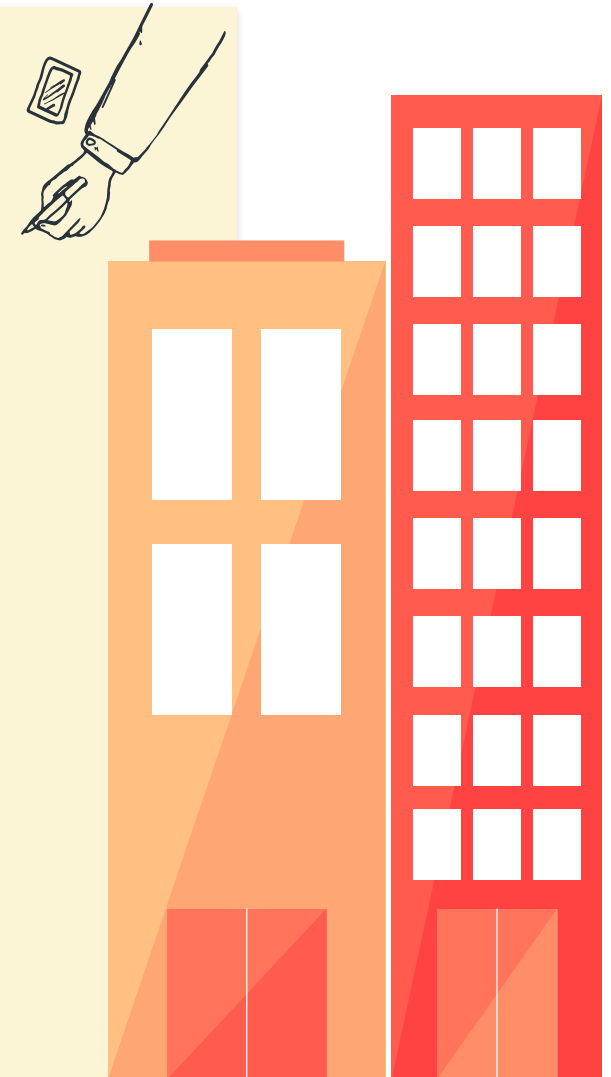


Inheritance of Indian assets

- Section 6(5) of the FEMA Act provides that a PROI may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or **inherited from a person who was resident in India**.

Therefore, a PROI can inherit Indian currency, Indian security or any immovable property situated in India from a PRII.

- Further, as per the Foreign Exchange Management (Non-Debt Instruments) Rules 2019 ('NDI Rules'), a Non-Resident Indian (NRI) / Overseas Citizen of India (OCI) can acquire immovable property situated in India by way of inheritance from a person resident outside India, if such property was acquired in accordance with FEMA provisions or acquired from a person resident in India.
- If the inheritance is by a PRII from another PRII and the assets are located in India, FEMA does not apply.
- The inherited assets can be further transferred by such beneficiary only in accordance with the NDI Rules.
- Sale proceeds shall be credited only to NRO Account and the NRI can repatriate only up to USD 1 million per financial year.



Inheritance of overseas assets

- **Section 6(4) of FEMA Act** provides that a PRII may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person **who was resident outside India**.

Therefore, a PRII can inherit foreign currency, foreign security or any immovable property situated outside India from a PROI.

- Further, the **Foreign Exchange Management (Overseas Investment) Rules 2022** clarifies that a PRII may acquire foreign securities or immovable property situated outside India by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India.
- Therefore, a PRII may inherit foreign security or immovable property situated outside India from another PRII if such PRII has acquired such foreign security or immovable property in accordance with FEMA.



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