

Foreign Investor's Checklist for Indian Real Estate (2025)

Legal Eligibility Verification

- ☐ Confirm property type is permitted for foreign investment under FEMA regulations
- ☐ Verify property is not agricultural land, farmhouse, or plantation property
- ☐ Confirm property is not in restricted/protected area requiring prior government approval
- ☐ Verify compliance with specific restrictions based on investor's country of origin
- ☐ Check if property falls under automatic route or requires government approval

Investment Structure Verification

- ☐ Determine optimal investment structure (direct purchase vs. company investment)
- ☐ For company investment, verify FDI sectoral caps and conditions
- ☐ Confirm compliance with minimum built-up area requirements for construction projects
- ☐ Verify minimum capitalization requirements are met
- ☐ Ensure lock-in period restrictions are understood and planned for

Property Due Diligence

- ☐ Conduct thorough 30-year title search
- ☐ Verify property is free from encumbrances (obtain non-encumbrance certificate)
- ☐ Check for any pending litigation on the property
- ☐ Verify land use classification in Master Plan
- ☐ Confirm property is not in environmentally protected zone
- ☐ Verify building permissions and approvals
- ☐ Check compliance with local building regulations

Foreign Exchange Compliance

- ☐ Ensure funds are transferred through proper banking channels
- ☐ Verify compliance with pricing guidelines for the property
- ☐ Prepare for Form IPI filing with RBI within 60 days of purchase
- ☐ Plan for annual reporting requirements
- ☐ Understand repatriation rules for eventual sale proceeds
- ☐ Verify TDS requirements for property purchase

Tax Planning

- ☐ Review applicable Double Taxation Avoidance Agreement (DTAA)
- ☐ Plan for income tax implications on rental income
- ☐ Understand capital gains tax implications for eventual sale
- ☐ Verify GST implications (for commercial properties)

- ☐ Plan for wealth tax implications (if applicable)
- ☐ Consider tax implications of chosen investment structure

Documentation Requirements

- ☐ Valid passport and visa documentation
- ☐ PAN card application/documentation
- ☐ Tax residency certificate from home country
- ☐ Source of funds documentation
- ☐ Bank statements showing fund transfers
- ☐ Legal representation documentation (power of attorney if needed)
- ☐ Company incorporation documents (if investing through company)

Exit Strategy Planning

- ☐ Understand repatriation rules for sale proceeds
- ☐ Plan for currency exchange rate fluctuations
- ☐ Consider lock-in periods for certain investments
- ☐ Evaluate market liquidity for different property types
- ☐ Understand tax implications of exit
- ☐ Plan for regulatory approvals needed for repatriation

Alternative Investment Options

- ☐ Evaluate “farmhouse-style” villas on residential land
- ☐ Consider commercial properties with rural aesthetics
- ☐ Explore hospitality sector investments (resorts, retreats)
- ☐ Evaluate Real Estate Investment Trusts (REITs)
- ☐ Consider investment in completed commercial projects
- ☐ Explore joint ventures with Indian partners (with proper legal safeguards)

Legal Citations and References

This checklist is based on the following legal framework:

1. **Foreign Exchange Management Act (FEMA), 1999**
 - Section 6(3)(i): Restricts transfer or acquisition of immovable property in India by non-residents
 - Section 13(1): Penalty provisions for FEMA violations
2. **FEMA (Non-debt Instruments) Rules, 2019**
 - Rule 12(3)(a)(i): Prohibits foreign nationals from purchasing agricultural land, plantation property, or farmhouses
 - Rule 12(3)(a): Permits purchase of other immovable property by foreign nationals
3. **FDI Policy 2020, Department for Promotion of Industry and Internal Trade**

- Para 5.2.10: Permits 100% FDI under automatic route in completed commercial properties
 - Para 5.2.11: Allows foreign investment in real estate development projects with minimum area requirements
 - Para 5.2.15: Permits 100% FDI in tourism and hospitality sector
4. **RBI Master Direction on Foreign Investment (RBI/FED/2017-18/60)**
 - Section 4.1: Outlines permissible real estate activities for foreign investment
 - Section 4.2: Details reporting requirements for such investments
 5. **Income Tax Act, 1961**
 - Section 195: TDS provisions for payments to non-residents
 - Section 90: Provisions related to Double Taxation Avoidance Agreements
 6. **SEBI (Real Estate Investment Trusts) Regulations, 2014**
 - Regulations governing investment in REITs, an alternative to direct property ownership
 7. **Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019**
 - Regulation 4: Reporting requirements for foreign investment

Disclaimer: This checklist is for informational purposes only and does not constitute legal advice. For specific legal guidance regarding foreign investment in Indian real estate, please consult a qualified attorney specializing in FEMA regulations and international investment.