NON-RESIDENT INDIAN INVESTMENT IN INDIAN CAPITAL MARKET

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ABSTRACT
Since 1991, after the globalisation, liberalisation and privatisation in India, Indian economy has been growing very fast and from all over the world, the investors are keen to invest in this economy in order to take the benefit of this growth. In this growth Non-Resident Indians (NRIs) also want to invest in India because of having access to many investment opportunities both at repatriation and non-repatriation basis. NRIs can invest in India both at portfolio investment and strategic investment. In portfolio investment they can invest in all the securities in the capital market, whether that securities are shares, debentures, mutual funds, etc. Through this project the researchers want to explain the NRI investment in capital market and also highlight FEMA, RBI and other authority guideline which is related to the NRIs investment in capital market.

Keywords: NRIs; Repartriation; Portfolio Investment; Securities

INTRODUCTION
There is ample amount of investment opportunities & possibilities in India for Non resident of India and the Persons of India Origin, since the last few years, especially after 1991 economic reform in India. It is provided under Indian Investment law also that non-resident Indian have an exclusive place for investment in India. The Government of India has also taken the step by simplifying the various directions and guidelines applicable to NRI’s and encouraged them to invest in India. These all the above things resulted into showing larger interest by NRIs in investing into India. These NRIs and PIOs plays a significant role in the development & advancement of India through their contribution in terms of their investments. Since the liberalisation of Indian economy the connection of NRIs with India has led to a number of investments in both capital market as well as in strategic area investment. By looking at this opportunity of investment by NRIs, the Indian Government is focused towards encouraging more and more NRI Investments.

The Laws which governs NRI investments in India are as follows:
1. Foreign Exchange Management Act, 1999 (FEMA) and its regulations particularly dealing with this subject.
2. The Securities and Exchange Board of India Act, 1992 empowers SEBI to make regulations in this subject.
3. The Ministry of Commerce Foreign Direct Investment policy,
4. The RBI Act 1934 empowers Reserve Bank of India to issue master circular

According to the Foreign Exchange Management Act (FEMA), 1999, “An NRI is a person resident outside India who is either a citizen of India or a person of Indian origin (PIO).”
An NRI:
1. is an individual;
2. is a person resident outside India;
3. has been or is an Indian citizen or a person of Indian origin (PIO).

The definition of a person resident outside India is that, any person who is not a resident in India. It means that in order to have a person resident in India he have to reside in India, but only for a minimum period of 182 days during the course of the preceding financial year and does not include any person who has gone out of India due to his employment or to do his business or for any other purpose which would indicate his intention to stay outside India for an uncertain period. This any other purpose depends on the circumstances which show the intention of staying outside India for an uncertain period.

These Non-Resident Indians (NRIs) can invest and are allowed to invest in India by investing into the portfolio investment scheme (PIS). Through this portfolio investment scheme they can invest in primary and secondary capital market in India. Under this scheme, they can purchase or acquire any securities i.e. shares, debentures, mutual funds etc of any Indian company through the medium of stock exchanges in India.

The Companies can raise funds through issuing securities to the public through the medium of stock exchanges. This is called capital market, consisting of primary market, where new issues through initial public offer has been issued to the public for the first time directly by the company to the investors, and the secondary market, is a place where existing securities are traded. For the NRIs Investment in equity shares are the best investment because it gives high return to them.

Objectives of the paper

The objective of this paper is to explain the NRI investment in capital market with reference to guidelines issued by FEMA and RBI related to the NRIs investment in capital market.

Definition

Who is a non resident Indian (NRI) : An Indian Citizen who stays outside the territory of India for an employment or to carry on any business or to stays outside India under the circumstances which shows the intention to live outside the territory of India for an uncertain duration. If any of the above condition is satisfied than the person is said to be the non-resident of India. It also includes persons posted at United Nations Organisation and officials deputed abroad by Central or State Government and public Sector undertaking on temporary basis for an assignment are also comes under the preview of non-resident. NRI are on par with non resident foreign citizens.

Categories of NRIs

There are three main categories of NRIs which are as follows-

1. Indian citizens who stay outside India for an employment or for carrying on any business or Vocation or any other purpose in indicates through the circumstances that he will stay for an indefinite period.

2. An Indian citizen who is working outside India on any assignment with foreign government agencies like United Nations Organisation (UNO), including its affiliates, International Monetary Fund (IMF), World Bank, United Nations peace keeping force etc.

3. All the Officials of Central and State Government and Public Sector undertaking deputed outside India on temporary basis for any assignments.
Definition of NRIs under different laws

The residential status of a person is also decided under two different Acts, other than FEMA. Income Tax Act, 1961 and Foreign Exchange Regulation Act, 1973 also defines it. The concept of Non-Resident under FERA is different as compared to that under Income Tax Act. Under the Income Tax Act, a person residential status is determined on the basis of number of days he stays in India whereas under FERA, it is the intention of a person to be in India or outside India is an important factor for determining his residential status.

As per Section 6 of the Income tax act:

1. An individual is said to be resident in India in any previous year, if he-
   a. is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or
   b. [* * *]
   c. having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation- In the case of an individual,
   a. being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purpose of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted
   b. being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted.

2. A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

3. A company is said to be resident in India in any previous year, if-
   a. it is an Indian company; or
   b. during that year, the control and management of its affairs is situated wholly in India.

4. Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

5. If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

6. A person is said to be “not ordinarily resident” in India in any previous year if such person is-
   a. an individual who has not been a non-resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or
b. a Hindu undivided family whose manager has not been non-resident in India in nine out of the
   ten previous years preceding that year, or has not during the seven previous years preceding
   that year been in India for a period of, or periods amounting in all to, seven hundred and
twenty-nine days or less.

As per Section 2 (p) and 2 (q) of FERA Act:

Resident and non-resident status of a person is defined as under:

“Person resident in India” means-

a. citizens of India, who has, at any time after the 25th day of March, 1947, been staying in India, but
does not include a citizens of India who has gone out of, or stays outside, India in either case-
   a. for or on taking up employment outside India, or
   b. for carrying on outside India a business or vocation outside India, or
   c. for any other purpose, in such circumstances as would indicate his intention to stay outside
      India for an uncertain period.

a citizen of India, who having ceased by virtue of paragraph (a) or paragraph (b) or paragraph (c) of
sub-clause (i) to be resident in India, return to, or stays in, India, in either case-
   a. for or on taking up employment in India, or
   b. for carrying on in India a business or vocation in India, or
   c. for any other purposes, in such circumstances as would indicate his intention to stay in India
      for an uncertain period.

a person, not being a citizen of India, who has come to, or stays in India, in either case-
   a. for or on taking up employment in India, or
   b. for carrying on in India a business or vocation in India, or
   c. for any other purpose, in such circumstances as would indicate his intention to stay in India
      for an uncertain period.

a Citizen of India, who not having stayed in India at any time after the 25th day of March, 1947, comes
to India for any of the purpose referred to in paragraphs (a), (b), and (c) of the sub-clause (iii) or for
the purpose and in the circumstances referred to in paragraph (d) of that sub-clause or having come to
India stays in India for any such purpose and in such circumstances.

Explanation.- A person, who has, by reason only of paragraph (a) or paragraph (b) or paragraph (d) of
sub-clause (iii) been resident in India, shall, during any period in which he is outside India be deemed
to be not resident in India.

Classification of Non-Resident Indian Citizens:

With respect to making investments in India, the following categories of entities are relevant to be
explained, one category that is NRI is already explained in the earlier part, so here only two
classification will be explained, they are-

Persons of Indian Origin (PIO): For the purpose of making an investment in the Indian securities
market and for opening a bank account for investing in the security market, a person is said to be of
Indian Origin if he holds Indian passport at any time or either of his parents or his grandparents were
the citizens of India or the spouse is the Indian citizen is also treated as a person of Indian origin
provided the bank accounts are opened or investment in securities in India are such persons jointly
with their NRI spouses.
Overseas Corporate Bodies: Overseas corporate bodies is also a one class of non-resident Indian which is predominantly owned by an individual’s of Indian nationality or origin resident outside India and includes Overseas companies, partnership firms, societies and other corporate bodies which are owned directly or indirectly, by the individuals of Indian origin to the extent of at least 60%. The various facilities which are granted to NRIs are also available, with some exceptions to Overseas Corporate bodies so long as the ownership or beneficial interest held in them by persons of Indian nationality or origin resident outside India continues to be at or above the level of 60%.

Types of NRIs Account in India

In India the NRIs can hold different types of account in order to invest in India. They don’t need any permission from the Reserve Bank of India to open an account. They can open and maintain the different types of accounts available for them in India in order to invest, with an authorised dealer in India i.e. a Bank which is authorised to deal in the foreign exchange. However for the individuals of Bangladesh and Pakistan, there is a need to have a prior approval of RBI before opening an account. The GPO post office is India is also authorised to open an NRO saving bank account. The different types of accounts are classified for the NRIs are classified as-

Non Resident Ordinary Rupee Account (NRO Account)

It is a normal bank account opened by the Indian citizens who are going outside India with an intention of residing there only i.e. to become a NRI. A person who has not opened the account before becoming NRI can also open this account after becoming NRI by sending remittances from his home country or by transferring funds from his other NRO account. The facilities available to the holder of this account are same as facilities available to an NRE account holder, except that any repatriation done through this account should be reported to RBI by filling up prescribed forms. This account can be opened in an authorised bank in the form of savings, current, recurring or fixed deposit accounts. The account can be opened in an individual or on joint account also with the resident or non-resident of India. The saving bank account is generally opened by the NRIs in order to crediting there legitimate dues, earnings, incomes etc. this NRO account should be denominated in Indian rupee only.

Non-Resident External Rupee Account (NRE Account)

It is an account which is opened by NRIs by depositing the foreign currency at the time of opening an NRE account. This foreign currency can be deposited through the medium of traveller’s checks or notes. This account can be opened in the form of saving, current and fixed deposit account. This can be opened by non-resident himself.

Foreign Currency Non Resident Bank Account – FCNR (B) Account

This account can also be opened by the NRIs but only in the form of term deposits of one to five years. The account can be maintained in any freely convertible currency.

Different Investment Ways

Unlike other investors the NRIs also have the different types of investment ways to invest in India. NRIs always have been very opportunistic in terms of the investment and always ready to invest in India. By looking at this thinking of NRIs the government of India regularly comes up with various new schemes to attract more and more investment from abroad from the NRIs.
Investment in Immovable Property

NRI can freely acquire and transfer the immovable property in India, but subject to certain restrictions provided under the Foreign Exchange Management Act, 1999. The restriction is that they can acquire any property other than agricultural land or farm house plantation property, by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India.

NRI may acquire any immovable property in India other than agricultural land /farm house plantation property, by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India. NRI may acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of RBI Regulations or from a person resident in India, An NRI may transfer any immovable property in India to a person resident in India.

Investment in Partnership: The NRIs are allowed to invest in the partnership or the proprietary business in India, by way of the capital contribution in such business in India engaged in any industrial, trading activity on non-reparation basis. RBI is the authority to grant such permission to the NRIs, with some conditions-

1. The amount invested in such business through abroad should be through normal banking channels or through transfer of funds held in investor’s bank account in India.
2. They should not engaged in any agricultural activity
3. The amount invested should not be reparable outside India.

Investment in Capital Market: NRIs and the FIIs are allowed to invest in the capital market of India also under the portfolio investment scheme. Under this scheme they can invest in both the primary as well as the secondary capital market through the medium of stock exchanges in India, where the securities are listed. NRIs can invest in the capital market in India through various modes, they are as follows-
NRIs Investment in Mutual Fund: The investment by NRIs in the mutual fund can be on repatriation basis and also on non-repatriation basis. It is the option of the NRI to choose any one as the investment mode. To invest in repatriation basis NRI must have an NRE Bank Account in India. The Reserve Bank of India (RBI) has granted a general permission to offer mutual fund schemes on repatriation basis, subject to the following conditions:

1. The mutual fund should comply with the terms and conditions stipulated by SEBI.
2. The amount representing investment should be received by inward remittance through normal banking channels, or by debit to an NRE account of the non-resident investor.
3. The net amount representing the dividend / interest and maturity proceeds of units may be emitted through normal banking channels or credited to NRE/ account of the investor, as desired by him subject to payment of applicable tax.

They can invest in mutual fund also on non-repatriated basis. This is also provided by the RBI to the NRIs by providing the permission to them to invest in the mutual fund on non-repatriation basis, but subject to certain conditions, like, fund for this investment should be provided from the NRO account by debiting the account and the current income from the dividend should also be repatriated.

This type of investment is also governed by FEMA in addition to the RBI guidelines. It covers all the transaction of investment in mutual fund which deals with foreign exchange, through its guidelines.

NRIs Investment in Government Securities: Under this scheme NRIs can invest in the government bonds and securities which can also be issued through the capital market. The NRI can purchase the units of UTI, Central and state government securities on non-repatriation basis and also on repatriation basis except the bearer securities which cannot be issued to NRIs. It can be by the remittance from normal banking channels or by withdrawing funds from their non-resident account with the bank situated in India. In addition to this investment in the government undertakings bonds is also allowed subject to the approval of the RBI.

NRIs Investment in Shares and Debentures: Under this scheme NRIs can invest in the shares and debentures of Indian company freely on repatriation basis or on non-repatriation basis by directly investing in the shares and debentures through the primary market and also through the investment in the shares and debentures in the secondary market. Primary market means the market where the buying of shares by the NRIs directly through the company itself and not through the market. This type of investment by the NRIs is the first investment in the shares and debentures of the company. Secondary market means where the buying of the shares and debentures by the NRIs of the existing shares and the debentures, through the stock exchanges in India where the securities are listed.

Here the investment by the NRIs can be done in shares/convertible debentures on repatriation basis and also on non-repatriation basis, under portfolio investment basis and also through the investment in securities other than shares and debentures.

Reparation basis investment in shares and debentures: Such type of investment by NRIs is allowed to them through the Foreign direct Investment Scheme of the Government of India. Under this scheme a non-resident Indian or the persons of Indian origin can buy the equity shares, preference shares and the debentures of the company, excepting certain cases where the prior approval of the RBI is necessary. Under this scheme direct subscription to the company shares can be possible. There are two routes available to the NRIs under this scheme; they are automatic and permission route.
The Indian company issuing the securities on repatriation basis should within 30 days of receipt of application money and also within 30 days of issue of shares or debentures submit various details to the Reserve Bank of India briefly stated herein:

- Name and address of the NRI investor; amount of investment; share of NRI participation; name and address of bank through which the funds have been received and other relevant facts about the investor.

- Name and address of the Company; its business; authorized capital; paid-up capital; share of NRI participation; present value of shares as per specified guidelines and other relevant facts about the company together with professional chartered accountant / company secretary's certificates etc.

- Said information and submission is not required to be submitted if the shares / debentures are issued on non-repatriation basis.

**Investment under portfolio investment scheme:** Through this portfolio investment scheme both the NRIs and the persons of Indian origin are permitted to invest in the capital market in India. They can invest in both primary market as well as secondary market in India under this portfolio investment scheme. Such type of investment by the NRIs under the portfolio investment scheme is allowed under both RBI and FEMA. They can invest in the company through purchasing the shares and debentures of the company through the stock markets in India.

Under this portfolio investment scheme NRIs are allowed to invest in the shares and debentures of the Indian company subject to the certain conditions:

- The payment has to be made for the buying of the shares and the debentures through an inward remittance in foreign exchange or by debiting the NRE accounts of the investors.

- In case of non repatriation basis the payment for the purchase of the shares has to made out of NRO account

- Registered stock broker is the medium of investment.

- The NRI should route all transactions relating to purchase and sale of shares / convertible debentures through a designated branch of an authorized Dealer (Generally a Bank Branch).

- The paid-up value of shares and each series off convertible debentures of an Indian company, purchased by each NRI both on repatriation and on non-repatriation basis, should not exceed 5 percent of the paid up value/ each series of convertible debentures respectively handed out by the company.

**Investment in shares or debentures on non-repatriation basis:** Under this head also the things are same as non-reparation basis; it only adds two more things in the purchase consideration. Here the NRIs can purchase the shares or the convertible debentures also through the NRO account and also foreign exchange remittance is also possible.

**Investment in securities other than the shares or convertible debentures:** Under this scheme also NRIs can invest in the capital market of the India. This scheme itself defines what kinds of securities can be included in this head. It includes a five kind of securities in which NRIs can invest. They are to be listed as-

- Government dated securities,
- Treasury bills,
- Units of domestic mutual funds,
- Public sector undertaking bonds (PSU)
Shares of public sector enterprise under dis-investment programme. With regard to limitations on investing by NRIs, there is no restriction on investing in such kind of securities.

The Reserve Bank of India monitors the ceilings on NRI/PIO investments in Indian companies on a daily basis. The ceiling limits for the NRIs which is provided by RBI overall 10 percent of the company paid up capital. For effective monitoring of foreign investment ceiling limits, the Reserve Bank has fixed cut-off points that are two percentage points lower than the actual ceilings. The cut-off point, for instance, is fixed at 8 percent for companies in which NRIs/PIOs can invest up to 10 percent of the company's paid up capital.

CONCLUSION

As it is a fact that today in India ample number of opportunities for the investors to invest in India in every field of sector. The Investment in the Capital market is also a very boom area where the chances of getting high returns is more as compared to other investment. The NRIs and PIOs can also invest in the capital market of India by investing in the primary and secondary market of India. The transactions of investing in the capital market by the NRIs are governed by RBI regulations and also through the FEMA regulations.

Presently after the repealing of the Foreign Exchange Regulation Act, the foreign investment in India is very increasing day by day. Among the different kinds of investment, the investments in the capital market by the NRIs are also flourished. But there is need for them to have a detail study about the investment opportunities in Indian Capital Market, whether the laws in India are sufficient enough to deal with there all the issue which may arise in future. The researcher suggest that in order to have a good investment by the NRIs in India in the Capital market, there is a need of for them to appoint the economic advisors for them before investing in the capital market of India. Such mechanism can lead to minimisation of risk of the bad allocation and also the bad deception.

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