

NRI Investor Guide

Defining Non-Resident Indians

According to the Reserve Bank of India, an Indian citizen who stays abroad for employment/carrying on business or vocation outside India or stays abroad under circumstances indicating an intention for an uncertain period of stay abroad is a non-resident. Persons who have been posted in UN organizations and officials deputed abroad by central/State Governments and Public Sector Undertakings on temporary assignments are also treated as non-residents.

A foreign citizen is regarded as a Person of Indian Origin

if he at any time held an Indian passport or if his parents or grandparents are citizens of India, as defined by the Constitution of India

A wife of a citizen of India or of a person of Indian origin is also deemed to be of Indian origin even though she may be of non-Indian parentage. For the purpose of the facility of opening and maintenance of various types of bank accounts and making investment in shares and securities in India, a foreign citizen (not being a citizen of Pakistan or Bangladesh) is deemed to be a person of Indian origin if: he, at any time, held an Indian passport, or he, or either of his parents or any of his grandparents were a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955.

A spouse (not being a citizen of Bangladesh or Pakistan or Sri Lanka) of an Indian citizen or of a person of Indian origin is also treated as a person of Indian origin for the above purpose provided the bank accounts are opened or investments in shares and securities in India are made by such persons jointly with their NRI spouses only.

Defining an Overseas Corporate Body

(Currently the OCBs are not allowed to fresh buying shares and securities but they can sold their holdings)

An Overseas Corporate Body is predominantly owned by individuals 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, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons. Such ownership interest should be actually being held by them and not in the capacity of nominees. The concerned OCB is required to initially furnish a certificate from an overseas auditor/chartered accountant/certified public accountant in form OAC where the ownership/beneficial interest is directly held by NRIs and in form OAC 1 where it is held indirectly by NRIs and further that such ownership interest is actually held by them and not in the capacity as nominees. Thereafter, a simple certificate signed by the Managing Director of the OCB or Chief Executive Officer of the OCB.

Investing in the Indian Stock Markets

There are no restrictions in investing into the equity segments of the secondary markets, provided the transactions are under the PIS Scheme (barring a few sectors like print media). **Currently the NRIs are not allowed to take positions/hedge/trade in the Derivatives Markets – encompassing Stock Futures, Index Futures, and also restricted to buy/sell Call and Put Options**

Secondary Market Purchases – Allowed under the (PIS) Portfolio Scheme

(A) Operating through the Registered Stock Broker ([Manashvi Securities Ltd](#))

Generally for secondary market operations (buying/selling shares through a broker on a stock exchange), the NRI needs to have a RBI Permission from the Reserve Bank of India. This RBI Permission is valid for a period of five years and the Permission is given on repatriation / non-repatriation basis.

(B) Operating through anyone or both of the Rupee Accounts:

Two types of rupee accounts, i.e.

NRE Account or Non-Resident (External) Rupee Account, and

NRO Account or Ordinary Non-Resident Rupee Account can be maintained by NRIs as either current or savings accounts for the purpose of portfolio investments.

(C) Obtaining the RBI Permission through a Designated Bank:

The NRI/OCB should obtain a RBI Permission from the Reserve Bank of India before buying/selling shares under the portfolio management scheme (buying/selling on the secondary markets through the stock exchanges). This approval can be obtained on repatriation basis and non-repatriation basis. The Approval is valid for a period of 5 years and can be further renewed for another 5 years at a time. This approval is provided by the bank on behalf of the RBI.

The Application is to be submitted to the designated bank in one of the prescribed forms, i.e. NRC/NRI/RPC/RPI.

The RBI Permission can be directly obtained from the applicant's designated bank. *Each NRI/OCB has to select one branch for of the bank for this purpose.*

(D) RBI Permission & Demat Accounts:

Only with the RBI Permission, should the NRI/OCB buy shares from the secondary market. When the NRI/OCB desires to transfer the shares purchased, the RBI Permission number and date is required to be mentioned on the transfer deed (in case of physical shares). In case of demat, the Depository Participant should be informed about grant of the RBI Permission so future credits into the demat account can be effected without any problem. The RBI Permission is also required for repatriation of funds, deposit of securities into the client's demat account, etc.

Understanding the PIS terms for investing in to secondary market in detail:

A) Designated bank branch is:

The Reserve Bank has authorized a few branches of each bank to conduct the business under Portfolio Investment Scheme on behalf of NRIs. These branches are the main branches of major commercial banks located close to the stock exchange/s. NRIs have to route their applications through any of the designated bank branches who have authorization from Reserve Bank.

B) Are NRIs allowed to apply through multiple designated banks or branches?

No. Each NRI has to select one branch for this purpose for investment on repatriation/non-repatriation basis.

C) Are NRIs allowed squaring up their transactions within a settlement?

As per regulations, NRIs are permitted to do delivery-based transactions only. It is mandatory to take delivery of shares purchased and give delivery of shares sold.

D) Are NRIs allowed to Trade in the Derivatives Segment?

No, currently the RBI does not permit the NRIs to trade/hedge or hold any position in any of the derivative products pertaining to the underlying equity, viz: NRIs are restricted to buy/sell stock futures, index futures, call & put options.

E) Can NRI investments under the Portfolio investment scheme be made on repatriable as well as non repatriable basis?

Yes, investments can be either repatriable or non-repatriable in nature.

F) When are NRI investments, considered repatriable?

If the original purchase is made on a repatriable basis and such investment are made out of funds from NRE/FCNR account or by means of remittance from abroad, then the sale proceeds, net of taxes, can be repatriated. For investments made on a repatriable basis, an NRI is required to open an NRE account with the designated bank as the repatriable amount will be credited to his NRE account. In case investments are made on a non-repatriation basis, sale proceeds can be credited only to the NRO account held with the designated bank branch. Therefore, an NRI interested in making investments on both repatriation and non-repatriation basis will have to open an NRE as well as an NRO account with the designated bank branch

G) Corporate Benefits, whether Repatriable or not?

A corporate benefit, in the form of dividend, interest, rights, bonus etc., arising out of investment in securities, is repatriable if the investment is made on a repatriable basis. Similarly, if the corporate benefit results from investment made on non-repatriable basis cannot be repatriated.

Non-resident (Special) Rupee Account - NRSR.

Non-resident (non-repatriable) Rupee Deposit Account - NRNR.

(Discontinued effective April 1, 2002. All existing NRSR Fixed Deposit accounts can be continued until maturity and on maturity be transferred to your NRO account. All NRNR Fixed Deposits can be continued till maturity and on maturity be transferred to NRE account. All existing NRSR Savings and Current Accounts have to be converted to NRO accounts not later than September 30, 2002.)

1. NRE

The NRE Account can be maintained in current/savings/fixed deposits form. The balances held in the NRE Account can be repatriated abroad freely. Income from interest on funds held in the NRE account is exempted from Income-Tax.

2. NRO

The NRO Account can be maintained in current/savings/fixed deposits form. Funds held in this account cannot be remitted abroad but have to be used for local payments in rupees. The debits for local payments are allowed freely from this account, representing legitimate dues of the account holder or proceeds of remittances received from abroad through banking channels are permitted to be credited freely. Debits to the accounts for the purpose of investments in India and credits representing sale proceeds of investments are allowed subject to the account holder giving an undertaking at the time of opening the account that such investments/disinvestments would be covered either by the general or special permission of the Reserve Bank. Funds due to the non-resident accountholder which do not qualify under the Exchange Control regulations, for remittance outside India are required to be credited to the NRO account back. The operation of the account should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.

3. FCNR

This account can be maintained in foreign currency with authorized dealers in India. The FCNR account can be maintained in Pound Sterling, US Dollar, Deutsche Mark (up to Dec 2001), Euro and Japanese Yen. The account can only be maintained in the form of term deposits for a fixed period ranging from 6 months up to 3 years, depending upon the choice of the NRI. Income from interest on funds held in the NRE account is exempted from Income-Tax.

Investment Ceilings & Restricted Sectors:

Ceilings on holdings:

The Reserve Bank of India has defined ceilings on investments made by NRIs/OCBs/PIOs and FIIs in Indian companies. Individually, NRIs/OCBs can invest up to 5% of the paid-up share capital (equity as well as preference capital)/each series of convertible debentures of a company. For the purpose of this ceiling, investment under the Portfolio Investment Scheme on repatriation as well as non-repatriation basis is clubbed together.

There is an overall ceiling of 10% of paid-up equity share capital of the company/paid-up value of each series of convertible debentures for purchase by NRIs/OCBs. The overall ceiling can be raised to 24% subject to approval the general body passing a resolution to that effect. However, there is no ceiling for investment in domestic Mutual Funds.

Shares/convertible debentures acquired through IPO/Private Placement are excluded for the purpose of above limits as the onus of allotting the shares in the specified limits rests with the issuing company.

Monitoring of Limits:

Monitoring by the designated bank

The respective designated bank branches monitor limits of individual holdings by NRIs/OCBs. Limits on aggregate holdings by NRIs/OCBs are monitored by the RBI. However, the NRI/OCB should also take precautions that it does not purchase stocks in excess of the prescribed limits.

Information dissemination by RBI on Ceilings

Once the aggregate holding of NRIs/OCBs builds up or is about to build up to the maximum prescribed ceiling, RBI puts the concerned stock under the Restrict List/Watch List. RBI publishes these lists from time to time.

Cut-Off limits by RBI upon reaching Ceiling

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% for companies in which NRIs/OCBs/PIOs can invest up to 10% of the company's paid up capital.

Once the aggregate net purchases reach the cut-off point, the RBI cautions all designated bank branches so as not to purchase any more equity shares of the respective company on behalf of NRIs/OCBs/PIOs without prior approval of the RBI. Further, on receipt of such proposals from designated bank branches, the Reserve Bank gives clearances on a first-come-first served basis till such investments in companies reach 10/24% limit. Once the ceiling limit is reached, the RBI advises all designated bank branches to stop purchases on behalf of their NRIs/OCBs/PIOs clients.

Additionally, the RBI informs the general public about the 'caution' and the 'stop purchase' in these companies through a press release.

Crossing the prescribed limits

Is regularized by liquidating the excess portion of such holding which is in excess of the prescribed limit.

Restricted Stocks / Details of Companies, Ceiling wise:

www.rbi.org.in/adv/fiinri.html

Brief Process of Transacting in the Secondary Markets:

Contract Reporting to Designated Bank who in turn informs the RBI

When the NRI/OCB buys or sells any shares, the photocopy of the contract note is required to be submitted to the designated bank, who in turn reports the transaction to the RBI.

Systematic Maintenance of Contracts & Other Data Important

The NRI/OCB should also keep with himself all contract notes and details of the cheques /payments given or received. Sale/maturity proceeds can be remitted abroad (through the NRE Account) if the original investment was made out of funds remitted from abroad or funds in NRE/FCNR accounts. Otherwise they will have to be credited to the NRO account.

Crediting Sales Remittances into NRE Account

Before transferring the proceeds into the NRE Account, the designated bank would require proof of purchase (contract note) + bank statement where the debit was made. The bank checks whether payment was made from the NRE/foreign remittances. Together with these documents, the copy of the sale contract and the sale proceeds also has to be submitted to the designated bank. The bank will then calculate long term or short term capital gains tax, deduct the tax payable together with the bank commission and remit the net proceeds to the NRE Account. The designated banks do not give benefits of indexation. If benefits of indexation have to be claimed then the NRI would have to claim the same with the Tax authority by filing its return.

For sales of primary market shares, the NRI/OCB would have to submit the proof of purchase & proof that the underlying shares sold were primary market shares together with the sales contract note and cheque would be required to be submitted to the designated bank if the amount is to be transferred into the NRE account.

Crediting Sales Remittances into NRO Account

Crediting the sales proceeds are relatively easy into the NRO account, as the banks do not insist on purchase records since the money lying into the NRO account is not repatriable. However, different banks may adopt different practices for crediting amounts into the NRO accounts.

Primary Market Purchases:

However, investments made directly into the primary market subscriptions do not require RBI Approvals as the company offering the primary issue takes a blanket approval from the Reserve Bank for the Non-Residents.

Separate Demat Accounts Preferable for Primary Market Purchases & Secondary Market Purchases

For this reason, it is advisable to keep the shares purchased from the secondary market and the shares subscribed from the primary market into two separate demat (shares held in electronic mode) accounts so that upon sale of secondary market or primary market shares can be easily distinguished. Also, it is imperative that the NRI keeps an exhaustive record of all his purchases as the same would be required when the shares are to be sold.

Such records come handy when the designated bank of the non-resident has to deduct long term/short capital gain before the amount can be accepted into the appropriate (NRE/NRO) bank account. However, please consult your own Depository Participant, as the DP policies may differ from one DP to another.

Investments in Government Securities/National Saving Certificates

The NRI's are freely permitted to invest their funds in Government securities or Units of UTI through authorized dealers. Units can also be purchased directly from UTI. Besides, NRI's can also make investments in National Savings Certificates.

Investments in Proprietary/Partnership Concerns also allowed

NRI's are permitted to make direct investments in proprietary/partnership concerns in India as also in shares/debentures of Indian Companies. They are also permitted to make portfolio investments (purchase of securities through stock exchanges). This facility is granted both on repatriation and non-repatriation basis.

Investments in New Issues, Mutual Funds allowed

NRI's can make investments in new issues of shares/convertible debentures of Indian companies under direct investment schemes. They can also invest in schemes of domestic Mutual Funds floated by public/private sector institutions/companies. *NRI's are not required to apply for RBI Permission to invest in such new issues (primary market offering) or units of Mutual Funds.* The concerned company/mutual fund files a declaration in Form ISD together with the other required documents to RBI within 30 days from the date of the issue.

The RBI has granted general permission to domestic mutual funds to issue units/similar instruments to NRI's/OCB's on both repatriation and non-repatriation basis.

NRIs and Rupee Accounts:

The NRIs can maintain bank accounts in rupees as well as in foreign currency. Accounts in foreign currency can be maintained with authorized dealers only.

The different types of Rupee Accounts that an NRI can operate are:

Non-resident (External) Rupee Account - NRE.

Ordinary resident Rupee Account - NRO.

Foreign Currency Account - FCNR.

Purchase/sale of shares of an Indian company by Foreign Institutional Investors under Portfolio Investment Schemes.

1. Purchase/sale of shares:

A registered FII may, through the Securities and Exchange Board of India, apply to the RBI for permission to purchase the shares and convertible debentures of an Indian company under Portfolio Investment Scheme.

The FII shall purchase the shares/convertible debentures of an Indian company through registered brokers on recognized stock exchanges in India.

The amount of consideration for purchases shall be paid out of inward remittances from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorized dealer in India.

The total holding by each FII/SEBI approved sub-account of FII shall not exceed 10% of the total paid-up equity capital or 10% of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all FIIs/sub-accounts of FIIs put together shall not exceed 40% (now increased to 49%). (For arriving at this ceiling on holdings, the shares/convertible debentures acquired both through the primary market as well as secondary market will be included. The ceiling will not include investments made by FII through off-shore funds, Global Depository Receipts and Euro-Convertible Bonds). The limits are not applicable to shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

The FII may also purchase shares/convertible debentures of an Indian company through private placement/arrangement, subject to the overall ceilings.

2. Maintenance of account by the FII for routing transactions of purchase and sale of shares/convertible debentures

The RBI upon specific application, permit an FII to open a foreign Currency Account and/or a Non-resident Rupee Account with a designated branch of an authorized dealer for routing the receipt of and payment for transactions relating to purchases/sales, subject to the following:

The account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the shares/convertible debentures sold on the stock exchange.

The funds in the account shall be utilized for purchases of shares/convertible debentures or for remittance outside India.

The funds from foreign currency account of the FII may be transferred to Non-Resident Rupee account of the same FII and vice-versa.

3. Remittance of sale proceeds of shares/convertible debentures

The designated branch of an authorized dealer may allow remittance of net sale proceeds (net of taxes) or credit the net amount of sale proceeds to the foreign currency account or a Non-resident Rupee Account of the FII.

4. Investments by certain other investors

The RBI may permit a domestic asset management company or portfolio manager who is registered with Sebi as a foreign institutional investor for managing the funds of a sub-account, to make investment under the Scheme on behalf of:

1. A person resident outside India who is a citizen of a foreign state, or
2. A body corporate registered outside India.

Provided such investment is made out of funds raised or collected or brought from outside India through normal banking channel.

The application to RBI for permission has to be made through Securities & Exchange Board of India.

Investments permitted to be made shall not exceed 5% of the total paid-up equity capital or shall not exceed 5% of the paid up value of each series of convertible debentures and shall also not exceed the overall ceiling specified from time to time.

NRI & Demat Accounts

1. Demat account opening:

NRIs can open a demat account with any Depository Participant of NSDL/CDSL in India. The NRI needs to mention the type ('NRI' as compared to 'Resident') and the sub-type ('Repatriable or 'Non-Repatriable') in the account opening form. There is a new category of NRI Accounts recently introduced, as 'DR' Account, which is used for the purpose of 2 Way in GDR/ADR.

2. NRIs and RBI Permissions:

No permission is required from RBI to open a demat account. Holding securities in demat only constitutes change in form and does not need any special permission. *However, the RBI Permission is required by the DP to receive shares purchased from the secondary markets.*

3. Can securities purchased under repatriable and non-repatriable category be held in a single demat account?
An NRI must open separate demat accounts for holding 'repatriable' and 'non-repatriable' securities.

4. How does NRI dematerialize the securities purchased while he/she was resident?

As per FEMA rules, NRI must regularize his/her holdings to reflect change of status – in this case bring them to 'Non-Resident' status. For this, NRI must submit (if not already submitted to the issuing company earlier) a letter addressed to the issuing company along with the Demat Request Form stating change of status and giving details of foreign address.

5. What are the procedures to be followed in respect of investment in securities in case person resident in India becomes NRI?

On becoming an NRI, a new depository account with appropriate NRI status is to be opened and all the balances held in account with 'Resident status should be transferred to the account with NRI status.

6. What are the procedures to be followed in respect of investment in securities in case NRI becomes person resident in India?

On becoming an Indian resident, a new depository account with appropriate status - 'Resident' in this case is to be opened and all the balances held in account with 'Non-Resident' status should be transferred to 'Resident' status.

7. Subscribing to new issues:

The issuing company is required to issue shares to NRIs on the basis of specific or general permission from GoI/RBI. Therefore, individual NRI need not obtain any permission. However, the NRI must carefully read the new issue application form before making required purchases. In other words, the NRI can purchase the shares even if the NRI does not have the RBI Permission.

8. Does NRI require any permission to subscribe to Rights issue of a company?

No.

9. Does NRI require any permission to receive bonus shares?

No.

10. Can an NRI nominate or be nominated in depository account? Whether such nominee can be person resident in India?

Yes.

11. Can an NRI and person resident in India have a joint demat account?

Yes. For the purpose of determining ownership of holding, the first holder is taken into account. Hence, even though other joint holders maybe persons resident in India, the sale proceeds of such securities can be repatriated in case the first holder is permitted to repatriate funds.

12. What are the permissions required for off-market transfer of securities?

From NRI to NRI

- No permission

From person resident Outside India to person resident in India (Gift)

- No permission

From person resident in India to person resident Outside India (Gift)

- Application to RBI by transferor

From person resident in India to person resident if outside India