4.1 Types of investment

4.1.1 Government Securities & Units

4.1.2 Investment in proprietary/partnership firms

4.1.3 Portfolio investment

4.1.3.1 Holding in joint names

4.1.3.2 Non-FERA companies, becoming FERA companies

4.1.4 NRI Bonds

4.1.5 Subscription to Memorandum & Articles

4.1.6 New issues of limited companies

4.1.7 New issues - 40% scheme

4.1.8 Investments in priority industries under 74% scheme

4.1.8.1 Overseas agents

4.1.9 Investment in existing sick companies

4.1.10 Immoveable property

4.1.11 Company deposits

4.2 Investment Chart

4.3 NRI funds inflow

4.4 Assistance from The Indian Investment Centre etc.

4.4.1 The Indian Investment Centre & State Government agencies

4.4.2 Banks

4.4.2.1 Credit cards for NRIs

CHAPTER FOUR

AVENUES OF INVESTMENT IN INDIA
4.1 Types of investment

Non-resident Indians and persons of Indian origin have several avenues of investment in India. Their funds, whether brought into the country through normal banking channels or lying in their non-resident accounts, can be invested in Govt. securities, Units of the UTI, proprietary and partnership concerns, in shares and debentures of limited companies, company deposits and immovable property. Such investment may be with or without repatriation rights. For non-repatriable investments, the NRI is required to furnish a non-repatriation undertaking as per the specimen in Appendix III.

The schemes of investment as detailed below with the exception of investment in National Plan Saver Certificates and Proprietary/Partnership concerns have been extended to overseas companies, partnership firms, societies, trusts and other corporate bodies owned to the extent of at least 60% either directly or indirectly but ultimately by persons of Indian nationality or origin resident abroad. All such eligible entities desiring to make investments in India should submit a certificate to the RBI in the prescribed form OAC/OACI, as the case may be (Appendices IV & V), from an overseas Auditor/Chartered Accountant/Certified Public Accountant along with their applications for investment in India. They are also required to submit such certificates to banks in India with whom they intend to open NRE, FCNR or NRO bank accounts.
4.1.1 Govt. Securities and Units

Investment in Units under the 1964 Scheme of the UTI, Govt. securities, Capital Investment Bonds and National Savings Certificates is freely allowed, subject to monetary limits, if any, under each of these schemes of investment. The investments may be made by either effecting remittances from abroad or by withdrawals from non-resident bank accounts maintained in India. Authorised Dealers in foreign exchange are permitted to credit the dividend/interest/sale/maturity proceeds of these Units/Securities to the NRI’s NRO account where the investments are held on non-repatriation basis. Where the investments made are held on repatriation basis, the interest/dividend therefrom as well as the sale/maturity proceeds thereof may even be remitted outside India or credited to the NRI’s NRE A/c with RBI’s prior permission, which is granted freely.

4.1.2 Investment in proprietory/partnership firms

The NRI may invest upto any extent in proprietory / partnership firms engaged in any business except real estate, that is, investment in land and immovable property for commercial purposes with a view to making profits or deriving income therefrom, and agricultural/plantation activities. There is no obligation on the NRI to associate any resident investor as partner. Such investment is subject to RBI permission for which an application should be made in Form FIN (Appendix VI) by the proprietory / partnership firm. The NRI is required to give an undertaking
that neither the capital invested nor any income earned thereon will be repatriated at any time.

4.1.3 Shares/debentures of companies through the Stock Exchange (portfolio investment)

The NRI desiring to make portfolio investments should authorise a bank in India to whom general permission will be granted by the RBI to undertake purchases and sales of shares/debentures on his behalf. Application for such permission is to be made in form NRI or RPI, as the case may be, (Appendices VII & VIII). While authorising the bank the NRI should specify the name of a share broker through whom the portfolio investments will be made since the bank cannot directly purchase and sell shares/debentures.

Applications from NRI entities for permission to designated banks for purchasing shares/debentures through Stock exchanges on non-repatriation basis may be made in form NRC (Appendix IX) while those for purchasing such securities through the Stock Exchanges on repatriation basis may be made on form RPC (Appendix X), to the RBI’s central office in Bombay.

In respect of portfolio investment on equity shares and convertible debentures the ceiling for investment, both on repatriation and non-repatriation basis, is, respectively 5% of the total paid-up equity capital of the company and 5% of the total paid-up value of each series of convertible debentures. Within this ceiling an NRI may hold equity
shares or convertible debentures upto 1% of the paid-up equity share capital or 1% of the value of each series of convertible debentures on a repatriation basis. No ceiling has, however, been prescribed for preference shares, non-convertible debentures and Master shares of the UTI which can be purchased upto any limit. The aforesaid ceiling limit of 5% is monitored by the RBI via the link offices in Bombay of the designated banks.

Portfolio investments may be made in any company, whether engaged in Industry or Trade. Such investments should however, be held for a minimum period of one year. The overall ceiling of 5% may be exceeded with the specific approval of the RBI. Equity shares acquired on conversion of Convertible Debentures are excluded from the 5% ceiling.

As in the case of other investments, funds for portfolio investments may be either brought into the country through normal banking channels or taken from the NRI’s bank accounts in India.

4.1.3.1 Holding in Joint Names

In cases where shares/debentures are acquired in joint names, the first holder is treated as investor for operating the one per cent limit for repatriation purposes. The second or third holder may seek repatriation benefit upto 1% provided he also invests in shares/debentures of the company either in his sole name or jointly with others with himself as the first holder.
4.1.3.2 Non-FERA Companies becoming FERA companies

An Indian company may, as a result of portfolio investments by NRIs, come to have a non-resident equity holding exceeding 40%, thus, technically, becoming a FERA company. The company concerned should, in such an eventuality, apply to the RBI for a permission under Sections 26(7), 28, 29 and 31 of FERA for doing such acts and things as are necessary with regard to matters covered by these Sections. Such general permission is readily granted by the RBI on application. On such permission being obtained the concerned company is regarded, once again, as a non-FERA company for all practical purposes.

4.1.4 NRI Bonds

The NRI bond is by far the finest instrument devised by the Government of India to encourage NRIs returning to India to bring their entire savings back home. The NRI Bond Issue managed by SBI Capital Markets Ltd., a subsidiary of the State Bank of India, opened on November 14, 1988 and was on tap till February 14, 1989. The following are the main features of these bonds:

a) the bonds exclusively meant for NRIs were issued in denominations of $500, $1000, $5000 and $10,000;
b) the bonds have a maturity period of seven years, but they are both encashable and transferable within this period;
c) interest on the bonds @ 11.5% p.a. will be compounded half-yearly in dollars and be paid on maturity, along with the principal in Indian rupees at the rate of exchange prevailing at that time;

d) the bonds are free from Indian income, wealth and gift taxes and these tax concessions will be available even if the bond holder returns to India before the maturity of the bond. These tax advantages will also be available to the transferee’s survivors and donors - in fact the halo of total tax exemption will exist as long as the bond exists, whoever may be the holder. A provision to this effect has been included in the Direct Tax Laws (Amendment) Act, 1989, which has been passed recently. The tax benefits will cease upon encashment of the bond;

e) NRI bonds are issued as promissory notes. They can, therefore, be sold and easily transferred simply by endorsement, delivery and registration. The transfer does not require any clearance from any authority.

f) rupee loans @ 13.5% p.a. may be raised to the extent of 75% of the face value of the bond for investments or other bonafide requirements of the bond holder in India as per. RBI’s A.D. (M.A. series) Circular No. 2 dt:17.2.89 to authorised dealers in foreign exchange. For the NRI who does not intend returning to India in the foreseeable future, the NRI bond is a means of investment planning because it offers the bond holder various choices in the matter of use of the funds in India on maturity of the bonds - gifts to near and
dear ones, seed money for a project to be taken up in India, donations for philanthrophic causes, investment in real estate, etc.

In the USA one gets a return of just 0.66% per annum on a three year deposit which is, further, subject to fluctuation on a weekly basis. In Japan, Germany, France and other developed European countries the return is much less. Comparatively, therefore, the return of 11.5% p.a., compounded half yearly and accumulated in dollars, on the NRI bonds, is, by any standards, excellent. The continuance of the tax exemption even after the NRI becomes a resident in India, and the conversion of the bonds into Indian rupees at the rate of exchange prevailing on the day of maturity, are two facets of the scheme that make it superior to any comparable financial investment issued by any government in the world.
The following table illustrates the return and other features of the different types of NRI bank investments:

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Currency</th>
<th>Payable</th>
<th>Cumulative/ Non-Cum.</th>
<th>US$ 1000 Repatriation after 7 yrs in Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRE FD</td>
<td>INR</td>
<td>13% Qtly.</td>
<td>Both</td>
<td>35,750 Available</td>
</tr>
<tr>
<td>FCNR FD</td>
<td>Pounds</td>
<td>12.5% Qtly.</td>
<td>Both</td>
<td>33,404 - do -</td>
</tr>
<tr>
<td>FCNR FD</td>
<td>US$</td>
<td>10.5% Qtly.</td>
<td>Both</td>
<td>30,161 - do -</td>
</tr>
<tr>
<td>NRI Bond</td>
<td>US$</td>
<td>11.5% Hly.</td>
<td>Annually or cumulatively at bond holder's option</td>
<td>31,936 Not avbl.</td>
</tr>
</tbody>
</table>


The total subscriptions to the NRI Bond Issue were around US$ 75 million. Responses to the Issue by way of subscription, came mostly from the U.S.A., Saudi Arabia and Kuwait.

4.1.5 Subscription to the Memorandum & Articles of Association of Indian Companies

NRIs have been permitted by the RBI to subscribe to the Memorandum and Articles of Association of any Indian company proposed to be set up for any industrial activity. The total face value of the shares subscribed for in this manner by the NRI should not exceed Rs.10,000/-. The Indian company should hold a letter of intent/industrial licence / certificate of registration issued by the Union Ministry of Industry or Director General of Technical Development or any other Central or State Government authority for undertaking...
its industrial activities. The company should file a declaration in form DSS (Appendix XI) with the RBI within 90 days of its incorporation, giving full details of the shares acquired by the NRI(s).

4.1.6 New issues of limited companies (Non-repatriable) Subject to furnishing a non-repatriation undertaking, the NRI may subscribe freely (upto 100%) to the new issues of shares/debentures of any public or private limited company engaged in any business activity except real estate business. As in the case of partnership firms, there is no obligation on the investee company to associate any resident Indian in the equity/preference capital of the company at any time.

Any Indian company proposing to issue shares or debentures to NRIs should apply in form "ISD" (Appendix XII) to the office of the RBI under whose jurisdiction its Registered Office is situated (Appendix XIII) together with
a) a non-repatriation undertaking from each NRI;
b) bank certificates in support of consideration received by remittance from abroad or out of funds held in the NRE/FCNR/NRO Accounts of the NRIs;
c) copy of Memorandum and Articles of Association;
d) latest balance sheet and profit and loss account;
e) where equity shares are to be issued to overseas companies/firms/societies/trusts or other corporate bodies owned directly/indirectly but ultimately by non-resident individuals of Indian nationality or origin, a certificate in form "OAC/OAC-1" from an overseas auditor/chartered accountant/certified public accountant indicating ownership/beneficial interest in the investing entity;
f) photocopy of consent order of the Controller of Capital Issues (CCI) if the total capital to be raised during a period of one year exceeds Rs. 1 crore.

The NRIs themselves need not seek permission from the RBI for such investment separately. Sometimes the NRI, for reasons of succession, survivorship etc., holds the shares/debentures jointly with his close resident relative/s in India. On such joint holdings, the RBI will permit repatriation benefits provided:

a) the investment is made out of funds received from abroad or held in the NRI's NRE or FCNR A/c;
b) the first holder is the NRI himself and
c) the resident holder is closely related to the non-resident investor

The facility of remittance/repatriation of capital/dividend will be allowed to the NRI (first holder) only. The resident holder will not be entitled to such facility when he/she inherits the shares/debentures.
4.1.7 New issues of Indian companies under the 40% scheme (Repatriable)

Under this scheme the NRI may invest upto 40% with repatriation rights in new issues of shares or convertible debentures of any new or existing non-FERA company raising capital by means of a public issue through a prospectus. The investment will be permitted only in companies raising capital for setting up new industrial/manufacturing projects or for expansion/diversification of existing industrial/manufacturing activities. Investment under this scheme may also be made in hospital projects, in the hotel industry (three star hotels and above) and new or existing companies engaged in the activities of shipping, development of computer software and oil exploration services. Where capital is raised otherwise than through a prospectus, the ceiling for NRI investment will be Rs. 40 lakhs. There is, however, no such monetary ceiling in the case of new issues of private limited companies.

RBI's approval for issue of shares to NRIs under this scheme should be sought by the company concerned by submitting form ISD. The form ISD shall be supported by the following particulars/documents for speedy clearance of the share issue proposal:

a) details of company's capital structure;
b) details of industrial/manufacturing activity undertaken/proposed to be undertaken;
c) certified copy of industrial licence, if any.
d) list (in duplicate) of the prospective non-resident investors, indicating name, nationality, country of birth/origin, country of residence of each investor, number and value of the shares and the manner in which subscription will be paid (i.e. by inward remittance from abroad or out of funds held in NRE/FCNR Account;)
e) all other documents as per items (b) to (f) in (iv) supra;

The application for setting up a hotel project should be supported by a letter from the Dept. of Tourism, Government of India, clearing the project and defining the grade of the hotel. No separate application is required from the NRI investors.

4.1.8 Investment in priority industries under 74% Scheme (Repatriable)

The Govt. of India (Ministry of Industry) operates a scheme for encouraging NRIs to invest in priority industries in India. Under this scheme investment in shares/convertible debentures upto 74% can be made on repatriation basis for starting industries listed in Appendix I, of the Industrial Licensing Policy 1973 (Appendix XIV). Investment will also be allowed in any other industry provided the investor gives an export obligation for 60% of the output (75% in the case of Small Scale Units). Investment under this scheme will also be permitted in hospital projects and in the hotel industry (3 star and above).
Applications for investment should be made to the Secretariat for Industrial Approvals (SIA) Ministry of Industry, Govt. of India, New Delhi. After securing Central Govt. approval for investment by NRIs, the company concerned should apply to the RBI in form ISD with a photocopy of this approval for permission to issue shares/debentures to the NRIs. The other documents to be forwarded to the RBI with the form ISD are those listed in (iv) supra, items (b) to (f).

If the investment under this scheme is to be made by a partnership firm the following particulars should be furnished to the RBI in addition to submitting form ISD:

a) name, address and nationality of each non resident partner;
b) quantum of capital to be contributed by each one of them; and
c) profit sharing ratio.

A copy of the partnership deed shall also be submitted.

4.1.8.1 Overseas Agents

The RBI permits Indian companies, on application, to appoint overseas agents on commission basis to secure direct investments in new issues of shares and debentures from NRIs and persons of Indian origin settled abroad.

4.1.9 Investment in existing sick companies (Repatriable)

To encourage NRI participation in the revival of sick companies, the Government have recently decided to permit
NRIs to invest in such units upto 100% on a repatriable basis. The following are the Government's guidelines in this regard:

a) Bulk investment by NRIs on private placement basis would be allowed in sick companies.

b) A company will be considered "sick" only if a public financial institution or a consortium is already formulating a plan for its rehabilitation/revival or the company is consistently showing losses for the last three years or the market price of its shares is below par for two years and the public financial institutions/banks are satisfied in this regard.

c) The bulk investment by the NRIs can be either in the form of sale of shares to them or by issue of fresh capital.

d) Investment on repatriation basis upto 100% of the equity capital of the company can be permitted provided a request is made by the Indian company and supported by a Special Resolution from the shareholders.

e) Repatriation of original capital brought into India for a sick company will be permitted after a minimum period of five years. The clearance will be given on a case-by-case examination and the future payment liabilities would be specifically taken into account while processing these cases.
f) RBI will adopt normal procedures to satisfy itself that the intending NRI investors are non-residents of Indian origin or corporate entities which are predominantly owned by NRIs.

The concerned Indian company should apply to the RBI, Exchange Control Dept., Bombay in form RSU (Appendix XV) with the documents specified in that form.

4.1.10 Immoveable property

NRIs can acquire residential property in India for their bonafide use subject to local laws and without RBI permission. Persons of Indian origin holding foreign passports, however, require RBI permission for such investments. Normally only one residential property will be permitted to be acquired by foreign nationals of Indian origin residing abroad. The form prescribed for application to the RBI is form IPI.I (Appendix XVI). Before granting permission the RBI should be satisfied about the reasonableness of the valuation of the property; also that the purchase price is paid out of funds remitted from abroad or held in the purchaser's bank account in India. The applicant should, further, undertake that he will not seek repatriation of the sale proceeds of the property, if sold at a later date, or the income accruing on it, outside India. RBI permission is also required for any sale, mortgage, lease for periods exceeding five years, gift or the settlement of such immoveable property acquired in India.
NRIs having immovable property in India may open NRO Accounts jointly with their close relatives in India for depositing rentals and making payments towards taxes and upkeep of the property.

4.1.11 Company Deposits

NRIs are permitted to place funds with public limited companies in India, including Government undertakings, with full repatriation benefits, provided:

a) the deposits are made in conformity with the prevailing rules and within the limits prescribed for acceptance of deposits by such corporate bodies;
b) the funds are procured either by remittance from abroad or from the NRE/FCNR A/c of the NRI; and
c) the deposit is kept for a period of 3 years

Where such deposits are on non-repatriation basis the funds lying in the NRI’s NRO A/c may be used and deposits may be placed with private limited companies as well.

The limit up to which a company incorporated under the Companies Act, 1956, (except a small scale unit) is permitted to accept deposits is 25% of the paid-up capital and free reserves of the company. Additionally, deposits up to 10% of the paid-up capital and free reserves of the company may be accepted from the company’s shareholders.

The company proposing to accept deposits from NRIs, whether on repatriation or non-repatriation basis, should submit an application to the RBI giving details of its Deposit Scheme. The NRIs need not seek separate permission in such cases.
4.2 Investment Chart
A comprehensive chart of investment facilities available to the NRI is placed at Appendix XVII.

4.3 NRI Funds Inflow
The liberalisation of exchange control and tax provisions in regard to NRI investments since 1982 and the attractive rate of interest offered by banks on term deposits in the NRE and FCNR bank accounts have succeeded to some extent in mopping up NRI funds. Bank deposits were a phenomenal Rs.10,170 crores as at the end of March 1988 as against Rs. 553 crores and Rs.242 crores respectively during 1982/83 and 1981/82. However, direct and portfolio investments by NRIs have not shown any significant improvement. NRI investment under the direct investment schemes amounted to Rs.1264 crores only as at the end of March 1988. Portfolio investment as on 31/3/88 was just Rs. 66 crores. This included Rs. 22 crores invested by certain offshore investment companies in the shares of a leading company in Bombay.

4.4 Assistance from The Indian Investment Centre, State Government Agencies and Banks

4.4.1 The Indian Investment Centre and State Government Agencies
The Indian Investment Centre (IIC) has been set up by the Government of India to promote foreign private investment in the country. The Centre has its headquarters at New Delhi and overseas offices at Abu Dhabi, Frankfurt, London, New
York, Singapore and Tokyo. The organisation renders advice and assistance to non-resident investors on setting up industrial projects in India. NRIs can make use of this facility.

Many State Governments, notably the Governments of Maharashtra and Gujarat, have also established nodal agencies or NRI Cells to facilitate clearances required from various State level authorities for services such as securing industrial plots, construction of factories, supply of electricity, power and water etc.

Full details of the addresses of the IIC offices and of the State Government agencies are contained in Appendix XVIII.

4.4.2 Banks

In Bombay two banks viz. State Bank of India and Citibank have branches exclusively for NRIs. The State Bank of India has set up an NRI desk in each of its 40 overseas branches. Citibank also has NRI desks in Hongkong, Singapore and New York. UCO bank has opened a merchant banking and NRI bureau in Bombay. Canara bank has NRI cells in centres like Goa, Mangalore and Cochin.
4.4.2.1 Credit Cards for NRIs

The Andhra Bank has introduced special Visa Credit cards for NRIs holding Indian passports. These can be utilised by the NRIs while on visits to India for purchase of goods and services at over 7000 merchant establishments enrolled by the Andhra Bank. NRIs can also draw cash advances at over 900 branches of the bank to meet emergency requirements. All the credit utilisations are debitable to the card holder’s NRO or NRE account. The scheme has been approved by RBI, initially, for a period of 1 year, upto 30/6/89.