

Regulatory Hotline

January 06, 2023

STREAMLINING OF FPI FRAMEWORK: SEBI'S CONTINUED EFFORTS AND WHAT STILL REMAINS

BACKGROUND

In an attempt to facilitate the ease of doing business and to reduce the time taken for registration of Foreign Portfolio Investors ("FPIs") under the SEBI (Foreign Portfolio Investors) Regulations, 2019 ("FPI Regulations"), SEBI, in its board meeting held on December 20, 2022¹, has approved the simplification of certain procedural requirements for on boarding of FPIs. SEBI also recently released a Master Circular for FPIs, Designated Depository Participants ("DDPs") and Eligible Foreign Investors², wherein it collated the provisions of the operational guidelines and various circulars which were issued for FPIs.

APPROVALS BY SEBI

SEBI, in the board meeting permitted the DDPs to grant an FPI registration to an applicant based on the scanned copies of application forms and supporting documents. It is to be noted here that while granting of registration on the basis of scanned copies has been permitted, trading may only be activated post the verification of the physical documents. Previously, applicants were required to send both, scanned copies and physical documents of application forms and supporting documents to the DDP for procuring the FPI registration.

Further, making the registration process applicant friendly, DDPs have been permitted to accept digital signatures by FPIs, in accordance with the provisions of the Information Technology Act, 2000, for the execution of registration related documents. Prior to this introduction, applicants were required to sign the documents in wet ink and send the scanned and original copies to the DDP.

To reduce the physical movement of documents and the time taken for registration, authorized bank officials have been permitted to use SWIFT mechanism³ for certification of copies of original documents submitted by FPIs.

Additionally, DDPs have been permitted to verify PAN through the CAF module available on their websites. This is expected to further reduce the time taken by DDPs for the opening of accounts. Earlier, DDPs could verify the PAN only after receiving a hard copy of the PAN from the applicant.

While earlier the FPI applicants were required to provide the complete details of the investor group constituents for the grouping of investors, the applicants have now been permitted to submit the unique investor group ID, generated by the NSDL portal, as it contains the details.

In addition to the above procedural changes, SEBI has also approved certain amendments to the various timelines provided in the FPI Regulations.

NDA VIEWS

The above steps by SEBI are a need of the hour for the FPI industry since the procedural leniencies proposed by SEBI would certainly aid the growing direct interest of foreign investors in the Indian listed market.

Having said the above, there still remain certain items that need the attention of SEBI, and we anticipate that SEBI or the FPI Advisory Committee⁴ constituted by SEBI on August 5, 2022, would delve into these.

1. No general permission for off-market transfer

While the extant FPI framework allows off-market transfer of assets between FPIs operating under the MIM structure⁵, permission has not been granted for transfer of assets between FPIs forming part of the same business group and / or investor group. Further, no general permission for off-market transfer has been granted to an FPI entity which wishes to relocate to another jurisdiction.

Thus, in a relocation scenario, the FPI entity may divest its shareholding in the investee company(ies) and post relocation, re-purchase the shares in the open market; and in the case of transfer of assets to a group entity, it may carry out such transaction through a block or a bulk deal only.

2. Ambiguity regarding declaration of Beneficial Owner by Control

There is no clarity while identifying the 'beneficial owner by control' under 'Annexure to CAF' form. While certain custodians require an applicant to identify only natural persons as the beneficial owner by control, others require the applicant to identify both, natural and artificial persons as beneficial owner by control. A clarification in this regard would be helpful and will bring uniformity across the table.

3. Ambiguity regarding scope of Material Change

Research Papers

Medical Device Industry in India

April 28, 2025

Clinical Trials and Biomedical Research in India

April 22, 2025

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

Regulation 22(1)(c) of the FPI Regulations requires the FPIs to inform SEBI and DDP of any material change in information. In this regard, while paragraph 14(i) of Part A of the Master Circular specifies the broad parameters of 'material change', this at times causes confusion amongst the investors with regard to the ambit of disclosure of change required under the FPI Regulations and guidelines. For instance, it is unclear whether 0.1% change in the ownership of an investor would be considered a material change and therefore, required to be intimated to the DDP.

4. Investment caps on NRI / OCI investment

While Regulation 4(c) of the FPI Regulations subjects Non-Resident Indians ("NRIs") and Overseas Citizens of India ("OCIs") being constituents of an FPI to certain conditions, the Master Circular sets out individual and aggregate caps of 25% and 50% respectively on contribution by NRIs and OCIs into an FPI's corpus⁶. Although, Schedule 3 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 permits NRIs to invest in listed Indian entities under the PIS route, it caps the investments to 5% and 10% of the individual and aggregate exposures, respectively.

In light of the above investment cap and considering the increased Know Your Customer and due diligence measures casted upon any FPI, including NRIs and OCIs, by SEBI, we suggest that the threshold for NRI/OCI contribution in an FPI be increased or further relaxed. This will help India attract more forex from NRIs/OCIs.

5. Eligibility towards subscription to ODIs

While Regulation 21(1)(b) of the FPI Regulations permits 'persons eligible for registration as Category I FPIs to subscribe to Offshore Derivative Instruments ("ODIs")', there is no clarity on whether a Category II FPI registered with SEBI, but eligible for registration as a Category I FPI, may subscribe to ODIs, or such Category II FPI would have to first surrender its Category II license and then subscribe to ODIs.

The above are few of the ambiguities and limitations prevailing under the extant FPI regulatory framework, the resolution of which would further broaden the scope of having increased FPI participation in our ever-expanding listed space.

– Ritul Sarraf, Prakhar Dua & Kishore Joshi

You can direct your queries or comments to the authors

¹ PR No. 37/2022, available at https://www.sebi.gov.in/media/press-releases/dec-2022/sebi-board-meeting_66407.html

² Circular No. SEBI/HO/AFD-2/CIR/P/2022/175 dated December 19, 2022, Available at https://www.sebi.gov.in/legal/master-circulars/dec-2022/master-circular-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors_66356.html

³ SWIFT is the messaging network used by financial institutions such as banks to securely send and receive information, such as money transfer instructions to and from clients. The DDPs may use this mechanism to receive secure instructions of certification of copies of original documents from the applicants.

⁴ The FPI Advisory Committee was constituted by SEBI on August 5, 2022 for the facilitation of FPI investments.

⁵ Paragraph 3 (Off-Market transfer of securities), of Part C of the Master Circular.

⁶ Paragraph 1 (ii) (Guidance for Processing of FPI applications by DDPs), of Part A of the Master Circular.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.