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SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 31st December, 2018

**SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO
INVESTORS) (THIRD AMENDMENT) REGULATIONS, 2018**

No. SEBI/LAD-NRO/GN/ 2018/58. — In exercise of the powers conferred by sub-section (1) of section 30 read with sub-section (1) of section 11, clause (ba) of sub-section (2) of section 11 and sub-sections (1) and (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 and section 25 of the Depositories Act, 1996, the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, namely,—

1. These regulations may be called the Securities and Exchange Board of India (Foreign Portfolio Investors) (Third Amendment) Regulations, 2018.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, -
 - a. in regulation 2, in sub-regulation (1), -
 - i. after clause (c), the following new clause shall be inserted, namely, -

“(ca) “control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner;”

ii. after clause (i), the following new clause shall be inserted, namely, -

“(ia) “Investment Manager” means an entity performing the role of investment management, investment advisory or any equivalent role, including trustees;”

b. in regulation 4, -

i. after clause (e), the following new clauses shall be inserted, namely, -

“(ea) where non-resident Indians or overseas citizens of India or resident Indians are constituents of the applicant or an existing foreign portfolio investor -

(i) the contribution of a single non-resident Indian or overseas citizen of India or resident Indian shall be below twenty-five percent. of the total contribution in the corpus of the applicant or the existing foreign portfolio investor;

(ii) the aggregate contribution of non-resident Indians, overseas citizens of India and resident Indians shall be below fifty percent. of the total contribution in the corpus of the applicant or the existing foreign portfolio investor;

Explanation: The contribution of Resident Indian is permitted if made through the Liberalised Remittance Scheme (LRS) approved by Reserve Bank of India in global funds whose Indian exposure is less than 50%.

(iii) the non-resident Indians, overseas citizens of India and resident Indians shall not be in control of the applicant or of the existing foreign portfolio investor:

Nothing contained in sub-clause (iii) shall apply if the applicant or an existing foreign portfolio investor is an ‘offshore fund’ for which ‘No

Objection Certificate' has been issued by the Board in terms of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, or is controlled by an Investment Manager which is controlled and/or owned by non-resident Indian or overseas citizen of India or resident Indian if the following conditions are satisfied:

- I. such Investment Manager is appropriately regulated in its home jurisdiction and registered with the Board as a non-investing foreign portfolio investor, or
- II. such Investment Manager is incorporated or setup under the Indian laws and appropriately registered with the Board.

Nothing contained in clause (ea) shall apply to non-investing foreign portfolio investor or if the applicant or an existing foreign portfolio investor proposes to invest or invests only in units of schemes floated by mutual funds in India.

(eb) the applicant and an existing foreign portfolio investor and their underlying investors contributing twenty-five percent. or more in the corpus of the applicant or existing foreign portfolio investor or identified on the basis of control, shall not be persons mentioned in the Sanctions List notified from time to time by the United Nations Security Council and shall not be from a jurisdiction which is identified in the public statement of the Financial Action Task Force as:

- (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
- (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.”

- ii. the existing regulation shall be numbered as sub-regulation (1) and after the said numbered sub-regulation, the following new sub-regulation shall be inserted, namely, -

“(2)(1) An applicant or an existing foreign portfolio investor shall comply with clause (ea) of sub-regulation (1) within a period of two years from the date of coming into force of this regulation or from the date of registration, whichever is later.

(2) An existing foreign portfolio investor shall comply with clause (eb) of sub-regulation (1) within a period of three months from the date of coming into force of this regulation.

(3) A foreign portfolio investor who remains non-compliant even after the period specified in clauses (1) and (2) of this sub-regulation shall be prohibited from making any fresh purchase of securities and such foreign portfolio investor shall liquidate its existing position in the Indian securities market within a period of one hundred and eighty days.

(4) In case of temporary breach of investment limits specified in clause (ea) of sub-regulation (1), the foreign portfolio investor shall comply with the eligibility conditions within ninety days of the breach and in case the foreign portfolio investor remains non-compliant with the said requirement even after ninety days, then no fresh purchases shall be permitted and such foreign portfolio investor shall liquidate its existing position in Indian securities market within a period of the next one hundred and eighty days.”

iii. in the Explanation, clauses (i), (ii) and (iii) shall be substituted with the following clauses, namely, -

“(i) The term “person” shall have the same meaning as assigned to it under the Foreign Exchange Management Act, 1999;

(ii) The terms “non-resident Indian” and “overseas citizen of India” shall have the same meaning as assigned to such terms under regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;

(iii) The term “resident in India” shall have the same meaning assigned to the term “person resident in India” under the Foreign Exchange Management Act, 1999.”

c. in regulation 5, in clause (a), the following Explanation shall be inserted, namely, -

“Explanation: A “government agency” shall mean an entity in which more than 75% of ownership or control is held by the Government of a foreign country.”

d. in regulation 21, in sub-regulation (6), for the words “for the purposes”, the symbol and words “, as defined in clause (a) of sub-section (1) of section 2” shall be substituted.

e. in regulation 22, in sub-regulation (1), in clause (c), for the words “are resident Indians or non-resident Indians and to entities that are beneficially owned by resident Indians or non-resident Indians”, the words and number “do not satisfy the conditions specified in regulation 4” shall be substituted.

f. in regulation 23, -

i. in sub-regulation (1), in clause (c), after the word “information” and before the word “previously”, the words and symbol “including any direct or indirect change in its structure or ownership or control,” shall be inserted.

ii. the existing sub-regulation (3) shall be substituted with the following sub-regulations, namely, -

“(3) Multiple entities having common ownership, directly or indirectly, of more than fifty percent. or common control shall be treated as being part of the same investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.

(3A) Notwithstanding anything contained in sub-regulation (3), the clubbing of investment limit of foreign portfolio investors having common control shall not be applicable where:

(i) the foreign portfolio investors are appropriately regulated public retail funds;
or

- (ii) the foreign portfolio investors are public retail funds majority owned by appropriately regulated public retail fund on look through basis; or
- (iii) foreign portfolio investors are public retail funds and Investment Managers of such foreign portfolio investors are appropriately regulated.

Explanation - Public retail funds means -

- (i) mutual funds or unit trusts which are open for subscription to retail investors and which do not have specific investor type requirements like accredited investors;
 - (ii) insurance companies where segregated portfolio with one to one correlation with a single investor is not maintained; and
 - (iii) pension funds.
- iii. after the newly inserted sub-regulation (3A), the following new sub-regulation shall be inserted and numbered as sub-regulation (4), namely, -
- “(4) In order to appropriately monitor investment concentration where common ownership or control is identified for such public retail funds, the Indian depositories shall maintain details of controlling entities on the basis of name, address, nationality, passport number/ any other identification card issued by Government and provide appropriate reports to the Board on a periodic basis.”
- iv. the existing sub-regulation (4) shall be renumbered as sub-regulation (5) and the words “beneficial ownership” shall be substituted with the words “common ownership or control”.

g. in regulation 32, -

- i. in sub-regulation (1), in clause (f), Explanations 1 and 2 shall be substituted with the following Explanations, namely, -

“Explanation 1. - For the purposes of this clause, "opaque structure" shall mean any structure such as (i) protected cell company, segregated cell company or equivalent, where the details of the ultimate beneficial owners are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement, or (ii) where applicant or its investor(s) identified on basis of threshold for identification of beneficial owner have issued any bearer shares or maintain any outstanding bearer shares.

Provided that the foreign portfolio investor satisfying the following criteria shall not be treated as having opaque structure:

- (i) the applicant is regulated in its home jurisdiction;
- (ii) each fund or sub fund in the applicant satisfies broad based criteria;
- (iii) the applicant gives an undertaking to provide information regarding its beneficial owners as and when Board seeks this information; and
- (iv) the applicant submits an undertaking that it does not maintain any outstanding bearer shares and it would not issue bearer shares in future.

Explanation 2. - The phrase “ultimate beneficial owner” shall have the same meaning assigned to the term “beneficial owner” as defined under the Prevention of Money Laundering Act, 2002.”

- ii. in sub-regulation (2), in clause (f), the words “beneficial ownership” shall be substituted with the words “common ownership or control”.
- h. in the Second Schedule, in Part A, in clause (4), -
 - i. the words “common beneficial owners(s)” shall be substituted with the words “direct/indirect common ownership or control”; and
 - ii. the words “beneficial owner is” shall be substituted with the words “common ownership or control is of”.

sd/-

AJAY TYAGI
CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

1. The Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 were published in the Gazette of India on 7th January, 2014 vide No. LAD-NRO/GN/2013- 14/36/12.
2. The Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, were subsequently amended on:
 - (a) July 8, 2016 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2016 vide notification no. SEBI/LAD-NRO/GN/2016-17/009;
 - (b) January 12, 2017 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2017 vide notification no. SEBI/LAD-NRO/GN/2016-17/018;
 - (c) February 27, 2017 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017 vide notification no. SEBI/LAD/NRO/GN/2016-17/035;
 - (d) March 6, 2017 by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide notification no. SEBI/LAD/NRO/GN/2016-17/037 read with notification no. SEBI/LAD/NRO/GN/2016-17/38 dated March 29, 2017;
 - (e) May 29, 2017 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Third Amendment) Regulations, 2017 vide notification no. SEBI/LAD/NRO/GN/2017-18/04.
 - (f) July 20, 2017 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Fourth Amendment) Regulations, 2017 vide notification no. SEBI/LAD/NRO/GN/2017-18/12.
 - (g) April 05, 2018 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2018 vide notification no. SEBI/LAD-NRO/GN/2018/05.
 - (h) April 27, 2018 by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2018 vide notification no. SEBI/LAD-NRO/GN/2018/08.
