



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

General Manager
Division of Foreign Portfolio Investors & Custodians
Investment Management Department
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SEBI/HO/IMD/FIIC/OW/P/2020/3302/1
January 24, 2020

The Director,
IPFII Singapore 4 Pte Ltd
61 Robinson Road, #11-01 Robinson Centre,
Singapore 068893

Dear Sir/Madam,

Subject: Request for Informal Guidance by way of an Interpretive letter under SEBI (Informal Guidance) Scheme, 2003 regarding clarification on whether a Foreign Portfolio Investor can invest in unlisted equity shares of an Indian company

1. This has reference to your letter dated November 21, 2019 (received on December 05, 2019) on the captioned matter.
2. In your letter under reference, you have inter-alia represented the following:
 - a. You have invested in non-convertible debentures (NCDs) issued by an Indian company viz. Metropolitan Lifespan Real Estate Developers Private Ltd (company).
 - b. The equity shares of the company are not listed on any stock exchange in India nor is there any proposal to list the equity shares.
 - c. 100% equity share capital of the company is held by 2 foreign companies (i.e. 99.99% is held by one shareholder and 1 equity share representing 0.01% is held by the second shareholder) under foreign direct investment route (FD). Both the shareholders are not registered in India as FPIs.
 - d. It is now proposed that the shareholder who holds 0.01% of the company's shares (representing 1 share) will transfer its entire holding (1 share) to the applicant. Post the transfer, the applicant will hold NCDs as well as 0.01% equity shares of the company.
 - e. Further, you have quoted relevant provisions of SEBI (Foreign Portfolio Investors) Regulation, 2019.
3. In light of the above submissions, you have requested an 'Interpretive Letter' for the following as per the provisions of the SEBI Informal Guidance Scheme:

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.

दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in 1



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- a. *While Regulation 20(1)(a) of FPI Regulations, specifies that a FPI can only invest in shares of a body corporate, listed or to be listed, Regulation 20(8) permits a FPI to invest in Indian securities as a person resident outside India in accordance with the provisions of Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2017(FEMA 20R).*
 - b. *FEMA 20R permits a person resident outside India to invest in unlisted shares of an Indian company under the FDI route and consequently it is understood that a FPI is permitted to invest in unlisted equity shares of an Indian company*
 - c. *In this regard, guidance is sought on whether in terms of the FPI Regulations, the applicant can purchase 1 unlisted equity share (representing 0.01% of the equity share capital) of the company.*
4. The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our views on the issues are as under:
- a) As per Regulation 20(1)(a) of FPI Regulations, an FPI can invest in shares, debentures and warrants issued by a body corporate listed or to be listed on a recognized stock exchange in India.
 - b) Further, FEMA20R has been superseded by Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 which under clause 1(a) of Schedule II, inter-alia, provides as given below:
"A FPI may purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange in India subject to following conditions....."
 - c) Accordingly, vide notification dated December 19, 2019, Regulation 20(8) of FPI Regulations was amended as follows:
(8) An entity, registered as a foreign portfolio investor shall be permitted to invest in Indian securities as a person resident outside India in accordance with provisions of Foreign Exchange Management Act, 1999, rules and regulations made thereunder".
 - d) In view of the aforesaid, as far as equity instruments are concerned, FPI may only purchase or sell equity instruments of Indian company listed or to be listed on any recognised stock exchange subject to conditions provided under applicable laws.
5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.



अनुवर्ती:
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6. With regard to your investment in non-convertible debentures (NCDs) issued by Metropolitan Lifespan Real Estate Developers Private Limited, please be guided by SEBI Circular dated November 05, 2019 – Clause 9 of the Part C of the operational guidelines for FPI, DDP and EFI read with RBI Master Direction dated January 4, 2018. Relevant extract of para 1.1.1(e) of Annex 5 of the aforesaid RBI Master Direction is reproduced below:

“1.1.1(e) Non-convertible debentures/ bonds issued by an Indian company.

iii. FPIs are permitted to invest in unlisted NCDs/ bonds issued by an Indian company subject to a minimum residual maturity of three years and end-use restriction on investment in real estate business, capital market and purchase of land. The custodian banks shall ensure compliance with this condition.”

7. You may note that the above views are expressed only with respect to the guidance sought on certain provisions of SEBI (Foreign Portfolio Investors) Regulations, 2019 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

(Achal Singh)