

SEBI (Foreign Portfolio Investors) Regulations, 2019

1.0 Objective

The purpose of this information memorandum is to apprise the Board about the notification of SEBI (Foreign Portfolio Investors) Regulations, 2019 (the Regulations) and amendment thereto being carried out consequent to notification of the Foreign Exchange Management (Non debt Instruments) Rules, 2019 by Government of India.

2.0 Background

2.1 The Board in its meeting held on August 21, 2019 had deliberated the proposals contained in memorandum No. 52/ 2019 (item No. 13) on report of the working group on SEBI (Foreign Portfolio Investors) Regulations, 2014. The Board approved draft SEBI (Foreign Portfolio Investors) Regulations, 2019 subject to the following:

- (a) The investment made through non-FPI route shall not be considered for clubbing purpose. The existing provision of clubbing the investment by a single FPI or an investor group of FPI shall continue.
- (b) The fees payable by Category II FPIs may be USD 300 instead of USD 1000.
- (c) As the Budget announcement regarding merger of NRI-PIS route in FPI route will require deliberations among DEA, RBI and SEBI, the recommendation 49 of Annexure 5 pertaining to NRIs may be kept in abeyance.

The Board authorized the Chairman to take necessary steps for notification of the Regulations and any incidental changes therein and to issue the circular to implement the proposals.

2.2 In the Board memorandum, it was mentioned that draft revised Regulations were subject to further legal scrutiny within SEBI. Subsequently, consultations were held with market participants as well as Legal Department of SEBI in respect of the draft Regulations. These consultations were for ensuring clarity and consistency in the Regulations.

2.3 The Regulations have been notified on September 23, 2019 and are placed at Annexure A.

2.4 In the said Board memorandum, it was also mentioned that:-

“In case, proposed FEMA (Non-debt Instruments) Rules require any further amendment in new SEBI (FPI) Regulations, 2019, the same shall be carried out on receipt of reference from DEA,”

2.5 Meanwhile, Department of Economics Affairs (DEA), Government of India has notified Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (hereinafter referred as the Rules) on October 17, 2019. These rules are in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 (FEMA 20R).

2.6 The clause I(a)(iv) of Schedule II of the Rules, reads as under:-

“The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of 10 percent limit for FPI investments in a single company, if they form part of an investor group. However, certain foreign Government agencies and its related entities may be exempt from such clubbing requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.”

2.7 In view the approval already granted by Board during meeting held on August 21, 2019, the following amendment is being proposed to implement changes emerging from FEMA(Non-debt Instruments) Rules, 2019:-

	Present Regulation	Revised Regulation
2(1)(n)	<i>“non-resident Indian” and “overseas citizen of India” shall have the same meaning as assigned to such terms under regulation 2 of the Foreign</i>	<i>“non-resident Indian” and “overseas citizen of India” shall have the same meaning as</i>

	<i>Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999</i>	assigned to such terms under rule 2 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 made under the Foreign Exchange Management Act, 1999
20(8)	<i>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 (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999</i>	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 the Foreign Exchange Management Act, 1999, Rules and Regulations made thereunder
20(9)	<i>In cases where the Government of India enters into agreements or treaties with other sovereign Government and where such agreements or treaties specifically recognize certain entities to be distinct and separate, the Board may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.</i>	Deleted

It shall be clarified in the operating guidelines for FPIs and DDPs that exemption from clubbing shall be available for government and government

related investors either by way of an agreement or treaty with other sovereign governments or by an order of the Government of India.

3.0 Information

This information memorandum is to inform the Board of notification of SEBI (FPI) Regulations, 2019 and proposed amendment thereto in accordance with the approval granted in meeting held on August 21, 2019.