Regulatory Hotline

June 14, 2024

SEBI PROVIDES FLEXIBILITY TO FOREIGN PORTFOLIO INVESTORS IN DEALING WITH THEIR SECURITIES POST EXPIRY OF THEIR REGISTRATION

- In February 2024, SEBI released a consultation paper on a framework for providing flexibility to FPIs in dealing with their securities post expiry of their registration.
- Earlier this month, SEBI notified the FPI (Amendment) Regulations, 2024, *inter alia,* providing flexibility to FPIs in dealing with their securities post expiry of their registration.
- Post the notification of the amendment, SEBI published a circular detailing the framework.

INTRODUCTION

Earlier this month, on June 3, 2024, the Securities and Exchange Board of India ("**SEBI**") notified the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024[1] ("**Amendment Regulations**"), amending the SEBI (Foreign Portfolio Investors) Regulations, 2019[2] ("**FPI Regulations**") – the primary regulations governing the functions and activities of Foreign Portfolio Investors ("**FPIs**") and Designated Depository Participants ("**DDPs**") in India. Prior to this notification, SEBI also released the Master Circular for FPIs, DDPs and EFIs[3] (the "**Master Circular**") on May 30, 2024.

The Amendment Regulations, *inter alia,* provide flexibility to FPIs in dealing with their securities post expiry of their FPI registration with SEBI. Pursuant to the Amendment Regulations, a circular[4] detailing the framework ("**Framework**") and timelines, and updating the Master Circular has also been released by SEBI (the "**Circular**").

On February 7, 2024, SEBI floated a consultation paper on the topic for public comments[5] ("**Consultation Paper**"), and subsequently approved the Framework in its board meeting on March 15, 2024[6] ("**Board Meeting**").

BACKGROUND

Regulation 7 (5) of the FPI Regulations stipulates a need for FPIs holding securities in India to have a valid registration with SEBI. According to the FPI Regulations and the Master Circular, an FPI registration is valid for a block of three years. FPIs are required to pay a registration fee and provide supporting documents, if required, to their respective DDPs before the expiry of their existing registration, to continue their FPI registration for the next block of three years.

Prior to the notification of the Amendment Regulations and the Circular, FPIs that failed to pay the registration fee to the DDP before the expiry of their existing registration were not permitted to apply for continuance after expiry. They could only make a fresh application for registration after surrendering their earlier registration. To surrender its registration, an FPI should have NIL balance in its account. In the absence of a liquidation mechanism for unsold securities post expiry of registration, the FPI could only authorize its custodian to write-off the securities held in its account, i.e., extinguish such securities from the safekeeping account, and freeze them in the FPI's demat account. Consequently, such securities remained frozen in the FPI's demat account indefinitely.

The Circular aims to address and regularize such issues.

REGULARIZATION OF FPI REGISTRATION OR DISPOSAL OF SECURITIES POST EXPIRY OF REGISTRATION

Acknowledging the genuine issues faced by FPIs in applying for renewal of their registration, SEBI has extended the time period for submitting the renewal application and payment of the registration fee to DDPs. A comparison of the erstwhile framework with the new one is provided in the table below:

S. No.	Particulars	Erstwhile Framework	New Framework
1.	Timeline for payment of registration fee and submission of documents	15 days before the expiry of existing registration. In case of payment / submission within the 15-day period, a reason for delay to be submitted to the DDP.	No change.

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2.	In case of payment of fee prior to the expiry of the registration, but incomplete KYC due to non-submission of information	No further purchases permitted until intimation of continuance given by the DDP upon completion of KYC.	No change.
3.	In case of non-payment of fee prior to the expiry of the registration	Payment of registration fee post expiry not permitted. FPIs to compulsorily surrender the earlier FPI registration and apply for fresh registration, in case it intends to have an FPI license.	Payment of registration fee, along with a late fee* within 30 days of expiry permitted. While FPIs have not been permitted to make fresh investments during the period from expiry till re-activation of registration, they have been permitted to dispose of the securities held in their account, during this period.
4.	Right to dispose securities in case of failure to re-activate registration within the prescribed timelines	No provision.	Permission to dispose of the securities held in the FPI's account, within 180 days from the expiry of the above 30 days. Remittance of sale proceeds to be subject to applicable KYC, AML/CFT requirements. Any monetary/ non-monetary corporate benefits/ voting rights to accrue to the FPI till the expiry of the aforementioned 180-day time period.

** Late Fee of USD 50 and USD 5 per day applicable to Category I and Category II FPIs respectively.*

DISPOSAL OF SECURITIES IN CASE OF RECLASSIFICATION OR CHANGE IN STATUS OF COMPLIANT JURISDICTION

The Circular has amended the provisions related to dealing with securities by FPIs in cases of (i) reclassification caused due to failure of an FPI registered under a particular category / sub- category to comply with the eligibility requirements of such category / sub-category, and (b) change in status of compliant jurisdiction[7] of the FPI.

S. No.	Particulars	Erstwhile Framework	New Framework
1.	Timeline for informing SEBI in case of reclassification or change in status of complaint jurisdiction	Prompt notification to DDP for reclassification	Both changes are Type I material changes. Intimation to DDP and submission of supporting documents to be done within the prescribed timelines[8].
2.	Fresh purchases	Fresh purchases blocked until either (a) compliance with additional KYC requirements, if any, or (b) FPI's jurisdiction / FPI becomes compliant with the FPI Regulations.	No change.
3.	Provision to sell securities	Reclassification - sale of securities permitted within 180 days from blocking of fresh purchases. Change in status of compliant jurisdiction – sale of securities permitted, no timeline for such sale provided.	Sale of securities permitted till the later of (a) expiry of existing registration, or (b) 180 days from the date of notification of change by the FPI / change in status of the jurisdiction
4.	Securities held after the expiry of the prescribed period	DDPs to refer such cases to SEBI for further action.	Process mentioned below to be followed.

DEALING WITH SECURITIES REMAINING IN THE DEMAT ACCOUNTS POST EXPIRY OF (A) FPI REGISTRATION AND/ OR (B) PRESCRIBED TIMELINES FOR LIQUIDATION

In addition to the above three instances, the FPI Regulations and the Master Circular stipulate for blocking of fresh purchases by FPIs and sale of their existing securities within 180 days in the following cases:

1. Breach of prescribed limits for contribution / control by Non-resident Indian Investors / Overseas Citizens of India and Resident Indian in the corpus of the FPI; and
2. Non-disclosure of granular details by FPIs fulfilling certain objective criteria.

Securities held post the expiry of the 180-day period

The Circular acknowledges the fact that there may be instances where FPIs may be unable to sell off all their securities within the prescribed 180-day period. In such cases, an additional 180-day period has been provided to FPIs to dispose their holdings, subject to the conditions mentioned below:

April 23, 2024

Q&A 2024 Protocol to the Mauritius India Tax Treaty

April 22, 2024

Boost to India's Space Potential: India Liberalizes Foreign Direct Investment

April 03, 2024

S. No.	Activities	Conditions
1.	Disposal of securities	Permitted, subject to a financial disincentive of 5% of sale proceeds. The amount of disincentive to be deducted by the custodian and remitted to the Investor Protection and Education Fund ("**IPEF**") within 30 days from deduction. Also subject to fulfilment of KYC, AML/CFT requirements by the FPI.
2.	Sale of suspended, unlisted/ delisted securities	Permitted by way of off-market transaction, and subject to pricing guidelines.
3.	Accrual of corporate benefits	Monetary/non-monetary corporate benefits/voting rights of securities held by the FPI, if any, to accrue to the FPI during the additional 180-day period.

Upon the expiry of the additional 180-day period, all the securities remaining unsold in the FPI's account shall be deemed to have been compulsorily written-off by the FPI, and the FPI would lose all beneficial interest in the same.

Securities written-off/ deemed to be written-off post expiry of the additional 180-day period

The Circular details the process of dealing with securities which are written-off / deemed to be written-off post the expiry of the additional 180-day period. This process has been summarized below:

- transfer of the written-off securities by the custodian to a separate escrow account operated by an exchange empanelled broker within 30 days of the write-off;
- monetary corporate benefits to be credited to IPEF;
- the empanelled broker to attempt to sell the securities at the available market prices;
- proceeds of sale, upon deduction of brokerage and statutory charges, to be transferred to IPEF.

DEALING WITH SECURITIES HELD BY FPIS WHOSE REGISTRATION HAS EXPIRED

Amending the proviso to Regulation 7(5) of FPI Regulations, the Amendment Regulations provide a timeline of 360 days to FPIs not having a valid certificate of registration and holding securities as on June 3, 2024, to sell such securities or wind up their open derivative positions within 360 days from June 3, 2024. For selling of such securities, the Circular provides a timeline of 180 days from its issuance and an additional 180 days.

OUR VIEWS

The amendment of the FPI Regulations and the issuance of the Circular were much awaited since the approval of the Framework in the March Board Meeting. The requirement for FPIs who could not pay the renewal fee to surrender their registration and apply for fresh registration posed significant practical challenges, including a lack of guidance on the disposal of securities held by such FPIs. The regularization of FPI registration in cases of delay in payment of renewal fees beyond the validity of the existing registration should help those genuine investors who could not pay the fee due to any administrative/ operational difficulties within the registration window to re-activate their registration without going through the hassle of surrendering their registration and applying for a fresh one.

Furthermore, the flexibility provided to FPIs in dealing with their securities post-expiry of their registration should instill confidence in FPIs regarding the security of their existing investments in India. Additionally, providing the 360-day timeline and dividing it into two periods of 180 days each should further provide FPIs the best chance to get maximum returns on their investments, including the illiquid securities, which may have otherwise been difficult to dispose of, while also nudging them to sell off the securities within the first 180 days to avoid the 5% disincentive.

While the new framework is a welcome move, it comes with its own lacunae. Firstly, the discrepancy between the calculation of the 360-day and 180-day periods could lead to confusion and compliance issues. Secondly, a framework regarding the final closing of accounts in case of non-disposal of securities held in the escrow account despite the empanelled broker's attempt to do so has not been provided, which still leaves scope for securities lying in the escrow account for an indefinite period.

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You can direct your queries or comments to the relevant member.

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[1]https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-

regulations-2024_83915.html

[2]https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019-last-amended-on-june-03-2024-_84004.html

[3]https://www.sebi.gov.in/legal/master-circulars/may-2024/master-circular-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors-_83689.html

[4]https://www.sebi.gov.in/legal/circulars/jun-2024/framework-for-providing-flexibility-to-foreign-portfolio-investors-in-dealing-with-their-securities-post-expiry-of-their-registration_83940.html

[5]https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-on-framework-for-providing-flexibility-to-fpis-in-dealing-with-their-securities-post-expiry-of-their-registration_81210.html

[6]https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2024/1713324577862_1.pdf

https://www.sebi.gov.in/sebi_data/meetingfiles/may-2024/1715265126249_2.pdf

[7]The jurisdiction ceasing to be a member of IOSCO/ Bilateral Memorandum of Understanding with SEBI/ BIS or the concerned jurisdiction of FPI being listed in FATF public statement as "high risk" and "non-cooperative" jurisdiction.

[8]Please refer to our hotline, SEBI relaxes the timelines for disclosure of material changes by FPIs for a detailed analysis on the types of material changes and related timelines. Available at https://nishithdesai.com/SectionCategory/33/Research-and-Articles/12/49/ResearchatNDA/15014/1.html