

Regulatory Digest

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TO BE OR NOT TO BE: UNPACKING 2024 FOR FOREIGN PORTFOLIO INVESTORS

The year 2024 has been transformative for Foreign Portfolio Investors (“**FPIs**”) in India. Following the regulatory momentum set by the Securities and Exchange Board of India (“**SEBI**”) in 2023, last year witnessed further significant developments in the FPI regime. SEBI continued its proactive approach, issuing series of circulars aimed at refining and strengthening the regulatory framework for FPIs. These changes have been instrumental in addressing emerging challenges and ensuring greater transparency and compliance within the Indian securities market.

As we close the chapter on 2024, this annual wrap explores the key regulatory changes brought about in the FPIs space and the updates to the laws and guidelines affecting FPIs.

UPDATES TILL JUNE 2024

Till the mid-year mark of June 30, 2024, numerous developments had taken place in the FPI space, including the issuance of Consultation Papers on (i) relaxation in timelines for disclosure of material changes by FPIs¹, (ii) framework for providing flexibility to FPIs in dealing with their securities post expiry of their registration² and (iii) proposals to improve ease of doing business with respect to the additional disclosure framework for FPIs³. Subsequently, the proposals of these consultation papers were brought into effect by way of different circulars. SEBI also amended the SEBI (Foreign Portfolio Investors) Regulations, 2019 (“**FPI Regulations**”) through two amendments, dated May 31, 2024⁴ and June 26, 2024⁵. Further, a revised Master Circular for FPIs, Designated Depository Participants (“**DDPs**”) and Eligible Foreign Investors (“**Master Circular**”) was also issued by SEBI on May 30, 2024. Please find an elaborate piece on the developments in the FPI space from January 1, 2024 till June 30, 2024 in our Mid-Year FPI Wrap 2024, available [here](#).

CONSULTATION PAPER ON PROPOSAL TO IMPROVE EASE OF DOING BUSINESS WITH RESPECT TO THE ADDITIONAL DISCLOSURE FRAMEWORK FOR LARGE FPIs

On July 30, 2024, SEBI released a consultation paper on ‘*proposal to improve ease of doing business with respect to the additional disclosure framework for large FPIs*’⁶, proposing to amend the August 24, 2023 circular (“**August 2023 Circular**”) which mandated certain additional disclosures by certain objectively identified FPIs. The August 2023 Circular, *inter alia* mandated certain FPIs, along with their investor groups with assets under management (“**AUM**”) exceeding INR 25,000 crore (~USD 3 billion) to provide granular details of all their investors/stakeholders on a look-through basis, to *inter alia* ascertain whether the FPI is effectively domiciled in a Land Bordering Country (“**LBC**”) or not.

The consultation paper proposed to modify the disclosure requirements and link the same to a minimum threshold of disclosure for identification and categorization of an FPI as an LBC or non-LBC entity on the basis of country/nationality of entities owning/controlling/holding economic interest in a suitable majority of AUM of the FPI, on a look-through basis. It further proposed that FPIs holding more than INR 25,000 crore (~ USD 3 billion) of equity AUM in the Indian markets, and making additional disclosures to the extent that the identification and categorization as LBC or non-LBC can be done, should not be required to make further disclosures in terms of the August 2023 Circular.

Unfortunately, the drafting of this consultation paper was very vague and ambiguous, and it led to a huge uproar in the market. This feedback was provided to SEBI and we understand that SEBI has since been re-working on the proposal, and we expect a circular to be released soon.

AMENDMENT TO CIRCULAR FOR MANDATING ADDITIONAL DISCLOSURES BY FPIs THAT FULFIL CERTAIN OBJECTIVE CRITERIA

On August 1, 2024, SEBI issued a circular⁷ amending the August 2023 Circular. The circular exempted University Funds and University related Endowments, registered or eligible to be registered as Category I FPI, from the additional disclosure requirement, subject to them fulfilling the following additional conditions:

- Indian equity AUM being less than 25% of global AUM;
- Global AUM being more than INR 10,000 crore equivalent (~USD 1.16 billion);
- Appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

The circular provided for the updation of the Standard Operating Procedure (“**SOP**”), issued pursuant to the August 2023 Circular with regard to the details of the eligible jurisdictions with respect to the exemption granted to University Funds and University related Endowments. Surprisingly, while this circular was released on and has been effective from August 1, 2024, the updated SOP has still not been issued, causing practical hurdles in the implementation of the circular.

MODIFICATION IN ANNEXURE TO COMMON APPLICATION FORM

Vide a circular dated June 27, 2024⁸, SEBI had provided flexibility of having up to 100% aggregate contribution by Non-resident Indians (“**NRIs**”), Overseas Citizen of India (“**OCIs**”) and resident Indian (“**RI**”) individuals in the corpus of FPIs based in International Financial Services Centres (“**IFSCs**”) in India and regulated by International Financial Services Centres Authority (“**IFSCA**”). Pursuant to this, on October 22, 2024, SEBI issued a circular⁹ modifying the Annexure to Common Application Form (“**CAP**”), which is one of the FPI registration application forms, inserting an option for applicants based in IFSCs in India to confirm if the aggregate contributions by NRI/OCI/RI are intended to be above 50% / are above 50% of the corpus of the FPI applicant and that the applicant shall at all times be in compliant with the applicable provisions of the FPI Regulations and the Master Circular.

PROCESS OF RECLASSIFICATION OF FPI INVESTMENT TO FOREIGN DIRECT INVESTMENT

The FPI Regulations and the Master Circular stipulate that the investment made by an FPI, along with its investor group¹⁰ shall be less than 10% of the total paid-up equity capital on a fully diluted basis. Further, the FPI (along with the investor group) investing in breach of the prescribed limit is required to (a) either divest the excess holding within 5 trading days from the date of settlement of the trade resulting in breach or (b) reclassify the entire holding as FDI¹¹.

In this regard, on November 11, 2024, SEBI issued a circular laying down the procedure for reclassification of FPI investment to FDI¹². The same day, the Reserve Bank of India (“**RBI**”) issued the Operational framework for reclassification of FPI investment to Foreign Direct Investment (“**FDI**”) ¹³. SEBI’s circular provided for compliance with extant FEMA Rules, along with the circular(s) issued by RBI for the reclassification of FPI investment to FDI and laid down the process to be followed by the DDPs for the same. RBI’s Operational Framework, on the other hand, detailed the approvals to be taken by the FPI for investment in equity instruments beyond the prescribed limit (as FDI) and the reporting requirements.

SIMPLIFIED REGISTRATION FOR FPIs

On September 24, 2024, SEBI issued a consultation paper¹⁴ on the *Draft Circular for “Simplified registration for FPIs”* for public comments. The consultation paper proposed

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to introduce an abridged version of the CAF, with an aim of facilitating ease of onboarding of FPI applicants and reducing duplication of available information.

Pursuant to the consultation paper, on November 12, 2024, SEBI released a circular¹⁵ on the topic, introducing an abridged version of the CAF for the following applicants:

1. fund(s) operated by investing/non-investing investment manager (“**IM**”), wherein such IM or any fund operated by IM, is already registered as FPI;
2. sub-fund(s) of a master fund, wherein such master fund or any sub-fund of such master fund, is already registered as FPI;
3. sub-fund(s) or separate class(es) of shares or equivalent structure(s) with segregated portfolio of a fund, wherein such fund or any of its sub-fund or separate class of shares or equivalent structure with segregated portfolio, is already registered as FPI;
4. scheme(s) of insurance companies wherein the parent entity or any scheme of insurance company is already registered as FPI.

As per the circular, the above-mentioned applicants may be provided with an option to fill the entire CAF or fill an abridged version of the same, where only the field(s) unique to the applicant may be filled. The circular further elaborates on the process to be followed for filing the remaining information in case the applicant chooses to fill the abridged CAF.

MANDATING DISCLOSURE OF ADDITIONAL GRANULAR INFORMATION BY CERTAIN OBJECTIVELY IDENTIFIED ODI SUBSCRIBERS

On December 17, 2024, SEBI issued a circular titled ‘*Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs*’¹⁶. This circular was issued pursuant to SEBI’s consultation paper dated August 6, 2024¹⁷ on investment by foreign investors through segregated portfolio / P-notes / Offshore Derivative Instruments and a subsequent SEBI board meeting on September 30, 2024¹⁸ approving the proposals¹⁹ of the same.

The circular aims to bring the additional disclosure requirements for ODI subscribers at par with those of FPIs by mandating certain objectively identified ODI subscribers to provide additional granular information of all entities holding any ownership, economic interest, or exercising control in the ODI subscriber, on a full look through basis, up to the level of all natural persons, without any threshold, in case of breach of certain thresholds. The circular also lays down certain conditions for issuance of ODIs by FPIs and separately stipulates that the criteria of breach of investment in an Indian corporate group shall be applicable to each segregated portfolio, in case of an FPI with segregated portfolios.

Please see our hotline **SEBI tightens norms around issuance of Offshore Derivative Instruments by FPIs** for a detailed analysis of the above.

NDA VIEWS

As we conclude our review of 2024, it is evident that the year has been full of action for FPIs. SEBI’s proactive approach, marked by significant amendments and a series of circulars and consultation papers has played a pivotal role in keeping the industry on its toes. While these developments have addressed emerging challenges and have aimed to ensure greater transparency and compliance within the Indian securities market, some of the proposals, like the LBC consultation paper also led to ambiguities in the market.

Looking forward to 2025, SEBI is likely to continue its trajectory of refining the regulatory landscape for FPIs. We anticipate further enhancements in disclosure norms, including the issuance of the much-awaited updated SOP on the August 2023 Circular. The ongoing emphasis on investments from LBCs also suggests that SEBI will come up with more clear guidance for market participants to prevent ambiguities and ensure smooth compliance.

Further, the second quarter of the year will also see the fruition of SEBI’s mandate of submission of additional granular information by ODI subscribers. It will be interesting to see the effect this may have on the inbound ODI investments, and SEBI’s reaction, in case the mandate proves to be counterproductive.

Authors

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

¹Available at: https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-on-relaxation-in-time-lines-for-disclosure-of-material-changes-by-foreign-portfolio-investors_81211.html

²Available at: 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

³Available at: https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-on-proposals-to-improve-ease-of-doing-business-with-respect-to-the-additional-disclosure-framework-for-fpis_81807.html

⁴Available at: https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2024_83915.html

⁵Available at: https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-second-amendment-regulations-2024_84435.html

⁶Available at: https://www.sebi.gov.in/reports-and-statistics/reports/jul-2024/consultation-paper-on-proposal-to-improve-ease-of-doing-business-with-respect-to-the-additional-disclosure-framework-for-large-fpis_85277.html

⁷Available at: https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-circular-for-mandating-additional-disclosures-by-fpis-that-fulfil-certain-objective-criteria_85371.html

⁸Available at: https://www.sebi.gov.in/legal/circulars/jun-2024/participation-by-non-resident-indians-nris-overseas-citizens-of-india-ocis-and-resident-indian-ri-individuals-in-sebi-registered-fpis-based-in-international-financial-services-centres-in-india_84449.html

⁹Available at: https://www.sebi.gov.in/legal/circulars/oct-2024/modification-in-annexure-to-common-application-form-caf-_87849.html

¹⁰As per Regulation 22(3) of the FPI Regulations, “*Multiple entities registered as foreign portfolio investors and directly or indirectly, having common ownership of more than fifty percent or common control, shall be treated as 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*”.

¹¹Provisos 1 and 2 to Regulation 20(7) of the FPI Regulations.

¹²Available at: https://www.sebi.gov.in/legal/circulars/nov-2024/procedure-for-reclassification-of-fpi-investment-to-fdi_88329.html

¹³Available at: https://website.rbi.org.in/web/rbi/-/notifications/operational-framework-for-reclassification-of-foreign-portfolio-investment-to-foreign-direct-investment-fdi-_p_l_back_url=%2Fweb%2Fbi%2Fsearch%3Fq%3Dfpi%26type%3Dcom.liferay.journal.model.JournalArticle%26type%3Dcom.liferay.portal.kernel.model.Layout%26togs%3Dexact%26orderBy%3Dnewest

¹⁴Available at: https://www.sebi.gov.in/reports-and-statistics/reports/sep-2024/consultation-paper-on-draft-circular-for-simplified-registration-for-foreign-portfolio-investors-fpis-_86950.html

¹⁵Available at: https://www.sebi.gov.in/legal/circulars/nov-2024/simplified-registration-for-foreign-portfolio-investors-fpis-_88408.html

¹⁶Available at: https://www.sebi.gov.in/legal/circulars/dec-2024/measures-to-address-regulatory-arbitrage-with-respect-to-offshore-derivative-instruments-odis-and-fpis-with-segregated-portfolios-vis-vis-fpis_89986.html

¹⁷Available at: https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-investment-by-foreign-investors-through-segregated-portfolios-p-notes-offshore-derivative-instruments_85510.html

¹⁸SEBI Board meeting Press Release available at: https://www.sebi.gov.in/media-and-notifications/press-releases/sep-2024/sebi-board-meeting_87154.html

¹⁹Agenda available at: https://www.sebi.gov.in/sebi_data/meetingfiles/oct-2024/1728450148462_1.pdf

Decision available at: https://www.sebi.gov.in/sebi_data/meetingfiles/dec-2024/1735625779527_2.pdf

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