



26 September 2019

Indian Regulator issues new FPI Regulations

On 23 September, 2019, the Securities and Exchange Board of India (“SEBI”) issued the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 (the “**FPI Regulations**”), which took immediate effect. The FPI Regulations govern the process to be followed for foreign investment in India by entities such as Irish regulated investment funds, so that they can commence investment in India once authorised.

Regular readers will be aware from our previous [publication](#) that the registration process in India is governed by the Foreign Exchange Management Act, 1999 (“**FEMA**”), with a specific focus on the foreign portfolio investor (“**FPI**”) route.

Enhanced Framework

The previous FPI Regulations were redrafted based on the [final report](#) of a committee chaired by former Reserve Bank of India deputy governor Harun R. Khan, which was issued on 24 May, 2019. In issuing the FPI Regulations, SEBI has now streamlined the regulatory framework for FPIs by permitting FPIs to carry out off market transfers of securities and by simplifying KYC requirements.

Additional enhancements to the FPI registration process include reducing the categories of FPI from three to two. The applications which will now fall under Category I comprise of; sovereign wealth funds, central banks, pension funds, banks, asset management companies, portfolio managers and entities from FATF member countries. The applicants which fall under Category II include; charitable organizations, family offices, individuals, corporate bodies and unregulated funds such as limited partnerships and trusts. Regulation 5 of the FPI Regulations, and Appendix I hereto, lists

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each of the classifications of applicants falling under Category I and Category II.

Outlook

We expect that the enhancement of the FPI Regulations will prove a welcome development to investors, including Irish regulated funds, investing in India. Increasingly Ireland has proven to be the domicile of choice for asset managers seeking to establish investment funds to invest in Indian securities.

Should you require any additional information please contact any of the fund lawyers listed here or your usual contact at Dillon Eustace.

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Appendix I

Category of foreign portfolio investor	Applicants
Category 1	<p>Shall include:</p> <ul style="list-style-type: none"> (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s); (ii) Pension funds and university funds; (iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers; (iv) Entities from the Financial Action Task Force member countries which are – <ul style="list-style-type: none"> I. appropriately regulated funds; II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor: Provided that the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund; III. university related endowments of such universities that have been in existence for more than five years; (v) An entity (A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio investor; or (B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country: Provided that such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.
Category 2	<p>Shall include all the investors not eligible under Category I foreign portfolio investors such as –</p> <ul style="list-style-type: none"> (i) appropriately regulated funds not eligible as Category I foreign portfolio investor; (ii) endowments and foundations; (iii) charitable organisations;

	<ul style="list-style-type: none">(iv) corporate bodies;(v) family offices;(vi) Individuals;(vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;(viii) Unregulated funds in the form of limited partnership and trusts.
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