# *Foreign Portfolio Investors - A Quick Flashback…*

***This Note covers some of the recent changes in the legal and regulatory framework in India that impact Foreign Portfolio Investors.***

In the past two years considerable developments have taken place on the Foreign Portfolio Investors (**"FPI"**) front. There have been changes to the norms governing FPIs that have impacted the permitted investments by them in India. Both Securities and Exchange Board of India (**"SEBI"**) and the Reserve Bank of India (**"RBI"**) have been making joint efforts to develop this market in India.

Offshore Derivative Instruments (**"ODI"**) and Participatory Notes (**"P-Notes"**) market, being entirely offshore, the regulations have been amended keeping in mind the impact that these products may create on Indian securities markets. SEBI has issued circulars, to align the eligibility criteria of ODI subscribers with the eligibility criteria under Regulation 4 (Eligibility criteria for FPIs) of the SEBI (Foreign Portfolio Investors) Regulations, 2014 (**"FPI Regulations"**).[1][2]

In terms of tenor also, investments by FPIs can be made in instruments having a minimum residual maturity of 3 years.

As of now, the only exception to the three year rule is investments made by FPIs in Security Receipts (**"SRs"**) issued by the Asset Reconstruction Companies (**"ARCs"**).[3]

(a) **ARC:-**
FPIs are now permitted to invest in 100% of each tranche of SRs issued by ARCs.[4] This raises a discrepancy at this stage, as the extant laws require an ARC to mandatorily hold a minimum of 15% of the SRs issued by it on an ongoing basis. To fully effect the intent of 100% investment by FPIs, amendments would be required to be made to extant laws.

(b) **Non-Performing Assets:-**
Where FPIs are not keen on the investment route involving non performing assets and ARCs, they can opt for an alternate route now, under which FPIs can invest in non-convertible debentures or bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of an amortising bond.[5] In this case also, the 3 years maturity period

1 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389083605384.pdf
2 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1416827082538.pdf
3 https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9543&Mode=0
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9554&Mode=0
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9947&Mode=0
4 http://dipp.nic.in/English/acts_rules/Press_Notes/pn4_2016.pdf
5 https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10147&Mode=0

restriction will apply to the revised maturity of such instruments.

(c) **Funds:-**
On the investment front, FPIs have been permitted to invest in units of investment vehicles registered and regulated under the respective regulations framed by SEBI or any other relevant regulating authority, and includes Alternative Investment Funds (**"AIFs"**), Real Estate Investment Trusts (**"REITs"**) and Infrastructure Investment Funds (**"InvITs"**).[6]

(d) **Double Taxation Avoidance Agreement ("DTAA"):-**
Recently India has also signed the DTAA with Mauritius and Singapore. While this allows India to tax capital gains on investments in the nature of shares, made by an FPI, this will not impact investments made by them in debentures & derivatives in India.

(e) **Unlisted Debt & Securitized Debt Instruments:-**
In the 2016 budget, the government had also proposed that the investment basket of FPIs will be expanded to include unlisted debt securities and pass through securities issued by securitisation special purpose vehicles. Working towards this initiative, RBI has issued a draft circular permitting FPIs to invest in unlisted debt securities and securitized debt instruments. Comments are invited on this by 25th May 2016.

RBI has proposed amendments to the relevant regulations under the Foreign Exchange Management Act, 1999 (**"FEMA"**) to allow foreign investment by non-residents, on repatriation basis to be made in equity, debt and any other approved securities only in dematerialised form. Additionally, the proposal suggests to make the depositories as the sole source of information and data in relation to such foreign investments.

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[6] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10130&Mode=0