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Analysing developments impacting business

MONITORING FPI INVESTMENTS – STRICT COMPLIANCE FOR LISTED COMPANIES

10 May 2018

As a follow up to the recent circulars issued by the Reserve Bank of India (RBI), which brought about certain changes in the limits applicable to investments by Foreign Portfolio Investors (FPI) in debt instruments (analysed in our update dated [7 May 2018](#)), the RBI has, in consultation with the Securities and Exchange Board of India (SEBI), issued a circular on 3 May 2018 (the RBI Circular) requiring listed Indian companies to comply with certain foreign investment monitoring requirements. The RBI Circular is to be read together with the SEBI circular dated 5 April 2018 (April 5 SEBI Circular) on monitoring of foreign investment limits and the SEBI circular dated 27 April 2018 (April 27 SEBI Circular).

As a modification of the usual system of receiving investment data in respect of investments by FPIs and Non-Resident Indians (NRI) in Indian companies (Foreign Investment Data) from custodians and authorised dealer banks, the RBI Circular has put in place a new mode of monitoring foreign investment limits in terms of which depositories are required to provide the necessary infrastructure and systems for operationalising the monitoring mechanism.

All listed Indian companies are required to provide the specified Foreign Investment Data to the depositories within the extended deadline of 15 May 2018 (extending the initial deadline of 30 April 2018 prescribed under the April 5 SEBI Circular). The new system for monitoring foreign investment limits in listed Indian companies is required to be made operational by 18 May 2018 (extending the deadline of 1 May 2018 prescribed under the April 5 SEBI circular).

The RBI Circular stipulates strict consequences for non-compliance. Listed Indian companies which do not comply with this requirement within the stipulated timelines will be barred from receiving foreign investment and will be seen as non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and the regulations made thereunder.

Further, upon implementation of the new monitoring system, all authorised dealer banks are required to provide the details of investments made by their respective NRI clients to the depositories in the format prescribed by the depositories/ SEBI. In addition, the reporting to RBI in the existing system, viz., LEC (NRI) and LEC (FII), will continue.

Comment

The RBI and SEBI have operationalised the new system for monitoring of Foreign Investment Data quite promptly and any failure of listed companies to comply with these requirements can result in debarment from receipt of foreign investments indefinitely. The RBI Circular does not set out a framework for rationalization of non-compliances thereunder and it appears that the procedure for compounding of offences under FEMA would apply for any non-compliance with the RBI Circular.

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