Regulatory Hotline

September 10, 2024

SEBI AMENDS FOREIGN VENTURE CAPITAL INVESTOR REGULATIONS: ALIGNS THE REGISTRATION AND GOVERNANCE FRAMEWORK WITH FOREIGN PORTFOLIO INVESTMENT LAWS

- On September 5, SEBI notified the Securities and Exchange Board of India (Foreign Venture Capital Investors) (Amendment) Regulations, 2024.
- The Amendment Regulations will come into effect on January 1, 2025.

INTRODUCTION

SEBI, on September 05, 2024, notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 ("**Amendment Regulations**")[1], amending the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("**FVCI Regulations**")[2], which govern and regulate the FVCIs investing in India.

The proposal to amend the FVCI Regulations was first released by SEBI on May 18, 2023, vide a consultation paper[3], which subsequently received approval in its board meeting on June 27, 2024[4].

The Amendment Regulations will come into effect on January 1, 2025, and seek to streamline the registration process for FVCIs by shifting the responsibility of processing registration applications and conducting due diligence to the Designated Depository Participants ("**DDPs**") registered with SEBI. This shift would align the FVCI registration framework with the existing Foreign Portfolio Investors ("**FPI**") framework.

SIGNIFICANT AMENDMENTS

Onboarding of DDPs and submission of registration application to DDPs

Under the erstwhile FVCI Regulations, applicants were required to submit their registration applications directly to SEBI, along with the application fee. The Amendment Regulations stipulate for the FVCI application to be made to a DDP by submitting a duly filled application form, along with an application fee of USD 2,500 (exclusive of GST). The Amendment Regulations empower the DDP to grant the registration certificate to the FVCI on behalf of SEBI, post a review of the application form and ensuring the applicant's compliance with other requirements[5].

The Amendment Regulations also mandate the existing FVCIs to onboard a DDP.

Eligibility Criteria

Under the erstwhile FVCI Regulations, SEBI assessed factors including the applicant's track record, professional competence, financial soundness, experience, general reputation of fairness and integrity, approval from the Reserve Bank of India ("**RBI**"), nature of the applicant entity and its regulation by an appropriate foreign regulatory authority. The Amendment Regulations have now replaced these eligibility criteria with the ones currently applicable to the FPIs. Some of the important eligibility criteria introduced by the Amendment Regulations are:

- *Residency:* Resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or signatory to a bilateral Memorandum of Understanding with SEBI, with the exception of Government or Government related investors who would be considered eligible for registration if such an applicant is a resident in a country approved by the Government of India.
- *Applicant being a bank*: Resident of a country whose central bank is a member of Bank for International Settlements ("**BIS**"), with the exceptions of (a) a central bank applicant, and (b) in case the applicant is regulated by the banking sector regulator in its home jurisdiction even if the central bank of that country is not a member of BIS.
- *Beneficial Owner(s):* The Amendment Regulations prohibit person(s) mentioned in United Nations Security Council's ("**UNSC**") Sanctions List from being an FVCI applicant or its beneficial owner. Further, the applicant should not be a resident of a country identified in the public statement of the Financial Action Task Force ("**FATF**"):
  - as a jurisdiction having strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which countermeasures apply; or
  - as a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

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CONDITIONS TO GRANT LICENCE

The Amendment Regulations introduce several notable changes to the conditions governing the registration certificate granted to the FVCIs. While the core requirements, such as adherence to the SEBI Act and the FVCI Regulations, appointment of a domestic custodian, and entering into an arrangement with a designated bank for operating a special non-resident rupee or foreign currency accounts remain unchanged, the Amendment Regulations impose additional obligations on FVCIs, such as the requirement to inform SEBI and DDP, in writing as soon as possible but not later than seven working days, in case the FVCI no longer meets the specified eligibility criteria. The DDPs have now been tasked with verifying an FVCI's compliance with the prescribed eligibility criteria.

RENEWAL OF REGISTRATION / SURRENDER OF CERTIFICATE

The Amendment Regulations significantly amend the process related to the renewal / surrender of the FVCI registration certificate. Key changes include the requirement of payment of a registration renewal fee of USD 100 (exclusive of GST) by FVCIs for every block of five years. Moreover, the provision of payment of late fees on crossing of the licence renewal deadline (akin to FPIs) has also been introduced by SEBI. In case an FVCI fails to pay both the renewal fee and the late fee, by the due date and does not hold investments in India, they will be considered to have voluntarily applied for surrender of their registration. Whereas, in case of an FVCI holding investments in India and failing to pay the renewal fee (along with the late fee) within thirty days from the expiry of the block for which the fee has been paid, the certificate of registration may be suspended or cancelled.

CHANGE IN REGISTRATION FORM

With an aim to streamline the registration process for FVCI and align it with the existing framework for FPIs, the application form for FVCIs has been amended to make it similar to the Common Application Form ("**CAF**") used for FPI registration[6]. The amended form covers basic details, such as name and incorporation details, along with requirement for KYC and beneficial owner details.

BENEFICIAL OWNERSHIP

The Amendment Regulations mandate existing FVCIs, as well as fresh FVCI applicants to provide details of their beneficial owners **("BO**") to their respective DDPs. Fresh FVCI applicants are required to provide the details of their BOs, identified as per the provisions of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("**PML Rules**") in the application form and annexure to application form.

BO details, *inter alia,* form a part of material information of a FVCI and therefore, as per the Amendment Regulations[7], FVCIs are mandated to inform the SEBI and DDP of any material change in information including any direct and indirect change in its structure or ownership or control previously furnished.

NDA'S VIEWS

The Amendment Regulations represent a pivotal shift towards aligning the registration framework for FVCIs with that of FPIs, enhancing efficiency and consistency. By transitioning registration responsibilities to DDPs and integrating updated processes for due diligence, compliance, and fee management, these amendments aim to ease the operational aspects of FVCI registration. This move also aligns with SEBI's broader efforts to reduce its direct involvement in the day-to-day operations of intermediaries, and to focus more on policymaking and regulatory oversight for these entities. The introduction of a new fee structure, revised eligibility criteria, and enhanced obligations for both FVCIs and DDPs reflect a strategic effort to refine regulatory practices and improve transparency. This shift is expected to streamline due diligence and post-registration processes for FVCIs. Since FVCIs presently appoint domestic custodians to manage investments and report to SEBI, integrating DDPs for registration should not be overly burdensome.

Furthermore, the requirement of identification and verification of BOs of FVCIs also seems to align with the recent steps taken by SEBI for identifying the BOs behind the investment vehicles investing in India.

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

[1]https://www.sebi.gov.in/legal/regulations/sep-2024/securities-and-exchange-board-of-india-foreign-venture-capital-investors-amendment-regulations-2024_86505.html

[2]https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-foreign-venture-capital-investor-regulations-2000-last-amended-on-february-07-2023-_69489.html

[3]https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/consultation-paper-on-streamlining-regulatory-framework-for-registration-of-foreign-venture-capital-investors-fvcis-_71391.html

[4]https://www.sebi.gov.in/sebi_data/meetingfiles/jul-2024/1719916568518_1.pdf

[5]Regulation 3 of the Amendment Regulations.

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[6] First Schedule, Part A of the Amendment Regulations.

[7] Regulation 15A(d) of the Amendment Regulations.

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