

# What's New

## News Flash



March 2018

### ***SEBI's informal guidance for FPIs on Non-Disposal Undertakings (NDUs)***

#### ***Background***

Regulation 32(2)(d) of the Securities and Exchange Board of India ('SEBI') Foreign Portfolio Regulations, 2014 (FPI Regulations) imposes an obligation on a Designated Depository Participant ('DDP') engaged by a Foreign Portfolio Investor ('FPI') to ensure that equity shares held by a FPI are free from all "encumbrances". Response to Question # 47 of the FPI FAQs reiterates this obligation and further stipulates that a DDP may take all requisite steps including obtaining a declaration from the FPI for the same. Although the FPI Regulations prescribe this restriction for encumbering equity shares, the term 'encumbrance' itself has not been defined in the FPI Regulations.

#### ***Informal Guidance under the SEBI (Informal Guidance) Scheme, 2003***

A FPI had sought informal guidance from SEBI under the SEBI (Informal Guidance) Scheme, 2003, for interpretation of the term 'encumbrance' referred in Regulation 32(2)(d) of the FPI Regulations. More particularly, a clarification was sought on whether the term 'encumbrance' would include non disposal undertakings (NDUs) in relation to FPI investors in their capacity as 'acquirers' and not 'promoters'.

Whilst the term 'encumbrance' is not been defined in the FPI Regulations, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) define the term in an inclusive manner to include pledges, liens or such other transaction, by whatever name called.

Further, FAQs in relation to the SAST Regulations clarify that NDUs executed by promoters will be covered within the scope of the term 'encumbrance' for the purpose of SAST Regulations.

In its guidance, SEBI has clarified the following:

- The term 'encumbrance' used in Regulation 32(2)(d) of the FPI Regulations include NDUs.
- FPIs are restricted from executing NDUs.

#### ***Ease of Access Norms***

We may add that the consultation paper on Easing of Access Norms for investments by FPIs had proposed to modify Regulation 32(2)(d) of the FPI Regulations to permit encumbrance for meeting statutory and regulatory obligations such as irrevocable payment commitment (IPC), payment of clearing & settlement obligations, custody fees, administrative fees/charges, etc. The proposal has been approved by the SEBI Board in its meeting held on December 28, 2017, though necessary amendments to the FPI Regulations are awaited.

If your interest lies in a specific area or subject, do advise us so we can send you only the relevant alerts. For any additional information, please reach out to your PwC relationship manager or write in to [\*\*\*pwctrs.knowledgemanagement@in.pwc.com\*\*\*](mailto:pwctrs.knowledgemanagement@in.pwc.com)

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