

## **Securities And Exchange Board Of India (Foreign Institutional Investors) Regulations, 1995**

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### **Securities And Exchange Board Of India (Foreign Institutional Investors) Regulations, 1995**

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) the Board hereby makes the following regulations, namely :-

#### CHAPTER 1 PRELIMINARY

#### **1. Short title and commencement :-**

- (1) These regulations may be called the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995.
- (2) They shall come into force on the date of their publication in the Official Gazette.

#### **2. Definitions :-**

In these regulations, unless the context otherwise requires,-

- (a) "Act means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) "certificate" means a certificate of registration granted by the Board under these regulations;
- (c) "designated bank" means any bank in India, which has been authorised by the Reserve Bank of India to act as a banker to Foreign Institutional Investors;
- 1(cc) [\*\*\*]
- (d) "domestic custodian" includes any person carrying on the activity of providing custodial services in respect of securities:

2"(dd)[\*\*\*]

(e) "enquiry officer" means any officer of the Board or any other person appointed by the Board under chapter v of these regulations :

(f) "Foreign Institutional Investor" means an institution established or incorporated outside India which proposes to make investment in India in securities ;

3[\*\*\*]

(g) "form" means a form specified in the First Schedule to these regulations ;

(h) "Government of India Guidelines" means the guidelines dated September 14, 1992 issued

(i) "institution" includes every artificial juridical person

(j) "schedule" means a schedule to these regulations :

(k) "sub-account" "those institutions, 4 "foreign corporates or foreign individual and" established or incorporated outside India and those funds, or portfolios, established outside India, whether incorporated or not, on whose behalf investments are proposed to be made in India by a Foreign Institutional Investor.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 2, clause (cc) shall be omitted, as follows :- "(cc) domestic asset management company" means an asset management company approved by the Board under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and who has been granted certificate of registration under Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993." by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 2, clause (dd) shall be omitted, as follows :- "(dd) domestic portfolio manager" means a portfolio manager registered under the Securities and Exchange Board of India (Portfolio Manager) Regulations, 1993." by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 2, in clause (f), the proviso shall be omitted as follows :- "Provided that a domestic asset management company or domestic portfolio manager who manages funds raised or collected or brought from outside India for investment in India on behalf of a sub-account, shall be deemed to

be a Foreign Institutional Investor." by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

substituted for "those" by the Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2000

## CHAPTER 2

### REGISTRATION OF FOREIGN INSTITUTIONAL INVESTOR

#### **3. Application for certificate :-**

(1) No person shall buy, sell or otherwise deal in securities as a Foreign Institutional Investor unless he holds a certificate granted by the Board under these regulations.

(2) An application for the grant of certificate shall be made to the Board in Form A.

(3) Notwithstanding anything contained in sub-regulation (2), any Foreign Institutional Investor who has made an application for the grant of a certificate to the Board prior to the commencement of these regulations shall be deemed to have made an application under sub-regulation (2) and the application shall be accordingly dealt with under these regulations.

(4) Notwithstanding anything contained here in above, any person who has before the commencement of these regulations, made an application for registration and has been granted registration by The Board under the Government of India Guidelines to act as a Foreign Institutional Investor shall be deemed to have made an application under sub-regulation (2) above and may continue to buy, sell or otherwise deal in securities subject to the provisions of these regulations, till the grant or refusal of a certificate under these regulations.

#### **4. Furnishing of information, clarification and personal representation :-**

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(1) The Board may require the applicant to furnish such further information or clarification as the Board considers necessary regarding matters relevant to the activities of the applicant for grant of certificate,

(2) The applicant or his authorised representative shall, if so required by the Board, appear before the Board for personal representation in connection with the grant of a certificate.

## **5. Application to conform to the requirements :-**

Subject to the provisions of sub-regulation (3) and sub-regulation (4) of regulation 3, any application, which is not complete in all respects and does not conform to the instructions specified in the form or is false or misleading in any material particular, shall be rejected by the Board : Provided that, before rejecting any such application, the applicant shall be given a reasonable opportunity to remove, within the time specified by the Board, such objections as may be indicated by the Board.

## **6. Consideration of application :-**

For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of a certificate and in particular the following, namely :-

(a) the applicants track record, professional competence, financial soundness, experience, general reputation of fairness and integrity ;

(b) whether the applicant is regulated by an appropriate foreign regulatory authority :

(c) whether the applicant has been granted permission under the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India for making investments in India as a Foreign Institutional Investor

(d) whether the applicant is-

4"(i) an institution established or incorporated outside India as a pension fund, mutual fund, investment trust, insurance company or reinsurance company;"

6(ia) a International or Multilateral Organisation or an agency thereof or a Foreign Governmental Agency or a Foreign Central Bank;

7"(ii) an asset management company, investment manager or advisor, nominee company, bank or institutional portfolio manager, established or incorporated outside India and proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any;"

(iii) a Trustee or a Power of Attorney holder, incorporated or established outside India, and proposing to make investments in India on behalf of broad based funds 8[and its proprietary funds, if any].

9[(iv) university fund, endowments, foundations or charitable

trusts or charitable Societies Provided that while considering the application from applicants under clause (iv) the Board may take into account the following, namely :-

(a) whether the applicant has been in existence for a period of at least 5 years,

(b) whether it is legally permissible for the applicant to invest in securities outside the country of its incorporation or establishments

(c) whether the applicant has been registered with any statutory authority in the country of their incorporation or establishment:

(d) whether any legal proceeding has been initiated by any statutory authority against the applicant.]

Explanation: For the purposes of this regulation, "broad based fund" means a fund, established or incorporated outside India, which has 10 ["at least twenty investors"], with no single individual investor holding more than ten per cent of the shares or units of the fund : Provided that if the broad based fund has institutional investor(s), it shall not be necessary for the fund to have 11["twenty investors"]: Provided further that if the broad based fund has an institutional investor who holds more than 12 ["ten per cent"] of the shares or units in the fund, then the institutional investor must itself be a broad based fund: or

(e) whether the grant of certificate to the applicant is in the interest of the development of the securities market:

13[(f) whether the applicant is a fit and proper person.]

14 (2)[\*\*\*]

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 6, in sub-regulation (1), in clause (d), sub-clause (i) shall be substituted in place of :- "(i) an institution established or incorporated outside India as Pension Fund or Mutual Fund or Investment Trust; or" by the Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 6, in sub-regulation (1), in clause (d), after sub-clause (i), the following sub-clause shall be inserted, namely: "(ia) a International or Multilateral Organisation or an agency thereof or a Foreign Governmental Agency or a Foreign Central Bank;" by the Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 6, in sub-regulation (1),

in clause (d), sub-clause (ii) shall be substituted , in place of :- "(ii) an Asset Management Company or Nominee Company or Bank or Institutional Portfolio Manager, established or incorporated outside India and proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any or " by the Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2006.

Inserted by the (foreign Institutional Investors) Amendment Regulations, 1997 w.e.f. 12 -2-1997.

[10000]Substituted for "at least fifty investors", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt. August 26, 1999 Published in Securities and Exchange Board of India, Noti. No. S.O. 688(E), dated August 26, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 26th August, 1999, pp. 2-3, No. 523 [F. No. SEBI/LE/16708/99] [L]

[10001]Substituted for "fifty investors ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt. August 26, 1999 Published in Securities and Exchange Board of India, Noti. No. S.O. 688(E), dated August 26, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 26th August, 1999, pp. 2-3, No. 523 [F. No. SEBI/LE/16708/99] [L]

[10002]Substituted for " five per cent ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt. August 26, 1999 Published in Securities and Exchange Board of India, Noti. No. S.O. 688(E), dated August 26, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 26th August, 1999, pp. 2-3, No. 523 [F. No. SEBI/LE/16708/99] [L]

Vide Press release No 16/97, dated 30-1-1997 it was decided to :  
(a) permit FIs to invest in dated Government securities within the framework of guidelines on FII investment in debt instruments for 100% debt funds, subject to an annual cap on such investments within the overall external commercial borrowing cap for the year, and  
(b) permit Proprietary Funds to invest through the FII route provided such funds belong to the FIs and subject to the condition that these FIs are regulated by their home regulators or are registered with their tax authorities. It has also decided that the requirement for FIs or sub-accounts of FIIs to be broad based would be removed. This would facilitate investment by pilot funds or seed funds which aim to establish a track record prior to wide

distribution of these funds. The above changes to the Regulations will soon come into effect with the notification of the amendments to the SEBI (Foreign Institutional Investors) Regulations, 1995.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 6, sub-regulation (2) shall be omitted as follows :- "(2) (a) A domestic portfolio manager or domestic asset management company shall be eligible to be registered as a foreign institutional investor to manage the funds of sub-accounts. (b) the domestic portfolio manager or domestic asset management company shall make an application in terms of Regulations 3, 4 and 5. (c) For the grant of certificate to a domestic asset management company or to a domestic portfolio manager the Board shall consider the following: (i) whether the applicant is an approved asset management company registered portfolio manager and that the approval or registration is valid. (ii) whether any disciplinary proceeding is pending before the Board against such applicant." by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

## **7. Procedure and grant of certificate :-**

Where an application is made for grant of certificate under these regulations, the Board shall, as soon as possible but not later than three months after information called for by it is furnished, if satisfied that the application is complete in all respects, all particulars sought have been furnished and the applicant is found to be eligible for the grant of certificate, grant a, certificate in Form B, subject to the payment of fees in accordance with the Second Schedule:

15[Provided that the Board may exempt from the payment of fees, an applicant such as the World Bank and other institutions established outside India for providing aid, and which have been granted privileges and immunities from the payment of tax and duties by the Central Government:

Provided further that the Board shall refund the fees already collected from the institutions which are exempted from the payment of fees by the proviso mentioned above.

16[\* \* \*]

17 (7A) A foreign institutional investor holding a certificate shall, at all times, abide by the Code of Conduct as specified in Third Schedule".

Inserted by the (foreign Institutional Investors) Amendment



Regulations, 1997 w.e.f. 12 -2-1997.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 7, the third proviso shall be omitted as follows :- "Provided further that a domestic portfolio manager or domestic asset management company shall not be liable to pay fee." by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

INSERTED BY THE Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2003 [Noti. No. F. No. SEBI/ LAD /DOP/16098/2003, dt. 28.8.2003 Gaz. of India, Exty., Pt. II-Sec. 3(ii), No. 784, dt. 28.8.2003, p. 4.]

### **8. Validity of certificate :-**

. The certificate and each renewal thereof shall be valid for a period of five years from the date of its grant or renewal, as the case may be. "Provided that in case of domestic portfolio manager or domestic asset management company the certificate and each renewal thereof shall be valid for a period not exceeding the validity of registration or approval granted under Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, as the case may be. Provided further that the certificate of registration granted or approved under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, expires before the expiry of registration under these Regulations, or the certificate of such entity is suspended, the domestic portfolio manager or domestic asset management company shall cease to carry on any activity as foreign institutional investor and shall be subject to the directions of the Board with regard to the fund, securities or records that may be in its custody or control as a foreign institutional investor."

### **9. Application for renewal of certificate :-**

(1) Three months before the expiry of the period of certificate, the Foreign Institutional Investor, if he so desires, may make an application for renewal in Form A.

"Provided that a Foreign Institutional Investor who does not desire to renew its registration or has failed to make an application for renewal under sub-regulation (1), shall at the time of expiry of registration, obtain a specific permission from the Board, for

disinvesting the securities held by it on its own account or on behalf of its sub- account(s), within a stipulated time period, subject to such terms and conditions as may be specified by the Board. Provided further that where a Foreign Institutional Investor does not desire to renew registration of any of its sub- account(s) or has failed to make an application for renewal of registration of sub-account(s), the Foreign Institutional Investor shall at the time of expiry of registration, obtain, a specific permission from the Board, for disinvesting the securities held by it on behalf of sub-account(s) within a stipulated time period subject to such terms and conditions as may be specified the Board."

(2) The application for renewal under sub-regulation (1) shall, as far as may be, be dealt with in the same manner as if it were an application made under sub-regulation (2) of regulation 3 for grant of a certificate.

(3) The Board shall, on such application, if satisfied that the applicant fulfils the requirements specified in regulation 6 grant a certificate in Form B subject to the payment of fees in accordance with the Second Schedule.

#### **10. Conditions for grant or renewal of certificate to Foreign Institutional Investors :-**

The grant or renewal of certificate to Foreign Institutional Investor shall be subject to the following conditions, namely :-

- (a) he shall abide by the provisions of these regulations;
- (b) if any information or particulars previously submitted to the Board are found to be false or misleading, in any material respect, he shall forthwith inform the Board in writing;
- (c) if there is any material change in the information previously furnished by him to the Board which has a bearing on the certificate granted by the Board, he shall forthwith inform the Board;
- (d) he shall appoint a domestic custodian and before making any investments in India, enter into an agreement with the domestic custodian providing for custodial services in respect of securities;
- (e) he shall, before making any investments in India, enter into an arrangement with a designated bank for the purpose of operating a special non-resident rupee or foreign currency account;
- (f) before making any investments in India on behalf of a sub-account, if any, he shall obtain registration of such sub-account, under these regulations.

## **11. Procedure where certificate is not granted :-**

(1) Where an application for grant or renewal of a certificate does not satisfy the requirements specified in regulation the Board may reject the application after giving the applicant a reasonable opportunity of being heard.

(2) The decision to reject the application shall be communicated by the Board to the applicant in writing stating therein the grounds on which the application has been rejected.

(3) The applicant, who is aggrieved by the decision of the Board under sub- regulation (1) may within a period of thirty days from the date of receipt of communication under sub- regulation (2), apply to the Board for reconsideration of its decision.

(4) The Board shall, as soon as possible, in the light of the submissions made in the application for reconsideration made under sub-regulation (3) and after giving a reasonable opportunity of being heard, convey its decision in writing to the applicant.

## **12. Application for registration of sub- accounts :-**

(1) A Foreign Institutional Investor shall seek from the Board registration of each sub- account on whose behalf he proposes to make investments in India.

(2) Notwithstanding anything contained in sub-regulation (1) above, any sub- account which has been granted approval prior to the commencement of these regulations by the Board shall be deemed to have been granted registration as a sub-account by the Board under these regulations.

(3) An application for registration as a sub-account shall contain particulars specified in 18 ["Para 1 of Annexure B to Form A of the First Schedule"]

[5]Substituted for "sub- para (b) of para 5 of Form A.", vide " SECURITIES ANDEXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATION\$995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

## **13. Procedure and grant of registration of sub -accounts :-**

(1) For the purpose of grant of registration the Board shall take into account all matters which are relevant to the grant of such registration to the sub-account and in particular the following, namely:-

(a) the applicant is an institution or fund or portfolio established or incorporated outside India and proposes to make investment in India ;

(b) the applicant is a broad based fund 1920"or a foreign corporate or individual"

21[(bb) the applicant is a fit and proper person;]

(c) the Foreign Institutional Investor through whom the application for registration is made to the Board holds a certificate of registration as Foreign Institutional Investor : and

(d) the Foreign Institutional Investor through whom an application for registration of sub- account is made, is authorised to invest on behalf of the sub- account.

22(e) The Foreign Institutional Investor through whom the application for registration is made, has submitted undertakings that the sub- account fulfils the criteria referred to in this sub-regulation in a manner specified in Para 2 of Annexure B to Form A of the First Schedule.

23"(ee) In case the sub-account is a foreign corporate or individual, the foreign institutional investor, through whom the application for registration is made, shall furnish information and undertaking as specified in para 3 of Annexure B to Form A of the First Schedule."

(f) The sub-account has paid registration fees in accordance with the Second Schedule.

24 (2) The Board on receipt of the undertakings and the registration fees as referred to in sub-regulation (1), may grant registration to the sub-account.

(3) A sub-account granted registration in accordance with sub-regulation (2) of this regulation shall be deemed to be registered as a Foreign Institutional Investor with the Securities and Exchange Board of India for the limited purpose of availing of the benefits available to Foreign Institutional Investors under section 115AD of the Income-tax Act, 1961 (43 of 1961).

Inserted by the SEBI (Foreign Institutional Investors) Amendment Regulations, 1997, w.e.f. 12-2-1997.

Substituted for "proprietary fund" by the Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2000

Inserted by the SEBI (Foreign Institutional Investors) Third

Amendment Regulations, 1997, w.e.f. 5-12-1997.

[6] Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

Inserted by the Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2000

[7] Substituted for " (2) The Board on being satisfied that the applicant is eligible for a grant of registration shall grant registration to the sub-account", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3 (ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

### CHAPTER 3

#### INVESTMENT CONDITIONS AND RESTRICTIONS

#### **14. Commencement of investment :-**

A Foreign Institutional Investor shall not make any investments in securities in India without complying with the provisions of this Chapter.

#### **15. Investment restrictions :-**

(1) A Foreign Institutional Investor may invest only in the following :-

(a) securities in the primary and secondary markets including shares, debentures and warrants of companies 4[unlisted,] listed or to be listed on a recognised stock exchange in India; and

(b) units of scheme floated by domestic mutual funds including Unit Trust of India, whether listed on a recognised stock exchange or not.

4(c) dated Government securities

12(d) derivatives traded on a recognised stock exchange.

"(e) commercial paper"

(2) Notwithstanding anything contained in Sub-regulation (1) of this regulation, the total investments in equity and equity related instruments (including Fully convertible debentures, convertible

portion of partially convertible debentures and tradable warrants) made by a Foreign Institutional Investor in India, whether on his own account or on account of his sub-accounts, shall not be less than seventy per cent of the aggregate of all the investments of the Foreign Institutional Investor in India, made on his own account and on account of his sub-accounts : 30[Provided that nothing contained in sub-regulation(2) shall apply to any investment of the foreign institutional investor either on its own account or on behalf of its sub-accounts in debt securities which are listed or to be listed on any stock exchange if the prior approval of the Board has been obtained for such investments . Provided further that the Board may while granting approval for the investments impose conditions as are necessary with respect to the maximum amount which can be invested in the debt securities in the debt securities by the foreign institutional investor on its own account or through its sub-accounts.]

31[Explanation.-For the purposes of the provisos to this sub-regulation, the expression "debt securities" shall include stated treasury bills and commercial paper and Government securities ]

32"Provided further that a foreign corporate or individual shall not be eligible to invest through the hundred percent debt route."

(3)In respect of investments in the secondary market, the following additional conditions shall apply:-

(a) the Foreign Institutional Investor shall transact business only on the basis of taking and giving deliveries of securities bought and sold and shall not engage in short selling in securities;33["Provided that nothing contained in clause (a) shall apply in respect of transactions in derivatives traded on a recognised stock exchange."]

(b) no transactions on the stock exchange shall be carried forward: and

(c) the transaction of business in securities shall be only through stock broker who has been granted a certificate by the Board under sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992 :

34[Provided that transactions in Government securities and Commercial paper in which treasury bills are included shall be carried out in a manner specified by the Reserve Bank of India.]

35["Provided further that nothing contained in clause (c) shall apply to sale of securities by a Foreign Institutional Investor in response to a letter of offer sent by an acquirer in accordance with the Securities and Exchange Board of India (Substantial

Acquisitions of Shares and Takeovers) Regulations, 1997 36 or to sale of securities by a Foreign Institutional Investor in response to an offer made by any promoter or acquirer in accordance with the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003."]

37"Provided further that nothing contained in clause (c) shall apply to divestment of securities by the Foreign Institutional Investors in response to an offer by Indian Companies in accordance with the Operative Guidelines for Disinvestment of Shares by Indian Companies in the overseas market through issue of American Depository Receipts (ADR) or Global Depository Receipts (GDR) as notified by the Government of India vide notification No. 15/23/99-NRI, dt. 29.7.2002 and directions issued by Reserve Bank of India from time to time under Sec. 10(4) and Sec. 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).".

38 Provided further that nothing contained in clause (c) shall apply to any bid for, or acquisition of, securities by a Foreign Institutional Investor in response to an offer for disinvestment of shares made by the Central Government or any State Government.

39"(d) a Foreign Institutional Investor or a sub-account, shall, subject to such instructions as may be issued by the Board, deliver or cause to be delivered only securities in dematerialized form for settlement of its transactions undertaken on a recognised stock exchange, except in cases where the issuer of such securities has not established connectivity with all depositories registered with the Board under Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996,"

(4) Unless otherwise approved by the Board, securities shall be registered-

(a) in the name of the Foreign Institutional Investor, provided the Foreign Institutional Investor is making investments on his own behalf: or

(b) in his name on account of his sub-account, or in the name of the sub-account, in case he is investing on behalf of the sub-account :

(5) The purchase of equity shares of each company by a Foreign Institutional Investor investing on his own account shall not exceed 40[ten] per cent of the total issued capital of that company.

(6) In respect of a Foreign Institutional Investor investing in equity shares of a company on behalf of his sub-accounts, the investment on behalf of each such sub-account shall not exceed 41[ten] per cent of the total issued capital of that company. 42"Provided that in

case of foreign corporates or individuals, each of such sub- account shall not invest more than 5% of the total issued capital of the company in which such investment is made."

(7) The investment by the Foreign Institutional investor shall also be subject to the Govern- ment of India Guidelines.

43 (8) A Foreign Institutional Investor or sub- account may lend securities through an approved intermediary in accordance with the stock lending scheme of the Board.

Inserted by the SEBI (Foreign Institutional Investors) Amdt. Regulations, 1996, w.c.f. 9- 10-1996.

[4]Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.20th April, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 333(E), dated April 20, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 20th April, 1998, p. 2, No. 245 [F. No. SEBI/LE/2575/98]

[8]Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

Inserted by the SEBI (foreign Institutional Investors)Amendment Regulations ,1997 w.e.f. 12-2-1997.

inserted by the Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2000

[9]Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

Inserted by the SEBI (foreign Institutional Investors )Second Amendment Regulation 1997 w.e.f. 10-7-1997.

[10]Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L]

Inserted by Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2003[Noti. No.



F. No. SEBI/LGL/8987/2003, dt. 14.5.2003 Gaz. of India, Exty., Pt. II-Sec. 3(ii), No. 445, dt. 14.5.2003, p. 2.]

Inserted by the SEBI (foreign Institutional Investors) Second Amdt Regulation as w.e.f. 19-11-1996.

In the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, in regulation 15, in sub-regulation (3), for clause (d) shall be substituted, in place of :- [(d) a Foreign Institutional Investor or a sub-account having an aggregate of securities which are worth rupees ten crore or more, as on the latest balance sheet date, shall, subject to such instructions as may be issued from time to time by the Board, settle their transactions entered on or after January 15, 1998, only through dematerialised securities.] by the Securities and Exchange Board of India (Foreign Institutional Investors (Amendment) Regulations, 2007.

Substituted for "five " by the SEBI (Foreign Institutional Investors) Amendment Regulations 1996 w.e.f. 9-10-1996.

Inserted by "the Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2000

[5] Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995"

Dt. 20th April, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 333(E), dated April 20, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 20th April, 1998, p. 2, No. 245 [F. No. SEBI/LE/2575/98]

#### CHAPTER 4

#### GENERAL OBLIGATIONS AND RESPONSIBILITIES

### **16. Appointment of domestic custodian :-**

(1) A Foreign Institutional Investor or a global custodian acting on behalf of the Foreign Institutional Investor, shall enter into an agreement with a domestic custodian to act as custodian of securities for the Foreign Institutional Investor.

(2) The Foreign Institutional Investor shall ensure that the domestic custodian takes steps for-

(a) monitoring of investments of the Foreign Institutional Investor in India:

(b) reporting to the Board on a daily basis the transactions entered into by the Foreign Institutional Investor;

(c) preservation for five years of records relating to his activities as a Foreign Institutional Investor; and

(d) furnishing such information to the Board as may be called for by the Board with regard to the activities of the Foreign Institutional Investor and as may be relevant for the purpose of this regulation.

(3) A Foreign Institutional Investor may appoint more than one domestic custodian with prior approval of the Board, but only one custodian may be appointed for a single sub- account of a Foreign Institutional Investor.

### **17. Appointment of designated bank :-**

A Foreign Institutional Investor shall appoint a branch of a bank approved by the Reserve Bank of India for opening of foreign currency denominated accounts and special non- resident rupee accounts.

### **17A. Investment Advice In Publicly Accessible Media :-**

42 (1)A Foreign Institutional Investor or any of his employees shall not render directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non read-time, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.

(2) In case, an employee of the Foreign Institutional Investor is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice."

Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

### **18. Maintenance of proper Books of account, records, etc :-**

(1) Every Foreign Institutional Investor shall keep or maintain, as the case may be, the following books of account, records and documents, namely:-

(a) true and fair accounts relating to remittance of initial corpus for buying, selling and realising capital gains of investment made from the corpus;

(b) accounts of remittances to India for investments in India and realising capital gains on investments made from such remittances ;

(c) bank statement of accounts;

(d) contract notes relating to purchase and sale of securities; and

(e) communication from and to the domestic custodian regarding investments in securities.

(2) The Foreign Institutional Investor shall intimate to the Board in writing the place where such books, records and documents will be kept or maintained.

### **19. Preservation of books of account, records, etc :-**

Subject to the provisions of any other law, for the-time being in force, every Foreign Institutional Investor shall preserve the books of account, records and documents specified in regulation 18 for a minimum period of five years.

### **19A. Appointment Of Compliance Officer :-**

43 (1) Every Foreign Institutional Investor shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Board or the Central Government.

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.

Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

### **20. Information to the Board :-**

Every Foreign Institutional Investor shall, as and when required by the Board or the Reserve Bank of India, submit to the Board or the Reserve Bank of India, as the case may be, any information, record or documents in relation to his activities as a Foreign Institutional Investor as the Board or as the Reserve Bank of India may require.

### **20A. Section 20A :-**

44 Foreign Institutional Investors shall fully disclose information concerning the terms of and parties to off-shore derivative instruments such as Participatory Notes, Equity Linked Notes or any other such instruments, by whatever names they are called, entered into by it or its sub-accounts affiliates relating to any securities listed or proposed to be listed in any stock exchange in India, as and when and in such form as the Board may require.

INSERTED BY THE Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2003 [Noti. No. F. No. SEBI/ LAD /DOP/16098/2003, dt. 28.8.2003 Gaz. of India, Exty., Pt. II-Sec. 3(ii),No. 784, dt. 28.8.2003, p. 4.]

## **CHAPTER 5**

### **PROCEDURE FOR ACTION IN CASE OF DEFAULT**

### **21. Cancellation or suspenslon of certificate :-**

- (1) A Foreign Institutional Investor who-
  - (a) fails to comply with any condition subject to which certificate has been granted; or
  - (b) contravenes any of the provisions of the Act or these regulations, shall be liable to the penalty of-
    - (i) suspension of certificate for a specified period; or
    - (ii) cancellation of certificate,
- (2) The provisions of these regulations shall be without prejudice to those of regulations 22 and 23.

## **22. Suspension of certificate :-**

A penalty of suspension of certificate of a Foreign Institutional Investor may be imposed if he-

- (a) indulges in fraudulent transactions in securities;
- (b) fails to furnish any information related to his transaction in securities as required by the Board or the Reserve Bank of India;
- (c) furnishes false information to the Board; or
- (d) does not co-operate in any enquiry conducted by the Board.

## **23. Cancellation of certificate :-**

A penalty of cancellation of certificate of a Foreign Institutional Investor may be imposed if he-

- (a) indulges in deliberate manipulation or price rigging or cornering activities prejudicially affecting the securities market or the investors interest;
- (b) is guilty of fraud or a criminal offence, involving moral turpitude ;
- (c) does not meet the eligibility criteria laid down in these regulations;
- (d) violates the provisions of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 or of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995, made under the Act: or
- (e) is guilty of repeated defaults of the nature mentioned in regulation 22.

explanation: In this regulation, "fraud" shall have the same meaning as is assigned to it in section 17 of the Indian Contract Act, 1872.

## **24. Manner of making order of suspension and cancellation**

## **of certificate :-**

No order of penalty of suspension or cancellation of certificate shall be imposed on the Foreign Institutional Investor except after holding an enquiry in accordance with the procedure specified in regulations 25 and 26.

### **25. Manner of holding enquiry :-**

- (1) For the purpose of holding the enquiry referred to in regulation 24, the Board may appoint an enquiry officer.
- (2) The enquiry officer shall issue to the Foreign Institutional Investor a notice at the principal place of business of the Foreign Institutional Investor setting out the default alleged to have been committed by the Foreign Institutional Investor and calling upon him to show cause why the penalties specified in regulation 21 should not be imposed on him.
- (3) The Foreign Institutional Investor may, within thirty days from the date of receipt of such notice, furnish to the enquiry officer a reply, together with copies of documentary or other evidence relied on by him in support of its reply: Provided that the enquiry officer may call upon him to supply further information.
- (4) The enquiry officer shall give a reasonable opportunity of hearing to the Foreign Institutional Investor to enable him to make submissions in support of his reply under sub-regulation (3) of this regulation
- (5) Before the enquiry officer, the Foreign Institutional Investor may either appear in person or through any person duly authorised by him in writing.
- (6) If it is considered necessary, the enquiry officer may ask the Board to appoint a presenting officer to present its case.
- (7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the Foreign Institutional Investor and by the presenting officer, if appointed under sub-regulation (6) above, submit a report to the Board and recommend the penalty, if any, to be awarded along with the justification for such penalty.

### **26. Show-cause notice and order :-**

- (1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue a show-cause notice to the Foreign Institutional Investor as to why the penalty, which it considers appropriate and which shall be specified in the notice

should not be imposed.

(2) The Foreign Institutional Investor shall within twenty-one days of the date of the receipt of the show-cause notice referred to in sub-regulation (1) of this regulation send to the Board a reply to the notice.

(3) The Board after considering the reply to the show-cause notice, if received in time, shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such order as it deems fit.

(4) Every order passed under sub-regulation (3) of this regulation shall be self-contained and give reasons for the conclusions stated therein including the justification for the penalty, if any, imposed by that order.

### **27. Effect of suspension and cancellation of certificate :-**

(1) On and from the date of suspension of certificate, if ordered under this Chapter, the Foreign Institutional Investor shall cease to buy, sell or otherwise deal in securities in India during the period of suspension.

(2) On and from the date of cancellation of certificate, if ordered under this Chapter, the Foreign Institutional Investor shall cease to buy, sell or otherwise deal in securities in India, except for the purpose of liquidating the existing investments.

### **28. Publication of order of suspension and cancellation of certificate :-**

. The order of suspension or cancellation of certificate under this Chapter shall be published by the Board in at least two daily newspapers.

### **29. Appeal :-**

45 Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (i.e. after 16th December 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter"

Substituted for regulation 32 "Any Foreign Institutional Investor aggrieved by an order of the Board under the regulations may prefer an appeal to the Central Government under the provisions of the Securities and Exchange Board of India (Appeal to the Central

Government) Rules, 1993 " by the Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000

SCHEDULE 1

FIRST SCHEDULE

FORMS

[FORM A]

1 . Substituted by the SEBI (Foreign Institutional Investors)(Amendment) Regulations, 2008, w.e.f. 22-5-2008.

Prior to substitution Form A read as under:

"FORM A

Application Form for Grant of Certificate of Registration as Foreign Institutional Investor(FII)

[See regulation 3(2)]

1. Details of the applicant:

1.1 Name of the applicant:

1.2 Date of incorporation/establishment:

dd/mm/yyyy

1.3 Legal form of the applicant and the law, under which it is incorporated, established or registered, if any:

1.4 Place of incorporation/establishment:

1.5 Brief description of the principal activities:

1.6 Year of commencement of such activities:

1.7 Brief description of the group, if any, to which the applicant belongs:

1.8 Registered office address:

Address

Postal Code

Country

Telephone no

Fax No

Web-site

E-mail address

1.9 Compliance officer:

Name

Job Title

Business Address

Postal Code

Country

Telephone no

Fax No

E-mail address

2 Category of the applicant

2.1.1 If the applicant is a fund:

Pension Fund University fund

Mutual Fund Endowment

Investment Trust Foundation

Bank Charitable Trust

Charitable society Insurance/Reinsurance Company

Central Bank Foreign Governmental Agency

International or Multilateral organization

Nominee company

Any other, in the nature of fund, please specify

2.1.2 Name of the investment manager/advisor of the fund:

2.2 If the applicant is not a fund:

Asset Management Company Institutional Portfolio Manager

Investment Manager/Advisor Trustee

Power of attorney holder

Any other, please specify

2.3 Details of the broad-based funds on whose behalf the applicant proposes to invest in Indian

Securities markets :

Name of the fund/s Category

(e.g. Mutual fund, Pension fund)

Country of

incorporation/establishment

3. Details of regulatory authority by which the applicant is regulated /with whom the applicant is registered.

3.1 Contact details:

Name

Address

Country

Postal Code

Telephone no

Fax No

6. Undertaking and declarations

Declaration:

We hereby declare that the applicant has not incurred any of the disqualifications mentioned in regulation 3(2) of the SEBI (Criteria for Fit and Proper Person) Regulations, 2004.

Undertaking:

1. We hereby agree and declare that the information supplied in the application,



including the attachment sheets, is complete and true.

2. We further undertake that we will immediately notify the Securities and Exchange Board of India and the Reserve Bank of India of any change in the information provided in the application.

3. We further undertake that we shall comply with the provisions of the Act, and regulations issued thereunder and all other relevant laws including guidelines issued by the Reserve Bank of India and the Government of India.

4. We further undertake that as a condition of grant of certificate of registration, we shall abide by such operational instructions/ directives as may be issued by Securities and Exchange Board of India and by the Reserve Bank of India from time to time under provisions of the Act or any other law for the time being in force.

[See regulation 3(2)]

FORM A

For and on behalf of (Name of the applicant)

Name of the applicant

Signature

Name of signatory

Position

Date dd/mm/yyyy

-----X-----

Notes:

1. Documents & Instruments to be enclosed with the application:

(i) Certified copy of the relevant clause of Articles of the Memorandum and Articles  
FORM B

(Regulation 7)

**CERTIFICATE OF REGISTRATION**

I. In exercise of the powers conferred by sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992, read with the regulations made thereunder the Board hereby grants a certificate of registration to \_\_\_\_\_ as a Foreign Institutional Investor, subject to the conditions specified in the Act and in the regulations made thereunder.

II. Registration Number for the Foreign Institutional Investor is IN/.../.../.../....

1[III. This certificate shall be valid till it is suspended or cancelled in accordance with the regulations.]

Date:

Place: Mumbai

By Order

For and on behalf of

Securities and Exchange Board of India

Authorised Signatory

**SCHEDULE 2**

**SECOND SCHEDULE**

**PAYMENT OF FEES**

[Regulation 7]

(1) Every applicant eligible for grant of a certificate under regulation 7 shall pay a registration fee US \$10,000.

(2) The registration fee shall be payable at the time of initial registration as well as

at the time of each renewal, within 15 days from the date of intimation from the Board. 48[12] Inserted vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June 1998 Published in Securities and Exchange Board of India, Noti. No.S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L] ["(2-A). An application for registration of sub-account under Regulation 12 shall be accompanied by a registration fee of US \$ 1000" which shall be payable at the time of initial application for registration as well as at the time of each renewal, and fees paid in respect of renewal shall be paid within 15 days of intimation by the Board."] (3) 49 Substituted by the SEBI (Payment of Fees) Amdt. Regulations, 1995. w.e.f. 28-11-1995. [50[13]Substituted for "The fees ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995" Dt.30th June, 1998 Published in Securities and Exchange Board of India, Noti. No. S.O. 545(E), dated June 30, 1998, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th June, 1998, pp. 4.6, No. 400 [F. No. SEBI/LE/FII/2725/98] [L] ["The registration fees"] specified above shall be payable by draft in favour of "The Securities and Exchange Board of India" at Bombay, or at the respective regional office.]

### SCHEDULE 3

#### Third Schedule

#### Code of Conduct

#### (Regulation 7-A)

1. A Foreign Institutional Investor and its key personnel shall observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities.
2. A Foreign Institutional Investor shall, at all times, render high standards of service, exercise due diligence and independent professional judgment.
3. A Foreign Institutional Investor shall ensure and maintain confidentiality in respect of trades done on its own behalf and/or on behalf of its sub-accounts/clients.
4. A Foreign Institutional Investor shall ensure the following :
  - a. clear segregation of its own money/securities and sub-accounts money/securities
  - b. arms length relationship between its business of fund management/investment and its other business.
5. A Foreign Institutional Investor shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made thereunder and the circulars and guidelines, which may be applicable and relevant to the activities carried on by it. Every Foreign Institutional Investor shall also comply with award of the Ombudsman and decision of the Board under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.
6. A Foreign Institutional Investor shall not make any untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.
7. A Foreign Institutional Investor shall ensure that good corporate policies and corporate governance are observed by it.
8. A Foreign Institutional Investor shall ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India.

9. A Foreign Institutional Investor or any of its directors or manager shall not, either through its/his own account or through any associate or family members, relatives or friends indulge in any insider trading.

10. A Foreign Institutional Investor shall not be a party to or instrumental for

a. creation of false market in securities listed or proposed to be listed in any stock exchange in India;

b. price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India;

c. passing of price sensitive information to any person or intermediary in the securities market."