

Insights and Commentary from Dentons

The combination of Dentons and Link Legal offers our clients access to 12,700+ lawyers in 200+ locations and 80+ countries around the world.

This document was authored by representatives of Link Legal prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

Grow | Protect | Operate | Finance

April 2023



CORPORATE LEGAL DEVELOPMENTS

NEWSLETTER JULY 2022

Weekly Insights & Updates

15 July 2022

SEBI

1. SEBI considers bringing mutual funds under the purview of SEBI (Prohibition of Insider Trading), Regulations, 2015

July 08, 2022: The Securities and Exchange Board of India (“SEBI”) has issued a consultation paper inviting public comments/ views on the proposal to cover dealing in units of Mutual Funds (“MFs”) under the SEBI (Prohibition of Insider Trading), Regulations, 2015 (“PIT Regulations”).

PIT Regulations are applicable in case of dealing in *securities* that are listed or proposed to be listed while in possession of Unpublished Price Sensitive Information (“UPSI”). At present, MF units are specifically excluded from the ambit of “*securities*” as defined under Regulation (2)(1)(i) of the PIT Regulations. However, over the years SEBI has issued multiple circulars imposing conditions for investments/trading in securities by employees and board members of Asset Management Companies (“AMCs”) and trustees of MFs. A consolidated circular in this regard was issued on [October 28, 2021](#) whereby employees and board members of AMCs, trustees of MFs etc. were **prohibited** from transacting in any scheme, while in possession of certain sensitive information which was not communicated to the unit holders of the schemes.

However, SEBI has now felt a need to revisit the position set by the above circulars and harmonise the provisions in the PIT Regulations to initiate serious enforcement actions against those who misuse the sensitive non-public information pertaining to schemes of MF. A separate chapter is proposed to be introduced in the PIT Regulations specifically to cover transactions in the units of MF schemes and to bring about, *inter alia*, the following key amendments in the PIT Regulations

- a. The definition of “securities” shall be revised to do away with the exclusion of MF units;
- b. The definition of “trading” shall be revised to include *redeeming, switching or agreeing to redeem or switch securities*;
- c. A new chapter IIA titled “*Restrictions on communication in relation to, and trading by insiders in, the units of mutual funds*” shall be inserted. Chapter IIA will provide for, *inter alia*, the definitions of “insider”, “UPSI”, “Generally available information”, “Connected Persons”, “Systematic Transactions” and comments of the public have been sought

whether the proposed definitions need to be modified;

- d. Stringent reporting obligations have been proposed to be imposed on designated persons of AMC's /trustees. It is proposed to – (i) make it mandatory to report to the compliance officer of AMC, all trades in MF units executed by designated persons of AMC/trustees, their immediate relatives and by any other person for whom such person takes trading decisions, within 7 calendar days from the date of transaction; and (ii) specify that all such transactions above value of INR 10,00,000 (Indian Rupees Ten Lakhs only) are to be disclosed by the AMC on an independent platform as decided by SEBI within 48 hours of receipt of information of the same; and
- e. It is proposed that AMC's shall be required to formulate a code of conduct to regulate, monitor and report dealings in MF units by designated persons and immediate relatives of designated persons. The code of conduct will be based on the *Schedule B1* that is proposed to be inserted. Schedule B1 provides for reporting obligations of the compliance officer, closure period restrictions, timing for re-opening of the closure period etc. It is also proposed that every AMC formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under the PIT Regulations.

The public comments on the above consultation paper are required to be sent no later than **July 29, 2022**.

Link [here](#).

RBI

1. Requirement for obtaining prior approval in case of takeover / acquisition of control of non-bank PSOs and sale / transfer of payment system activity of non-bank PSO

July 04, 2022: The Reserve Bank of India ("RBI") vide its notification RBI/2022-23/80 CO.DPSS.POLC.No.S-590/02-14-006/2022-23 issued the following directive under Section 10(2) read with Section 18 of Payment and Settlement Systems Act, 2007, with immediate effect ("**Directive**"):

RBI made a reference to instructions contained in paragraph 5.10 of [Master Directions on Prepaid Payment Instruments dated August 27, 2021](#), paragraph 5.2 of [Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020](#); which earlier required to communicate any takeover or acquisition of control or change in management of a non-bank entity/ non-bank Payment Aggregator to RBI within 15 days; AND paragraph 3.1 of Annex-A to [White Label ATM Guidelines dated June 20, 2012](#); which required obtaining prior approval of RBI in case of assignment/transfer of authorization issued to White Label ATM Operators (i.e., ATMs set up, owned and operated by non-banking entity).

(i) The operations of non-bank Payment System Operators (authorised to operate any Payment System) have been reviewed and they shall require prior approval of RBI in the following cases:

- Takeover / Acquisition of control, which may / may not result in change of management.
- Sale / Transfer of payment activity to an entity not authorised for undertaking similar activity.

(ii) The non-bank PSOs shall inform RBI within 15 calendar days in the following cases:

- Change in management/directors.
- Sale / Transfer of payment activity to an entity authorised for undertaking similar activity.

(iii) Details of the requirement of such prior approval are detailed under [Annexure 1](#) to the said Directive.

Link [here](#).

2. 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Additional specified securities

July 7, 2022: RBI had earlier issued [press release on "Liberalisation of Forex Flows" dated](#)

July 06, 2022: paragraph 3 of the said press release referred to inclusion of additional 'specified securities' under the Fully Accessible Route (FAR) for investments in Government securities by non-residents.

RBI had introduced the FAR in pursuance of the announcement made in the Union Budget 2020-21 that certain specified categories of Central Government securities would be opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well, *vide* [A.P. \(DIR Series\) Circular No. 25 dated March 30, 2020](#). The Government Securities that were eligible for investment under the FAR ('specified securities') were notified by the Bank, *vide* [circular no. FMRD.FMSD.No.25/14.01.006/2019-20 dated March 30, 2020](#).

RBI *vide* its notification RBI/2022-23/86FMRD.FMID.No.04/14.01.006/2022-23 has decided that in addition to the aforesaid specified securities, the following two securities as well as all new issuances of Government securities of 7-year and 14-year tenors shall be designated as 'specified securities' under the FAR; and accordingly, these securities will henceforth be eligible for investment under the FAR – with immediate effect:

Additional 'specified securities' under the Fully Accessible Route		
S. No.	ISIN	Security
1.	IN0020220011	7.10% GS 2029
2.	IN0020220029	7.54% GS 2036

Link [here](#).

3. Overseas foreign currency borrowings of Authorised Dealer Category-I banks

July 7, 2022: RBI called the attention of Authorised Dealer Category-I (AD Cat-I) banks to the [Foreign Exchange Management \(Borrowing and Lending\) Regulations, 2018](#) and [Master Direction - Risk Management and Inter-Bank Dealings dated July 05, 2016](#), as amended from time to time.

RBI, *vide* its circular RBI/2022-23/88 A. P. (DIR Series) Circular No. 08, referred to paragraph 4 of the [press release on "Liberalisation of Forex Flows" dated July 06, 2022](#), and allowed AD Cat-I banks to utilise the funds raised from overseas foreign currency borrowings between July 08, 2022 and October 31, 2022 (both dates included) in terms of paragraph Part-C(5)(a) of the [Master Direction - Risk Management and Inter-Bank Dealings dated July 05, 2016](#), as amended from time to time, for lending in foreign currency to constituents in India.

RBI further specified that such lending shall be subject to the end-use prescriptions as applicable to External Commercial Borrowings (ECBs) in terms of paragraph 2.1(viii) of the [Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019](#), as amended from time to time; and such facility will be available till the maturity/ repayment of the overseas foreign currency borrowings.

The said directions have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Link [here](#).

4. Investment by Foreign Portfolio Investors (FPI) in Debt - Relaxations

July 7, 2022: RBI called the attention of Authorised Dealer Category-I (AD Cat-I) banks to the paragraph 3 of the [press release on "Liberalisation of Forex Flows" dated July 06, 2022](#) regarding relaxations in the regulatory regime under the Medium-Term Framework.

RBI further made a reference to:

- the Foreign Exchange Management (Debt Instruments) Regulations, 2019 notified *vide* [Notification No. FEMA. 396/2019-RB dated October 17, 2019](#), as amended from time to time, and the relevant directions issued thereunder; and

b. the **Investment by Foreign Portfolio Investors (FPI) in Debt - Review** ("Directions"), as amended from time to time.

According to paragraphs 4(b)(i) and 4(b)(ii) of the Directions, short-term investments by an FPI in government securities (Central Government securities, including Treasury Bills and State Development Loans) and corporate bonds should not exceed 30% of the total investment of that FPI in any category. RBI has decided that investments by FPIs in government securities and corporate bonds made between July 08, 2022 and October 31, 2022 (both dates included), shall be exempted from the limit on short-term investments till maturity or sale of such investments.

Further, according to paragraph 4(b)(ii) of the Directions, FPI investments in corporate bonds were subject to a minimum residual maturity requirement of one year. RBI has decided to allow FPIs to invest in commercial papers and non-convertible debentures with an original maturity of up to one year, during the period between July 08, 2022 and October 31, 2022 (both dates included). These investments shall be exempted from the limit on short-term investments till maturity or sale of such investments.

AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

The Directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approval, if any, required under any other law – and shall be applicable with immediate effect.

Link [here](#).

Authors

Nusrat Hassan
Co-Managing Partner
nusrat@linklegal.in

Ambuj Sonal
Associate Partner
ambuj.sonal@linklegal.in

Abhinav Anand
Senior Associate
abhinav.anand@linklegal.in

Sayantani Dutta
Partner
sayantani.dutta@linklegal.in

Tanvi Pande
Senior Associate
tanvi.pande@linklegal.in

Meghna Punjabi
Associate
meghna.punjabi@linklegal.in

FIRM'S RECOGNITION



OUR OFFICES

DELHI

Aiwan-e-Ghalib Complex,
Mata Sundri Lane,
New Delhi 110 002, India
Tel: +91 11 4651 1000

BENGALURU

#10, First Floor, 12th Main,
Palace Road,
Vasanth Nagar,
Bengaluru – 560 052, India
Tel: +91 80 4123 1072

CHENNAI

1B, First Floor 17-A,
Diamond Business Center,
Kalakshetra Road,
Chennai – 600 041, India
Tel: +91 44 4271 9731

MUMBAI

21/22, Second Floor,
Free Press House,
Free Press Journal Road,
215, Nariman Point,
Mumbai – 400 021, India
Tel: +91 22 6633 6791/6625 2222

HYDERABAD

1st Floor, MC Design House,
Plot No. 27, Rohini Layout,
HITEC City, Madhapur,
Hyderabad – 500 081, India
Tel: +91 40 3516 8987, +91 40 3516 8988

NEW YORK

57 West, 57th Street,
4th Floor, New York,
NY 10019
Tel: (212) 389-6290/ (212) 389-6281/
(212) 381-1057

ABOUT DENTONS

Dentons is designed to be different. As the world's largest global law firm with 21,000 professionals in over 200 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you.

www.dentons.com

© 2023 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.