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INDIA-MAURITIUS- Mauritius based funds to obtain Category I Foreign Portfolio Investment

In a communique dated the 13th of April 2020, the Financial Services Commission of Mauritius announced that Mauritius based funds are eligible for registration as Category 1 Foreign Portfolio Investor (FPI) with Securities and Exchange Board of India (SEBI). In light of the present pandemic and economic situation, this measure, initially adopted by India, will come as respite and hope for many corporations operating in the global business sector as not only it brings back the element of certainty to Mauritius in relation to FPIs, but also restores the confidence of investors on the island's jurisdiction.

1. What is a Foreign Portfolio Investment?

Foreign Portfolio Investment (FPI) is investment by non-residents in Indian securities including shares and government bonds, amongst many others. This class of investors are known as Foreign Portfolio Investors. According to the SEBI, any equity investment for non-residents which is less or equal to 10% of the Indian company's capital is considered as portfolio investment. The 10% mentioned, will be considered as Foreign Direct Investment (FDIs). All the FPIs taken together cannot exceed 24% of the company's capital. It is pertinent to note that Non-Resident Indian are not considered as FPIs.

2. Categories of Foreign Portfolio Investments (FPIs)

Until the FPI Regulations of 2019, there were previously three categories of FPIs. The 2019 Regulations withdrew Category III so that now, the FPIs are classified under either Category I or Category II.

Category I FPIs will include Government and government-related investors, Central Banks, SWFs, International or Multilateral agencies, pension funds and university funds, appropriately regulated entities, entities from FATF member countries with appropriately regulated funds etc. Category II FPIs will include appropriately regulated funds not eligible as Category I FPIs, endowment and foundations, family offices, individuals and many others.

The main differences between the Category I and the Category II FPIs are firstly, the KYCs requirement for the Category I FPIs are less stringent than Category II FPIs, and secondly, the Category 1 FPIs are likely to benefit from the indirect transfer provisions under the India Income Tax.

3. Foreign Portfolio Investor Licence (FPI Licence)

To facilitate the registration process of the FPI with the SEBI under the FPI Regulations, duly licensed designated depository participants ("DDPs") have been assigned the responsibility to coordinate all applications and communications between the applicant and the authority.

The applicant should meet the following criteria to be eligible for the FPI licence:

- be a resident in a country other than India whose securities market regulator is a signatory to the International Organisation of the Securities Commission's Multilateral Memorandum of Understanding or a signatory to a Bilateral Memorandum of Understanding with the SEBI
- not be a non-resident Indian;
- in case of a bank, the latter should be resident of a country whose central bank is a member of the Bank for International Settlements;
- be legally permitted to invest in securities outside the country of its incorporation or establishment or place of business;
- be authorised to invest on its own behalf or on behalf of its clients; and
- have sufficient experience, good track record, be professionally competent, financially sound and have a generally good reputation of fairness and integrity.

The basic rule to grant a certificate to the applicant lies in the interest of the securities market's development. The FPI Licence is valid for a block of 3 years upon expiry, of which it has to be renewed against settlement of a fee to the SEBI.

Category I- USD 3,000-

Category II- USD 300

(The Fees are exclusive of our legal costs and our counterparts in India)

4. The Position of Mauritius and the Impact.

a. Amendments brought to SEBI- FPIs Regulations 2019

Following the amendment brought to *Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019* on 7 April 2020, Category I FPI shall now also include entities from any country specified by the Central Government of India by an Order or by way of an agreement or treaty with other sovereign governments.

The Indian Ministry of Finance has issued an Order on the 13th of April 2020, in which the Central Government of India specifies Mauritius as an eligible country for the purposes of the Regulation 5 (a)(iv) of *Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019.*

Being listed, Mauritius is eligible for Category I FBIs – implying that those particular FBIs will be exempted from the indirect transfer provision of the 1961 Indian Income Tax. Recent budgets announcement in India saw Category I FPIs being exempted from the indirect transfer provisions and, with the current order of the Central Government, Mauritius will also form part of those classes benefitting from exemptions.

5. <u>Our Services</u>

We remain open during the Lockdown and are available on the following contact details to discuss with clients who wish to enquire further.

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