



## **Regulatory Alert** Stay Ahead...

**SEBI Board decides to expressly prohibit resident and non-resident Indians to invest in India through ODI route**

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## Background

Under the existing Securities Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, Resident Indians (RIs) as well as Non-Resident Indians (NRIs) are not eligible to register in India as a Foreign Portfolio Investor (FPI). Also, in the FAQs issued by SEBI with respect to SEBI (FPI) Regulations, 2014 (latest FAQs issued on 30 June 2016), SEBI has clarified that a company which is majority owned by one or more NRIs or Persons of Indian Origins (PIOs) shall not be allowed to make investments as an FPI. Nonetheless, in the same FAQ document, in another question it has been clarified that a fund having NRIs as its investors is not prohibited from obtaining FPI registration in India.

In respect of investments made in India under the Offshore Derivative Instruments (ODI) route which largely includes Participatory Notes (P-notes) and Swaps, SEBI has mandated that ODIs can only be issued to those subscribers which meet the eligibility criteria under SEBI (FPI) Regulations, 2014.

## The proposed amendment

The SEBI Board in its meeting held on 26 April 2017 has decided to insert a specific provision in SEBI (FPI) Regulations, 2014 to expressly prohibit RIs, NRIs and entities beneficially owned by RIs or NRIs from subscribing to ODIs.

## Conclusion

The express prohibition to RIs and NRIs (and entities beneficially owned by them) for subscribing to ODIs would provide certainty on this aspect. Nonetheless, FPIs which issue ODIs may need to introduce additional checks and controls to ensure that ODIs are not issued to RIs or NRIs or entities beneficially owned by them. The proposed amendment would be implemented once SEBI notifies the amendment in the official gazette.

Interestingly, while SEBI has proposed to prohibit RIs and NRIs from subscribing to ODIs, the current regulatory framework does not prohibit NRIs from investing in a fund which makes investments in India as a FPI. Also, NRIs are not prohibited from being minority shareholders in a company that invest in India as a FPI. Source: Draft Notifications dated 13 April 2017 available on [www.mca.gov.in](http://www.mca.gov.in)

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