Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI | SILICON VALLEY | BENGALURU | SINGAPORE | NEW DELHI | NEW YORK | GIFT CITY

Research

Unlocking Capital

The Role of Sovereign Wealth and Pension Funds in India's Growth

February 2025

© Nishith Desai Associates 2025

Research

Unlocking Capital

The Role of Sovereign Wealth and Pension Funds in India's Growth

February 2025

DMS Code: 117653.1

© Nishith Desai Associates 2025

Ranked as the 'Most Innovative Indian Law Firm' in the prestigious FT Innovative Lawyers Asia Pacific Awards for multiple years. Also ranked amongst the 'Most Innovative Asia Pacific Law Firm' in these elite Financial Times Innovation rankings.

Disclaimer

This report is a copyright of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

Contact

For any help or assistance please email us on **concierge@nishithdesai.com**
or visit us at **www.nishithdesai.com**.

Acknowledgements

Palomita Sharma
palomita.sharma@nishithdesai.com

Anirudh Arjun
anirudh.arjun@nishithdesai.com

Khyati Dalal
khyati.dalal@nishithdesai.com

Harshita Srivastava
harshita.srivastava@nishithdesai.com

Contents

Glossary of Terms 1

Introduction 3

A. SWFs and PFs – India Perspective 4

B. Legal form of SWFs and PFs 4

C. SWFs and PFs landscape in GIFT City 5

Tax Regime for SWFs and PFs in India 7

A. Tax Regime in India 7

B. Application of Tax Treaty to SWFs and PFs 7

C. Exemption under Domestic Tax law 7

D. Specified person 8

E. Specified investments 9

F. Investment from loan or borrowing 9

G. Additional Conditions to be fulfilled by SWFs/ PFs to Claim Exemption under Section 10(23FE) 10

H. Secondary investments made by SWFs 13

I. Withdrawal of Exemption under Section 10(23FE) 13

Modes of Investment - Regulatory Framework 15

A. Foreign Direct Investment 15

B. Foreign Portfolio Investment 17

C. Foreign Venture Capital Investment 18

Investment Vehicles 21

A. Infrastructure Investment Trusts 22

B. Real Estate Investment Trust 24

C. Alternative Investment Funds 26

Compliances under Competition Law 27

A. Combination 27

B. Amendments to the Competition Act ("2024 Amendments") 28

C. Deal Value Threshold 28

D. Substantial Business Operations in India Test 29

E. De-minimis Exemptions to Combination 30

F. Green Channel 30

Conclusion: The Way Forward 31

Glossary of Terms

ADIA	Abu Dhabi Investment Authority
AIF	Alternative Investment Funds
AIF Regulations	Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012
AUM	Assets Under Management
BCI	British Columbia Investment Management Corporation
CA, 2013	Companies Act, 2013
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
Combination Regulations	Competition Commission of India (Combinations) Regulations, 2024
Competition Act	Competition Act, 2002
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FPI	Foreign Portfolio Investor
FPI Regulations	SEBI (Foreign Portfolio Investors) Regulations, 2019
FVCI	Foreign Venture Capital Investor
FVCI Regulations	SEBI (Foreign Venture Capital Investors) Regulations, 2000
FY	Financial Year
GIC	Government of Singapore Investment Corporation's
IFSWF	International Forum of Sovereign Wealth Funds
IM	Investment Manager
INR	Indian Rupees
InvIT	Infrastructure Investment Trust
InvIT Regulations	SEBI (Infrastructure Investment Trusts) Regulations, 2014
IPO	Initial Public Offer
ITA	Income Tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Rules, 1962
LLP	Limited Liability Partnership
LLP, 2008	Limited Liability Partnership Act, 2008
LP	Limited Partners
Master Circular	Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024.
Mubadala	Mubadala Investment Company
NBFC	Non-Banking Financial Company
NCD	Non-Convertible Debenture
NDI Rules	Foreign Exchange Management (Non-debtInstruments) Rules, 2019
OCD	Optionally Convertible Debenture
OCRPS	Optionally Convertible Redeemable Preference Shares
PF	Pension Fund

© Nishith Desai Associates 2025

PIF	Public Investment Fund
PM	Project Manager
QIA	Qatar Investment Authority
QIB	Qualified Institutional Buyer
RBI	Reserve Bank of India
REIT	Real Estate Investment Trust
REIT Regulations	SEBI (Real Estate Investment Trusts) Regulations, 2014
SEBI	Securities and Exchange Board of India
SPV	Special Purpose Vehicle
SWF	Sovereign Wealth Fund
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
Temasek	Temasek Holdings (Private) Limited
USD	United States Dollar

© Nishith Desai Associates 2025

Introduction

Sovereign Wealth Funds (SWFs) and Pension Funds (PFs) are instrumental in driving global development, with SWFs acting as government-owned investment vehicles primarily investing abroad to fulfil macroeconomic objectives, and PFs being funds set up by government or social security institutions to support pay-as-you-go pension plans. Given India's pressing funding requirements, its strong medium-term growth prospects, its well-established legal framework, and the depth of its financial markets, the country has become an increasingly attractive destination for SWFs and PFs. India's allure has grown significantly compared to its Asian counterparts, making it a perfect match for SWFs and PFs.

As of November 2024, SWFs have invested approximately USD 626 million directly in India[1], underscoring their growing interest in the country. A key trend we're observing is the transition of SWFs and PFs from merely deploying capital as limited partners in private equity and public market funds managed by global General Partners (GPs) to making direct investments in Indian enterprises. This shift has been significant enough for many of these investors to establish a physical presence in India, with dedicated investment teams operating within the country.

Key sectors attracting SWF investments in India include infrastructure, healthcare, entertainment, asset management, data centers, renewables, and more recently, emerging industries such as space exploration. High-profile SWFs like GIC Private Limited, PIF, Temasek, and others have made substantial investments in the Indian market, with their 2023 performance ranging from USD 492 billion to over USD 1.5 trillion in assets under management[2].

Some of the notable deals involving SWFs and PFs in India in the last few years include:

a. **GIC:** USD 200 million investment in Data Infrastructure Trust to acquire American Tower Corporation (India).

b. **PIF:** Strategic engagement beyond Jio Platforms, including an 8% stake in Saudi Aramco and an influential role in Ratnagiri Refinery and Petrochemicals Limited (RRPCL).

c. **Mubadala:** Acquisition of a 90.01% stake in Fortress through its wholly-owned asset management subsidiary, Mubadala Capital.

d. **GIC:** Proposed additional funding into Asia Healthcare Holdings Pte. Ltd.

e. **Mubadala:** First investment in Avanse Financial Services Limited.

f. **Mubadala & BCI:** Investments in Cube Highways Trust, a key player in India's toll and annuity road assets.

g. **BCI:** Investment in Data Infrastructure Trust.

h. **GIC:** Investments in Skyroot Aerospace, India's first private sector company to launch a rocket, and the electric vehicle startup Euler.

i. **ADIA:** A notable investment in Lenskart, a leading Indian eyewear retailer.

j. **QIA:** Investment in the Bodhi Tree investment platform.

1 2024 World Investment Report, United Nations, available at:https://unctad.org/system/files/official-document/wir2024_en.pdf.

2 The Rise and Rise of Sovereign Wealth Funds, Henry Jones, available at:https://eqtgroup.com/thinq/wealth/the-rise-and-rise-of-sovereign-wealth-funds.

© Nishith Desai Associates 2025 Provided upon request only

k. **GIC:** Commitment of USD 2 billion with Genus Power & Infrastructures Limited to set up platform for Smart Metering projects.

l. **Temasek:** Ongoing investment in Manipal Health Enterprises.

m. **Mubadala:** Significant stake acquisition in Tata Power Company Ltd.

n. **GIC:** Strategic investments in Hector Beverages, the maker of Paper Boat beverages and packaged foods.

In May 2024, it was reported that SWFs' total securities holdings in India surged by an impressive 60%, increasing from INR 3 trillion in 2023 to INR 4.7 trillion in 2024[3]. This remarkable growth reflects the strengthening of global confidence in India's economic prospects, fuelled by favourable government policies, a robust investment climate, and India's rising position as a key player in attracting international capital.

Beyond direct investments, SWFs frequently allocate capital to India-focused funds as Limited Partners (LPs), entrusting the fund managers to deploy the capital in line with defined investment strategies, which are rigorously vetted by the SWFs. As LPs, these funds also secure co-investment rights to make direct investments in specific opportunities. This growing trend underscores the strategic shift toward deeper engagement with India's investment ecosystem.

A. SWFs and PFs – India Perspective

While, corporate or securities laws in India have not defined the term SWF or PF, the 2020 CBDT Circular[4] and the ITA[5] lays down self-certification measures for SWFs as they apply for tax exemption which may be used as a yardstick on the Indian regulatory position as to the qualifying criteria for SWFs. Additionally, in relation to PFs, the self-certification measures for the purposes of availing exemption under section 10(23FE)[6] of the ITA are mentioned in Rule 2DB of the ITR and the same may be interpreted as the qualifying criterial for PFs.

B. Legal form of SWFs and PFs

Typically, SWFs are set up in one of the following three forms:[7]

a. SWFs are constituted by a pool of assets (arrangement) without a separate legal personality. The legal ownership of the pool of assets rests directly with the state/government or central bank and management of pool of assets is undertaken by a separate fund management entity owned by the government or an external asset manager. Examples include the Botswana Pula Fund and Norway's Government Pension Fund Global; or

3 Sovereign wealth funds' assets in India rise 60%, Benn Kochuveedan, The New Indian Express, available at:https://www.newindianexpress.com/business/2024/May/08/sovereign-wealth-funds-assets-in-india-rise-60.

4 Circular No. 15 of 2020, July 22, 2020, CBDT.

5 Section 10 (23FE) (b), ITA.

6 Ministry of Finance, Notification,:https://www.incometax.gov.in/iec/foportal/sites/default/files/2024-03/Notification%20No%2033%20of%202021.pdf.

7 Snoeij, Richard. "Sovereign Immunity and Source State Taxation of Sovereign Wealth Funds: Is it Time to Re-Evaluate?." World tax journal.-Amsterdam 8.2 (2016): 225-242.

b. SWFs are established under public law as legal identities distinct from the state/government or central bank, with full capacity to act. They are the legal owner of the investment assets and governed by a specific constitutive law. Examples include the ADIA, the KIA and the QIA; or

c. SWFs are established as state/government-owned corporations with a separate legal personality. They are the legal owner of the investment assets and typically governed by general company law, although specific laws can (also) apply. Examples include the China Investment Corporation and the Korea Investment Corporation

PFs are usually categorized as follows:

a. Social Security Reserve Funds are integral components of the broader social security system, primarily accumulating surpluses from employee and employer contributions, which are then used to meet future payouts. These funds are often managed either by the social security institution itself or by an independent public sector entity. Notable examples include Denmark's Social Security Fund, Japan's Government Pension Fund, and the USA's Social Security Trust Fund.

b. Sovereign Pension Reserve Funds are established directly by governments, with their financial inflows typically sourced from fiscal transfers. Unlike social security reserve funds, these funds are specifically designed to finance public pension obligations at a predetermined future date, and often cannot make payouts for extended periods. Examples of such funds include the Australian Future Fund, New Zealand Superannuation Fund, Irish National Pension Reserve Fund, and the Norwegian Government Pension Fund.[8]

The legal structure and classification of these SWFs and PFs significantly impact their governance frameworks and tax treatment.

C. SWFs and PFs landscape in GIFT City

The growth of SWFs and PFs in Gujarat International Finance Tec-City City **("GIFT City")** in 2024-2025 is attributed to several targeted initiatives and strategic developments. Tax benefits have been a major draw, with exemptions on dividends, interest, and capital gains extended until March 31, 2025.[9] and further proposed to be extended until March 31, 2030 (as per the Bill) .These incentives are designed to attract long-term investments, particularly in critical infrastructure sectors like renewable energy, transportation, logistics, and urban development, which align with India's economic growth agenda.

The regulatory environment, overseen by the International Financial Services Centres Authority **("IFSCA")**, has been tailored to international standards, ensuring ease of compliance and transparency for foreign investors. The IFSCA has also enabled structures like Alternative Investment Funds (AIFs) to facilitate SWF and PF investments, offering flexibility and tax-efficient mechanisms for asset allocation.

High-profile entries into GIFT City underscore its growing appeal. ADIA was granted regulatory approval by the IFSCA to establish a subsidiary in GIFT City in October 2024. ADIA intends to leverage the GIFT City's favorable tax regime, a 10 (ten) year tax holiday, the favourable legal framework and seamless regulatory

8 Adrian Blundell, Sovereign Wealth and Pension Fund Issues, Financial Market Trends, OECD 2008:https://www.oecd.org/pensions/private-pensions/40196131.pdf.

9 Khushboo Tiwari, Budget 2024: Tax exemptions expanded to retail schemes, ETFs in Gift-IFSC, Business Standard, available at:https://www.business-standard.com/budget/news/budget-2024-tax-exemptions-expanded-to-retail-schemes-etfs-in-gift-ifsc-124072300948_1.html.

processes[10]. Similarly, Artha Global Opportunities Fund's relocation from Mauritius to GIFT City highlights its emerging competitiveness over traditional financial hubs[11].

Innovative policies, such as the Reserve Bank of India's expansion of foreign currency account usage in July 2024[12], have further boosted the ecosystem, allowing funds to operate with greater flexibility in currency management. GIFT City's increasing integration with global financial markets, coupled with strategic partnerships between Indian and international institutions, has created a dynamic environment for SWFs and PFs to diversify their portfolios while accessing India's fast-growing economy. These developments position GIFT City as a premier destination for institutional investments in South Asia.

10 Press release, ADIA establishes subsidiary in India's GIFT City, available at:https://www.adia.ae/media/azure/adia/media/2023/01/press-release-adia-establishes-subsidiary-at-gift-city-english.pdf.

11 Riya Sharma, Artha Global Opportunities Fund relocates to GIFT City, targets $1 billion AUM, Economic Times, available at:https://economictimes.indiatimes.com/markets/stocks/news/artha-global-opportunities-fund-relocates-to-gift-city-targets-1-billion-aum/articleshow/116403849.cms.

12 Jayshree P Upadhyay, India widens use of foreign currency accounts in GIFT City, Reuters, available at:https://www.reuters.com/world/india/india-widens-use-foreign-currency-accounts-gift-city-2024-07-11/.

© Nishith Desai Associates 2025

Tax Regime for SWFs and PFs in India

A. Tax Regime in India

Taxation of income in India is governed by the provisions of the ITA which contains separate rules for the taxation of residents and non-residents. Under Section 4 read with Section 5 of the ITA, non-residents are taxable only on their India-sourced income i.e., only and to the extent that such income accrues or arises or is deemed to accrue or arise in India or is received or deemed to be received in India.

Section 2(31) of the ITA defines 'person', the satisfaction of which is imperative for any entity to be taxed in India under Section 4 of the ITA. This definition does not include foreign state or a foreign state government within its ambit and as such a foreign state may not be covered within the scope of ITA. In relation to SWFs or PFs, is it critical to assess the legal form of SWF or PF, to determine as to whether it qualifies as a 'person' under the ITA or not.

Further, under Section 90(2) of the ITA, a taxpayer can choose to be taxed as per the provisions of a tax treaty entered into between India and the country of residence of the taxpayer OR as per the ITA, whichever is more beneficial to such taxpayer. However, Section 90 of the ITA requires that a tax residency certificate **("TRC")** should be submitted as evidence of residential status of the taxpayer in order to be able to claim relief under such tax treaty.

B. Application of Tax Treaty to SWFs and PFs

Provisions of tax treaties are applicable to 'persons' who are 'residents' of a contracting state'. Several tax treaties include the State, its political sub-divisions and their local authorities in the definition of 'resident'. Whether an SWF or a PF qualifies as a resident for tax treaty purposes depends on the facts of each case. Specifically, in case where SWFs or PFs are established as subsidiaries of State or a political sub-division, whether it would qualify as a person or not, will have to be determined on the basis of language of the relevant tax treaty.

C. Exemption under Domestic Tax law

Prior to 2020, ITA did not contain any specific provisions for taxation of SWFs or PFs.

The Finance Act, 2020 had introduced section 10(23FE) under the Income-tax Act, 1961 (ITA), to provide certain exemption to 'specified persons' (defined below) namely, notified PFs and SWFs on their income arising from investments made in specified business during the period April 1, 2020 to March 31, 2024, subject to satisfaction of certain conditions. SWFs are eligible for certain exemptions designed to promote foreign investment.

Section 10(23FE) provides a tax exemption on income earned by SWFs from investments in India, including long-term capital gains, interest, dividends, and other income derived from 'specified investments' (defined below), such as securities and bonds.

To qualify, the SWF must be wholly or partly owned by a foreign government, and the investment must be made in India through a government-established entity, focused on long-term infrastructure or similar assets.

Additionally, under Section 9A, SWFs can avoid being treated as having a permanent establishment (PE) in India, provided they do not engage in active business operations within the country. This ensures that SWFs are not subject to Indian taxes on long term capital gains or other income generated from investments. Furthermore, SWFs may benefit from reduced withholding tax rates or exemptions on certain income under India's Double Taxation Avoidance Agreements (DTAAs) with other countries, provided they fulfill the criteria set out in the relevant treaties. These provisions aim to attract long-term investments in India, particularly in strategic sectors like infrastructure, energy, and other critical industries.

The government has extended the tax exemption under Section 10(23FE) of the ITA for SWFs and PFs, until March 31, 2025.

The Finance Bill, 2025 ("Bill") has proposed a five-year extension of this sunset clause, extending it until March 31, 2030. This one-time extension is expected to offer certainty and clarity to SWFs and PFs regarding their investments in India, thereby supporting the growth of the infrastructure sector in the country.

The Finance (No.2) Act, 2024 re-classified all capital gains arising from transfer of unlisted debt securities as short-term capital gains, irrespective of the holding period. This resulted in an anomaly considering the exemption under Section 10(23FE) to recognized SWFs and PFs was limited to long term capital gains and is available if the investments are held at least for 3 years. The Bill now proposes to correct this anomaly. Pursuant to the amendment, long term capital gains on transfer of unlisted bonds or debentures will be exempt in hands of recognized SWFs and PFs. Gains on transfer of unlisted bonds or debentures will qualify as long -term capital gains if such securities are transferred after 2 (two) years from their date of acquisition.

D. Specified person

Specified persons[1] eligible to claim an exemption under Section 10(23FE) inter-alia includes the following:

a. SWFs which satisfy each of the following conditions:

   i. it is wholly owned and controlled, directly or indirectly, by the government of a foreign country;

   ii. it is set up and regulated under the law of such foreign country;

   iii. the earnings of the said fund are credited either to the account of the government of that foreign country. No portion of the fund's earnings should accrue to any private person except for payment(s) made to creditors or depositors for loan / borrowing (not taken for making investments into India);

   iv. the asset of the said fund vests in the Government of such foreign country upon dissolution except for payment(s) made to creditors or depositors for loan / borrowing (not taken for making investments into India);

   v. the fund should not participate in the day-to-day operations of its investee entities. It is clarified that monitoring mechanisms employed by the fund to protect its investment such as the appointment of director(s) shall not constitute a participation in the day-to-day operations of the investee entity

1 Clause (a) (b) and (c) to Explanation 1 of section 10(23FE), ITA and Rule 2DB of the Income Tax Rules, 1962.

vi. it is specified by the Central Government by notification in the Official Gazette.

b. Pension Fund that:

i. is created or established under the law of a foreign country including the laws made by any of its political constituents being a province, State or a local body;

ii. is not liable to tax in such foreign country or if liable to tax, exemption from taxation for all its income has been provided by such foreign country;

iii. it does not participate in the day-to-day operations of investee but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in day to day operations of the investee; and

iv. is specified by the Central Government, by notification in the Official Gazette.

c. A wholly owned subsidiary of Abu Dhabi Investment Authority which (i) is a resident of United Arab Emirates and (ii) makes investment, directly or indirectly, out of the fund owned by the Government of the Abu Dhabi.

E. Specified investments

'Specified Investment'[2] eligible to claim an exemption under section 10(23FE) of the ITA are:

a. Investments in InvITs or REITs;

b. Investment in company or enterprise engaged in business of (i) developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility or (ii) infrastructure sub-sectors mentioned in updated harmonised master list of infrastructure sub-sectors[3] **("Eligible Infrastructure Entity")**;

c. Investment in Category I / II AIFs regulated under the SEBI (Alternative Investment Funds) Regulations, 2012 having not less than 50% (Fifty percentage) investment in Eligible Infrastructure Entity or Specified Company (defined below) or NBFC (defined below) or InvITs;

d. Investment in a domestic company set up after April 1, 2021, having minimum 75% (Seventy Five percentage) investment in Eligible Infrastructure Entity **("Specified Company")**;

e. Investment in a specified non-banking financial company **("NBFC")** having minimum 90% (Ninety percentage) lending to Eligible Infrastructure Entity.

Detailed rules have been prescribed in relation to computation of income which will be considered to be exempt in hands of specified person.

F. Investment from loan or borrowing

Importantly, the exemption under section 10(23FE) shall not be available to SWFs and PFs which have availed of loans or borrowings, directly or indirectly, for the purposes of making the investment in India.[4] CBDT

2 Section 10(23FE) (iii), ITA.

3 Notification S.O. 2227E, CBDT, July 6, 2020.

4 Seventh proviso to section 10(23FE) of ITA.

© Nishith Desai Associates 2025

has clarified that if the loans and borrowings have been taken by the SWFs or any PFs or any of their group concerns, specifically for the purposes of making an investment by SWF or PF in India, such fund shall not be eligible for exemption. It has further been clarified that if the loans and borrowings have been taken by the SWF or PF or any of their respective group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under section 10(23FE) of the ITA, provided that the source of the investment in India is not from such loans and borrowings.[5]

G. Additional Conditions to be fulfilled by SWFs/ PFs to Claim Exemption under Section 10(23FE)

As of April 2024, 35 SWFs and PFs have been notified under section 10(23FE) indicating the enthusiastic participation of SWFs / PFs in the Indian investment ecosystem[6]. The additional conditions required to be fulfilled by these SWFs / PFs in order to claim exemption under section 10(23FE) of the ITA are as below:

a. Filing of income-tax returns: It has to file income tax returns, as per the provisions of the ITA, for all the years in which the investment(s) eligible for exemption under section 10(23FE) of the ITA was held by it **("Relevant Investment Period")**;

b. Audit: It has to get books of account audited for the Relevant Investment Period by an accountant specified under section 288[7] of the ITA. Further, such audit report has to be furnished in the specified format[8] at least one month in advance to the due date specified for furnishing tax returns under section 139[9] of the ITA;

c. Quarterly statements: It has to electronically furnish a quarterly statement within one month from the end of each quarter in the specified format[10], in respect of each investment made by it during the said quarter;

d. Segmented accounts: It has to maintain a segmented account of income and expenditure in respect of all specified investments;

e. Ownership: It should continue to be owned and controlled, directly or indirectly, by its establishing government. Further, no other person should exercise control or have any ownership (directly or indirectly) in the SWF / PF at any point in time;

f. Applicable law: It should continue to be regulated under the law(s) of its establishing government.

In addition to above, PFs are also required to satisfy the below mentioned conditions:[11]

5 Circular No 19 of 2021 [F. NO. 370142/48/2021-TPL] October 26, 2021.

6 https://www.financialexpress.com/money/income-tax-sovereign-wealth-funds-pension-funds-one-step-away-from-the-finish-line-3458339/.

7 Section 288, Income Tax Act, 1961:https://incometaxindia.gov.in/_layouts/15/dit/Pages/viewer.aspx?grp=Act&cname=CMSID&cval=102120000000087375&searchFilter=[{%22CrawledPropertyKey%22:1,%22Value%22:%22Act%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:0,%22Value%22:%22Income-tax%20Act,%201961%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:29,%22Value%22:%222024%20(No.%202)%22,%22SearchOperand%22:2}]&k=&IsDlg=0.

8 Annexed to the notification in the Official Gazette notifying an SWF as a specified person.

9 Section 139, Income Tax Act, 1961:https://incometaxindia.gov.in/_layouts/15/dit/Pages/viewer.aspx?grp=Act&cname=CMSID&cval=102120000000086950&searchFilter=[{%22CrawledPropertyKey%22:1,%22Value%22:%22Act%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:0,%22Value%22:%22Income-tax%20Act,%201961%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:29,%22Value%22:%222024%20(No.%202)%22,%22SearchOperand%22:2}]&k=&IsDlg=0.

10 Form II, Circular No 15 of 2020, July 22, 2020, F. No. 370142/26/2020- TPL, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.

11 Rule 2DB of the ITR.

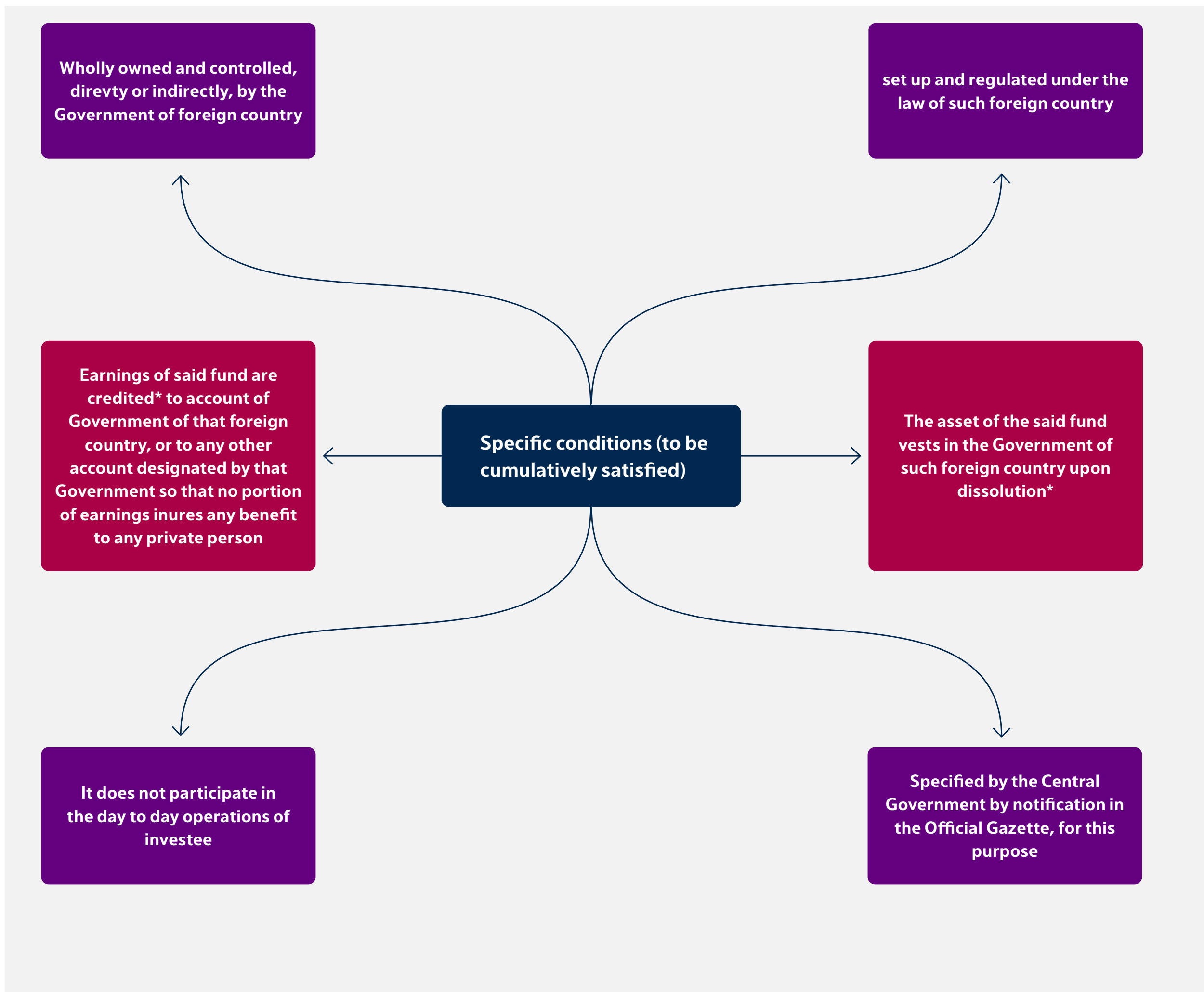
a. it is responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be.

   This condition is deemed to have been met if (a) the value of such assets is not more than 10% (Ten Percentage) of the total value of the assets administered or invested by such fund, (b) the ownership of such assets lie with the foreign government and (c) the assets vest in the foreign government upon being dissolution of the fund;

b. the earnings and assets of the PF are used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans and no portion of the earnings or assets of the pension fund inures any benefit to any other private person.

   This condition, however, does not apply to (a) any payment made to creditors or depositors for loan taken or borrowing for reasons other than making an investment in India, and to (b) earnings from assets where the earnings are credited to the account of the government of the foreign country and do not inure any benefit to any private person.

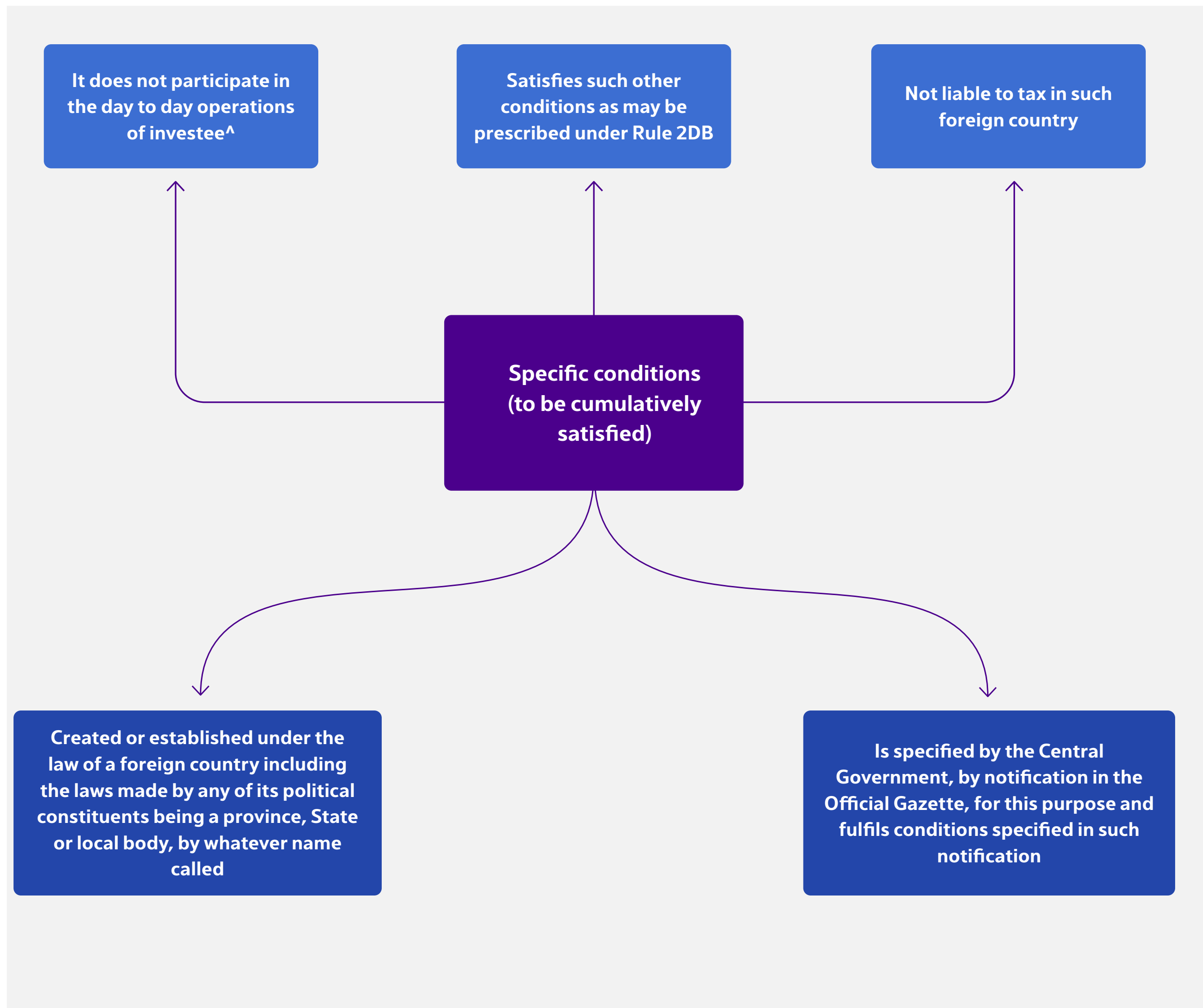
Specified Conditions : SWF



∗This condition shall not apply to any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India

ˆThe monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee

Specified Conditions : PF



ˆThe monitoring mechanism to Protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee

H. Secondary investments made by SWFs

CBDT has clarified that certain secondary investment[12] by SWFs will be considered as 'investment' for purposes of section 10(23FE) of the ITA, hence, eligible for exemption. The following transfers have been considered as investments:

a. Transfer of the shares or units of Eligible Infrastructure Entity, or InvIT by any person to a SWF after the date of notification of such SWF under section 10(23FE);

b. Transfer of the units of AIF or shares of domestic company or NBFC, which has invested in an Eligible Infrastructure Entity or InvIT, by any person to a SWF after the date of notification of such SWF under section 10(23FE);

c. Transfer of the shares of domestic company or NBFC, which has invested in an Eligible Infrastructure Entity, by any person to an AIF where such investment by AIF is made out of the funds of the specified person after the date of notification of such SWF after the date of notification of such SWF under section 10(23FE);

d. Transfer of the shares of an eligible infrastructure entity by a person to a domestic company where such domestic company has made investment out of the funds of the SWF after the date of notification of such SWF under section 10(23FE).

I. Withdrawal of Exemption under Section 10(23FE)

As discussed above, exemption to SWFs and PFs under section 10(23FE) of the ITA is provided subject to fulfillment of several conditions. In case any of those conditions is violated in any previous year, exemption under section 10(23FE) of the ITA will be withdrawn for all years in which exemption has been claimed and income will be taxable in the same previous year in which it is claimed to be exempt.[13] For example, if dividend income from specified investment was claimed to be exempt by SWF in FY 21-22 and the SWF has violated any condition specified in section 10(23FE) in FY 23-24, such dividend income will be taxable in FY 21-22 itself.

To address difficulties in some cases, it has been clarified that capital gains on the transfer of the investment, in violation of the conditions under Section 10 (23FE), shall be taxable, and the income received in earlier previous years on such investments, which has been claimed to be exempt in those years, shall also become taxable in the previous year during which the conditions were violated. This clarification provides an exception to the general rule.

However, there are two exceptions to the aforesaid 'general rule':

I. Lock-in period

Exemption under section 10(23FE) is available if the specified investments are held for a period of 3 (Three) years.[14]

12 Para 4.6, circular no. 9 of 2022 [F. NO.370142/2/2022-TPL], May 9, 2022.

13 Para 4.4.2 of circular no. 9 of 2022 [F. NO.370142/2/2022-TPL], May 9, 2022.

14 Section 10(23FE) (ii), ITA.

The non-adherence to the three-year rule may cause the fund's income to be chargeable to income tax, i.e. disqualified for exemption under section 10 (23FE).[15] In the event of such an inclusion to tax, the taxability of capital gains accruing on such investments (which did not adhere to the 3 (Three) year rule) is tabulated hereunder:

Investments transferred before 3 years	Taxability	Reason
Investment(s) by the specified person in an Eligible Infrastructure Entity, InvIT, REIT, an AIF, a Specified Company, or an NBFC	In the hands of the specified person	Not be exempt from tax under section 10(23FE) of the ITA
Investment(s) by such an AIF, out of the investment made by the specified person, in an eligible infrastructure entity, InvIT, REIT, an eligible domestic company, or an NBFC	Such capital gains will be taxable in the hands of the specified person	AIF is a pass-through entity and on account of the income not being exempt from tax under section 10(23FE) of the ITA
Investment(s) by such domestic company, out of the investment made by the specified person directly or through an AIF, in an eligible infrastructure entity	Income, attributable to such capital gains, shall be taxable in the hands of the specified person	Not be exempt from tax under section 10(23FE) of the ITA
Lending by such NBFC(s), out of the investment made by the specified person either directly or through an AIF, to an eligible infrastructure entity	Income, attributable to such capital gain or other income of the NBFC, shall be taxable in the hands of the specified person	Not be exempt from tax under section 10(23FE) of the ITA

Additionally, any interest or dividend on such investments (which is transferred in violation of the 3 (Three) years' rule) which was earlier exempt from taxation shall now be subject to tax in the hands of the specified person as the income of the relevant previous year in which the 3 (Three) year rule is violated.[16]

II. Violation of investment thresholds by AIF / domestic company / NBFC[17]

In case where the AIF / domestic company / NBFC fails to meet the threshold of minimum investment in an eligible infrastructure entity or InvIT, as the case may be, during any subsequent previous year, then income of specified person which has been exempted during any preceding previous year under the said clause (where minimum threshold was met during that previous year), shall remain to be exempted under the said clause and shall not be withdrawn solely because of the reason of minimum threshold not being met during the subsequent previous year. However, income of the specified person during the previous year of violation of minimum threshold and for all subsequent years, from such AIF/Company/NBFC shall not be exempted under the said clause. This is assuming that no other conditions specified in Section 10(23FE) of the ITA or ITR have been violated.

15 Third Proviso section 10(23FE), ITA.

16 Para 4.1.4, circular no. 9 of 2022 [F. NO.370142/2/2022-TPL], May 9, 2022.

17 Para 4.3.2, circular no. 9 of 2022 [F. NO.370142/2/2022-TPL], May 9, 2022.

© Nishith Desai Associates 2025 Provided upon request only

Modes of Investment - Regulatory Framework

While a separate category or regulatory framework has not been created under Indian laws to cater particularly to investments by an SWF or PF, such investments can be made through any of the existing routes of foreign investment as mentioned below:

a. Foreign Direct Investment;

b. Foreign Portfolio Investment;

c. Foreign Venture Capital Investment.

A. Foreign Direct Investment

FDI in India is governed by FEMA read with the NDI Rules, the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, together with the consolidated FDI Policy issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India.

Under Schedule V of the NDI Rules, long term investors such as SWFs and PFs can invest into Indian securities subject to compliance with terms and conditions of investment promulgated by the RBI and the SEBI (if applicable).

Permitted Sectors: Under the FDI route, foreign investments can be made into "permitted sectors" that include, inter alia, infrastructure, manufacture, civil aviation sector, satellite establishment and operation, e-commerce, pharmaceuticals, insurance, etc. Such investment will be subject to sectoral caps and conditions and can be made either through the automatic route (i.e., not subject to approval of central government) or the approval route (i.e., subject to approval of the central government), depending upon the sector in which foreign investment is sought to be made.

Press Note 3 Approvals: In accordance with Press Note 3 (2020 Series) issued by the Department for Promotion of Industry and Internal Trade on April 17, 2020 and Rule 6(a) of the NDI Rules, acquisition of any ownership interest in an Indian entity by any non-resident investor requires approval of the central government if the non-resident investor is, or, the beneficial owner(s) of such investment in India is situated in or is a citizen of countries that share land borders with India. This is not usually an issue for most SWFs and PFs on account of the source of their funds, and can actually be a competitive advantage.

Instruments for Investment: FDI is permitted to be made in "equity instruments" issued by any Indian company, which include equity shares, fully and compulsorily convertible preference shares, fully and compulsorily convertible debentures, convertible notes, partly paid shares and warrants. Equity instruments through which investment is made are permitted to have optionality clause, however, the equity instrument will be subject to a lock-in period of 1 (One) year (or higher, if prescribed for the specific sector), and will not have the right to exit at an assured price.[1]

1 Explanation to Rule 2(k), FEMA (Non-Debt Instruments) Rules, 2019.

© Nishith Desai Associates 2025
Provided upon request only

FDI is also permitted through swap of shares, subject to the condition that valuation of the shares is made by a merchant banker registered with SEBI or an investment banker outside India registered with the appropriate regulatory authority in the host country.[2]

Downstream Investment: Indirect FDI or downstream investment can be made by an Indian company, which is owned or controlled by non-residents, into another Indian company. As per the FDI Policy such downstream investment is required to comply with the same norms as applicable to direct FDI in respect of relevant sectoral conditions and caps with regard to the sectors in which the downstream entity is operating. Such downstream investments is considered to be indirect FDI in an Indian entity if they have been made in the following manner: (A) another Indian entity which has received foreign investment, and (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India **("Non-Indian Entity")**; or (B) an investment vehicle whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India.[3] Downstream investment into Indian entities require that funds for investments be brought from abroad or arranged through internal accruals (i.e., profits transferred to reserve account after payment of taxes).

Pricing Guidelines: Under the NDI Rules, in case of unlisted companies, the price at which a non-resident investor subscribes to primary equity instruments issued by an Indian company, or, purchases secondary equity instruments from a person resident in India cannot be lower than the price computed by any internationally accepted pricing methodology as calculated by a chartered accountant or a merchant banker registered with the SEBI.[4]

In case of listed companies, the pricing guidelines prescribed by FEMA do not apply. Fair value of instruments of a listed company are to be valued in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2018.

Deferred Consideration: The NDI Rules permits the transfer of shares between a resident buyer and a non-resident seller or vice versa on a deferred consideration basis, subject to the following conditions:

a. the deferred consideration should not exceed 25% (Twenty Five percentage) of the aggregate consideration;

b. the deferred consideration should be paid within a period of 18 (Eighteen) months from the date of the agreement for transfer of shares;

c. the deferred consideration maybe paid under an escrow arrangement, whose term shall not exceed 18 (Eighteen) months; and

d. if the total consideration is paid, the seller may furnish an indemnity valid for a period of 18 (Eighteen) months, for deferred portion of the condition;

Provided that the total consideration paid for the shares should be compliant with the applicable pricing guidelines.

2 Rule 21, FEMA (Non-Debt Instruments) Rules, 2019.

3 Private Equity and Private Debt Investments in India, Nishith Desai Associates (2022):https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Private_Equity_and_Private_Debt_Investments_in_India.pdf.

4 Rule 21, FEMA (Non-Debt Instruments) Rules, 2019.

B. Foreign Portfolio Investment

An FPI refers to a person that is registered as such under the FPI Regulations. FPIs in India are regulated through the FPI Regulations, the NDI Rules (Schedule II) and Master Circular for FPI issued by SEBI.

Regulation 5(a)(i) and (ii) of the FPI Regulations identify SWFs and PFs respectively as "Category I FPI". As such, an SWF, once registered as an FPI, can purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange subject to compliance with, inter alia, the below conditions:

Investment Limits: With respect to the investment under the FPI route, the total holding of an FPI or an investor group, should be (a) less than (i) 10% (Ten percentage) of the total paid-up equity capital on a fully diluted basis of the Indian entity or (ii) 10% (Ten percentage) of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company, and (b) the total holdings of all FPIs put together, including any other direct and indirect foreign investments in the Indian entity should not exceed the FDI sectoral caps applicable to the Indian company. If, however, the Indian entity is engaged in a sector where FDI is not permitted, the threshold of aggregate holding will be 24% (Twenty-Four percentage). A breach of these requirements will result in the investment being categorized as FDI instead of investment by FPI.[5]

Clubbing of Investment Limits: Where 2 (Two) or more FPIs including foreign Governments / their related entities have common ownership, directly or indirectly, of more than 50% (Fifty percentage) or, common control[6], all such FPIs are considered to form part of an investor group.

Further, investments by foreign government agencies are clubbed with the investment by the foreign government or its related entities for the purpose of calculation of 10% (Ten percentage) limit for FPI investments in a single company, if they form part of an investor group. However, clubbing is not applicable where, inter alia[7]:

a. FPIs are appropriately regulated public retail funds; or

b. FPIs are public retail funds and investment managers of such FPIs are appropriately regulated.

Public retail funds include, inter alia, pension funds, and therefore, pension funds regulated under the laws of the jurisdiction where it was constituted need not comply with the provisions pertaining clubbing of investment limits.

Consideration: FPIs can purchase instruments of an Indian company through public offer or private placement, subject to the individual/ aggregate limits, and the following conditions:

a. In case of subscription by way of public offer, the price of the shares issued to FPIs should not be less than the price at which shares are issued to resident investors.

b. In case of subscription by way of private placement, the price should not be less than: (i) the price arrived at in terms of the pricing guidelines issued by SEBI; or (ii) the fair price worked out as per any internationally accepted pricing methodology for valuation of shares, on an arm's length basis.

5 Regulation 5(a)(i) and (ii) of the Foreign Portfolio Investor (FPI) Regulations, 2014.

6 "Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner."Para 2.1.8, Consolidated FDI Policy.

7 Regulation 22(4), SEBI FPI Regulations.

Such fair value price arrived at should be certified by a SEBI registered merchant banker or chartered accountant or a practicing cost accountant.

Instruments: FPIs are permitted to make investments by way of, inter alia:

a. shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India

b. dated Government securities / treasury bills;

c. non-convertible debentures / bonds issued by an Indian company;

d. commercial papers issued by an Indian company;

e. security receipts issued by asset reconstruction companies;

f. Listed non-convertible / redeemable preference shares or debentures issued in terms of Regulation 6 of Foreign Exchange Management (Debt Instruments) Regulations, 2019;

g. Securitised debt instruments, including (i) any certificate or instrument issued by an SPV set up for securitisation of asset(s) with banks, Financial Institutions or NBFCs as originators;

h. Units of REIT, InvITs and unit of Category III AIFs;

i. Debt securities issued by REITs / InvITs.

As seen from the category of instruments available under this route, investments in debt can also be made by an FPI. Therefore, this route is suitable for yield focused instruments and other debt and hybrid investments.

C. Foreign Venture Capital Investment

The FVCI Regulations were promulgated to incentivize and stimulate foreign investment into venture capital undertakings in India. The FVCI Regulations make it mandatory for offshore funds to register themselves with SEBI in order to avail the benefits under the FVCI Regulations.

Some of the benefits extended by SEBI and RBI to FVCI(s) in comparison to investment through FDI route include:

a. **Registration Process:** Effective January 1, 2025, FVCIs must apply for registration through Designated Depository Participants (DDPs) registered with SEBI. DDPs are authorized to process applications and conduct due diligence on behalf of SEBI.[8]

b. **Eligibility Criteria:** Applicants must be entities established in an International Financial Services Centre or outside India. The eligibility criteria now align with those applicable to Foreign Portfolio Investors (FPIs).[9]

c. **Application Form:** The application form has been revised to resemble the Common Application Form (CAF) used for FPIs, streamlining the registration process.[10]

8 SEBI amends Foreign Venture Capital Investor Regulations: Aligns the Registration and Governance Framework with Foreign Portfolio Investment Laws, Nishith Desai Associates:https://nishithdesai.com/NewsDetails/15117.

9 Ibid.

10 Ibid.

d. **Renewal and Surrender:** FVCIs are required to pay a renewal fee of USD 100 (excluding GST) for each block of five years. Late fees apply if the renewal is not completed by the due date.[11]

e. **Free pricing:** Registered FVCIs are not restricted by the pricing guidelines applicable to investments through FDI and are provided the advantage of free pricing both at the time of entry as well as exit of their investments. A sale or transfer of securities or instruments can be made by at a price that is mutually and commercially agreed between buyers and sellers.[12]

f. **Instruments:** An FVCI can invest in equity instruments, equity-linked instruments (instruments optionally or mandatorily convertible into equity share) or debt instruments, which include OCRPS, OCDs and NCDs.

g. **Lock-in:**[13] Under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the entire pre-issue share capital (other than for promoters, where lock-in is for a longer period of 18 (Eighteen) months) of a company conducting an IPO, is locked-in for a period of 6 (Six) months from the date of allotment in the public issue. However, an exemption from this requirement has been granted to registered FVCIs, provided, the shares have been held by them for a minimum period of 6 (Six) months from the date of purchase by the FVCI. This exemption enables the FVCI to exit from its investments, post-listing.

h. **Exemption under the Takeover Code:** SEBI has also exempted promoters of a listed company from the public offer provisions in connection with any transfer of shares of a listed company, from FVCIs to the promoters, under the Takeover Code.

i. **QIB Status:** FVCIs registered with SEBI have been accorded QIB status and are eligible to subscribe to securities at an IPO through the book building route.[14]

Sectors: FVCIs can invest only in the following sectors:

a. biotechnology;

b. IT related to hardware and software development;

c. nanotechnology;

d. seed research and development;

e. research and development of new chemical entities in pharmaceutical sector;

f. dairy industry;

g. poultry industry;

h. production of bio-fuels;

i. hotel-cum-convention centres with seating capacity of more than three thousand;

j. Infrastructure sector (as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide notification F. No. 13/06/2009- INF, dated the March 27, 2012).[15]

---

11 Ibid.

12 Schedule VII, FEMA (Non-Debt Instruments) Rules, 2019.

13 Regulation 17, SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018.

14 Definition of "Qualified Institutional Buyer", SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

15 Schedule VII, FEMA (Non-Debt Instruments) Rules, 2019.

Investment Thresholds: The FVCI Regulations specify that:

a. at least 66.67% (Sixty Six point Six Seven percentage) of the investible funds of a FVCI shall be invested in unlisted equity shares or equity-linked instruments of venture capital undertaking of venture capital undertaking or investee company as defined in Securities and Exchange Board of India (Alternative Investment Funds) Regulation, 2012;

b. up to 33.33% (Thirty Three point Three Three percentage) of the investible funds of a FVCI may be invested by way of: (i) subscription to an initial public offer of a venture capital undertaking or investee company whose shares are proposed to be listed; (ii) debt or debt instrument of a venture capital undertaking or investee company in which the FVCI entity has already invested by way of equity; or (iii) preferential allotment of equity shares of a listed company, subject to a lock-in period of 1 (One) year.

Investment Vehicles

Infrastructure and real estate are fundamental pillars of any economy, and India is no exception. The development of a nation is often measured by progress in these sectors, which have the power not only to drive economic growth but also to lay the foundation for the overall well-being of citizens and attract global investments.

Recognizing the importance of these sectors, the Indian government has set an ambitious target of achieving a USD 5 trillion GDP by 2025. To meet this goal, India needs to invest approximately USD 1.4 trillion in infrastructure alone over the coming years. The 2024-25 Union Budget, presented on July 23, 2024, outlined the government's strategy to focus on key sectors, including infrastructure, to create abundant opportunities for growth. In addition, private sector investments in infrastructure will be encouraged through viability gap funding and enabling policies and regulations.

The development of infrastructure and real estate requires massive financial resources, which cannot be met without the involvement of external partners such as Sovereign Wealth Funds (SWFs) and Pension Funds (PFs). These funds have increasingly shown interest in India's infrastructure and real estate sectors, and while they have the option to invest through various channels, REITs (Real Estate Investment Trusts) and InvITs (Infrastructure Investment Trusts) have become particularly attractive.

REITs and InvITs serve as ideal vehicles for such investments due to their key features:

a. Listed, liquid, and regulated securities

b. Yield-generating products

c. Quasi-sovereign credit, in most cases

Both REITs and InvITs function similarly to mutual funds in that they pool funds from investors, issue units, and then invest the pooled capital. InvITs, regulated by specific InvIT Regulations, channel investor funds into infrastructure projects such as roads, highways, power, and energy projects. Similarly, REITs, governed by REIT Regulations, invest in income-generating real estate projects like hotels, hospitals, convention centers, and large residential/commercial developments.

InvITs and REITs have already made significant contributions to project development by infusing capital from private investors and facilitating the recycling of funds. Due to the strong sectoral growth, lower volatility, and attractive returns, these investment vehicles have gained significant traction. In 2021-22 alone, InvITs raised approximately USD 2.56 billion through initial offers, preferential issues, and rights issues.[1] In 2023-24, fundraising reached USD 2.3 billion[2], and by November 2024, InvITs and REITs had collectively mobilized around USD 1.4 billion.[3] Over the last four years leading up to March 2024, these vehicles raised a total of USD 1.3 trillion.[4]

1 K.R.Srivats, All you need to know about InvITs and infrastructure funding, The Hindu Business Line, May 11, 2022, available at:https://www.thehindubusinessline.com/blexplainer/all-you-need-to-know-about-invits-and-infrastructure-funding/article65403672.ece.

2 Fundraise by InvITs, REITs surges multi-fold to Rs 17,116 cr in FY24 on promising returns:https://economictimes.indiatimes.com/industry/services/property-/-cstruction/fundraise-by-invits-reits-surges-multi-fold-to-rs-17116-cr-in-fy24-on-promising-returns/articleshow/109103666.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

3 Fund raising by REITs and InvITs:https://www.sebi.gov.in/statistics/reits-invits/funds-raised-reits-invits.html.

4 REITs, InvITs mobilise Rs 1.3 trillion in past four years: RBI data, Press Trust of India, available at:https://www.business-standard.com/economy/news/reits-invits-mobilise-rs-1-3-trillion-in-past-four-years-rbi-data-124042400677_1.html.

Given the significant public funds involved, SEBI regulations ensure a well-structured and regulated framework for REITs and InvITs. These regulations govern the mechanisms of investment, the rights and obligations of parties involved, and the mandatory distribution of profits, all of which will be discussed in detail in the following chapters.

A. Infrastructure Investment Trusts

Infrastructure sector, being capital intensive and with projects having long gestation periods, InvITs are ideal investment avenues for long term investors such as SWFs and PFs. Recognising the potential for investment under this sector, the Government of India, through SEBI promulgated the InvIT Regulations.

Structure and Parties: An InvIT is a trust registered with SEBI in accordance with the InvIT Regulations. It raises funds by issuing units to its investors and invests those funds in assets in infrastructure sector. As on December 12, 2024, there are 26 (Twenty-Six) registered InvITs in India.[5]

Parties: The important parties for an InvIT include:

a. Trustee[6] – A person that holds the assets of the InvIT in trust for benefit of unit holders or investors;

b. Sponsor[7] – A company or an LLP or any other body corporate that sets up the InvIT. A sponsor should hold at least 15% (Fifteen percentage) units of an InvIT after initial offer of units on a post-issue basis for a period not less than three years from date of listing of units;

c. IM[8] – A company or an LLP designated as such and is primarily responsible for investment decisions with respect to the underlying assets or projects of the InvIT including any further investment or divestment of the assets. An IM also oversees the activities of a PM.

d. PM[9] – A company or an LLP which is designated as such by the InvIT and is responsible for execution or management of an infrastructure project and for achievement of all milestones pertaining the same;

e. Holding Company[10] – A company or an LLP in which the InvIT holds or proposes to hold not less than 51% (Fifty One percentage) of the equity share capital or interest and which in turn has made investments in other SPV(s) which hold the infrastructure assets. A holding company cannot engage in any other activity other than holding the underlying SPV or holding infrastructure projects and activities incidental to such holdings;

f. SPV[11]– A company or LLP that is directly responsible for the infrastructure project. An InvIT or a holding company must hold at least 51% (Fifty One percentage) of the equity share capital or interest of an SPV (except in case of public-private partnership projects, where such holding is disallowed by the government or under a concession agreement). At least 90% (Ninety percentage) of assets of an SPV should be directly held in infrastructure projects. It cannot invest in other SPVs or engage in activities other than those pertaining to its underlying infrastructure project.

---

5 Registered InvITs, SEBI (as on December 12, 2024), available at:https://www.sebi.gov.in/sebiweb/other/OtherAction.do?doRecognisedFpi=yes&intmId=20.

6 Regulation 2(1)(zzb), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

7 Regulation 2(1)(zz), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

8 Regulation 2(1)(zf), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

9 Regulation 2(1)(zp), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

10 Regulation 2(1)(sa), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

11 Regulation 2(1)(zy), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

Investment Conditions and Distributions by InvIT: An InvIT is a growth vehicle, and the unitholders invest in such entities in expectation of profits and return of their investment. As the InvIT is a specialized vehicle formed with the intent to invest into infrastructure projects, SEBI provides certain conditions and restrictions pertaining to investments by InvITs to ensure that the object of the InvIT Regulations is not defeated.

I. Investment Conditions:

An InvIT is permitted to invest only in a holding company, SPV or infrastructure projects or securities in India in accordance with the investment strategy as detailed in the offer document or placement memorandum.[12] If the InvIT has to invest in an infrastructure public private partnership project, then the same has to be routed through the holding company or the SPV.[13]

In circumstances where the InvIT invests in any infrastructure projects through SPVs, (a) a shareholders'/ partnership agreement has to be entered into between the InvIT and the shareholders/partners of the SPV, wherein such agreement shall specify that the shareholder or partner of the SPV shall not exercise any rights to prevent the InvIT from complying with the InvIT Regulations[14], (b) the IM shall ensure that in every meeting of the SPV, the voting of the InvIT is exercised.

In circumstances where the InvIT invests in any infrastructure projects through the Holding company, apart from complying with the aforementioned conditions, the ultimate holding interest of the InvIT in the underlying SPV(s) shall not be less than 26% (Twenty Six percentage).[15]

Lastly, the InvITs shall: (a) not invest in units of other InvITs[16]; (b) undertake lending to any person other than the holding company or the SPV(s), provided however, investment in debt securities is permitted[17]; and (c) hold an infrastructure asset for a period of not less than 3 (Three) years from the date of purchase of such asset by the InvIT, directly or through holding company and/or SPV.[18]

II. Distributions by InvIT:

- The manner and quantum of distributions in an InvIT is one of its most remarkable features which attracts many potential investors. The following conditions are placed on the InvIT, the Holding company and SPV regarding distribution of the net distributable cash flows:[19]
    1. not less than 90% (Ninety Percentage) of net distributable cash flows of the SPV shall be distributed to the InvIT /Holding company in proportion of its holding in the SPV, subject to applicable provisions under the CA, 2013 or LLP, 2008;

12 Regulation 18(1), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

13 Regulation 18(2), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

14 Regulation 18(3)(a), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

15 Regulation 18(3A)(a), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

16 Regulation 18(9), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

17 Regulation 18(10), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

18 Regulation 18(11), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

19 Regulation 18(6), SEBI (Infrastructure Investment Trusts) Regulations, 2014.

© Nishith Desai Associates 2025

2. not less than 90% (Ninety Percentage) of net distributable cash flows of the InvIT shall be distributed to the unit holders;
3. not less than 90% (ninety percent) of net distributable cash flows generated by the Holding company on its own, shall be distributed by the Holding company to the InvIT. Provided however, the entire cash flows received by Holding company from underlying SPVs shall be distributed to the InvIT;

Further, if any infrastructure asset is sold by the InvIT or Holding company or SPV or if the equity shares or interest in holding company/SPV are sold by the InvIT, then the cash flows generated through such sale shall be distributed as per the above mechanism. Provided however, if the InvIT proposes to reinvest the sale proceeds in other infrastructure projects within a period of the 1 (one) year, then such sale proceeds shall not be distributed.

The distributions from the net distributable cash flows (as mentioned above) shall be declared and made not less than once every 6 (Six) months in every financial year in case of a publicly offered InvITs and not less than once every year in case of a privately placed InvITs.[20] Any amount remaining unclaimed or unpaid out of the distributions shall be transferred to the 'Investor Protection and Education Fund' constituted by the board of the IM.[21]

B. Real Estate Investment Trust

A REIT is essentially a pool of real estate assets that is structured similarly to a mutual fund and has the potential to provide consistent income. REITs invests its funds in holding and developing real estate properties. As on December 25, 2024, there are a total of 6 (Six) registered REITs in India[22]. The REIT Regulations cover the registration process, the eligibility criteria for all the parties to a REIT and other requirements related to units of a REIT. SEBI has also permitted the establishment of Small and Medium REITs **("SM REITs")**, having an asset value of at least INR 250,000,000 (Indian Rupees Two Hundred Fifty Million), compared to the minimum asset value of INR 5,000,000,000 (Indian Rupees Five Billion) required for existing REITs. The minimum number of members for the SM REITs shall continue to be 200 (Two Hundred) investors (other than investment manager). For further details on SM REITs, please refer to our article here.

I. Parties: The important parties for a REIT include

a. Trustee — A person that holds REIT's assets in trust for benefit of unit holders[23];

b. Sponsor — Any person that sets up the REITs and is designated as a sponsor at the time of application made to the Board.[24] A sponsor should hold at least 15% (Fifteen percentage) units of an REIT after initial offer of units on a post-issue basis for a period not less than three years from date of listing of units[25];

c. Manager — A company or an LLP or body corporate incorporated in India which manages assets and investments of a REIT and undertakes its operational activities.[26]

20 Regulation 18(6)(c), SEBI (Infrastructure Investment Trusts) Regulations, 2014.
21 Regulation 18(6)(e), SEBI (Infrastructure Investment Trusts) Regulations, 2014.
22 SEBI, Real Estate Investment Trust:https://www.sebi.gov.in/sebiweb/other/OtherAction.do?doRecognisedFpi=yes&intmId=42.
23 Regulation 2(1)(zv), SEBI (Real Estate Investment Trusts) Regulations, 2014.
24 Regulation 2(1)(zt), SEBI (Real Estate Investment Trusts) Regulations, 2014.
25 Regulation 11(3), SEBI (Real Estate Investment Trusts) Regulations, 2014.
26 Regulation 2(1)(w), SEBI (Real Estate Investment Trusts) Regulations, 2014.

d. Holding Company — A company or an LLP in which the REIT holds or proposes to hold not less than 50% (Fifty percentage) of the equity share capital or interest. A holding company will in turn make investment in other special purpose vehicles, which ultimately hold the real estate properties. A holding company cannot engage in any activity other than holding the underlying SPV or holding real estate/ properties and activities incidental to such holdings[27];

e. SPV— A company or LLP that directly holds the real estate / properties.[28] A REIT or a holding company must hold at least 50% (Fifty percentage) of the equity share capital or interest of an SPV (except in case of public-private partnership projects, where such holding is disallowed by the Government or under a concession agreement). Additionally, at least 80% (Eighty percentage) of assets of an SPV should be directly held in properties. Lastly, it cannot invest in other SPVs or engage in activities other than holding and developing property and activities incidental to the same.

II. Distribution of Monies:

The following is a summary of the distribution policy that is outlined in regulation 18(16) of the REIT Regulations. This policy applies to distributions made by the REIT, its holding company, or special purpose vehicles.

a. The REIT or its holding company must receive at least 90% (Ninety percentage) of the net distributable cash flow generated by special purpose vehicles, in proportion to the REIT's or holding company's ownership stake in the special purpose vehicles (subject to applicable provisions of the CA, 2013 and the LLP Act).

b. The following is the minimum amount of net distributable cash flow that a holding company is required to transfer to a real estate investment trust (subject to the rules of the Companies Act of 2013 or the Limited Liability Partnership Act of 2008, as applicable):

    i. A total of 100% (One Hundred percentage) of the cash flow that was received by the holding company from the SPV; and

    ii. With respect to the cash flows generated by the holding company on its own, a total of 90% (Ninety percentage) of such net distributable cash flows.

c. A REIT is required to distribute to its unitholders at least 90% (Ninety percentage) of the net distributable cash flow that it generates each year.

d. A REIT is required to distribute at least 90% (Ninety percentage) of the proceeds arising from the sale of property, equity shares, or an interest in a holding company or a special purpose vehicle, unless the REIT intends to reinvest the proceeds within 1 (One) year.

e. Distributions are required to be made at least once every 6 (Six) months.

If a distribution is not made within 5 (Five) days of a declaration, then the manager shall be liable to pay interest to the unitholders at the rate of 15% (Fifteen percentage) per annum until the said distribution is made. However, such interest shall not be recovered in the form of fees or any other form that is payable to the manager by the REIT.[29]

27 Regulation 2(1)(qa), SEBI (Real Estate Investment Trusts) Regulations, 2014.

28 Regulation 2(1)(zs), SEBI (Real Estate Investment Trusts) Regulations, 2014.

29 Regulation 18, SEBI (Real Estate Investment Trusts) Regulations, 2014.

C. Alternative Investment Funds

We have also seen SWFs allocating towards AIFs in India. Under the AIF Regulations, SWFs have been deemed as an Accredited Investor **("AI")** and need not obtain a certificate of accreditation to reap the benefits of an AI status.[30] By virtue of its status as an AI, SWFs are eligible for the following exemptions:

a. Not subject to the minimum investment requirement of INR 10,000,000 (Indian Rupees Ten Million);[31] and

b. Not subject to the minimum grant amount for social impact funds.[32]

Likewise, as AIs, SWFs will now be eligible to invest into large value fund for accredited investors **("AI Fund(s)")** which are AIFs (or schemes therein) where each investor (other than the investment manager, sponsor, employees or directors of the AlF or employees or directors of the investment manager) is an AI and invests not less than INR 70,000,000 (Indian Rupees Seventy Million). Additional exemptions made available for AI Funds are as follows:

a. Timelines for certain regulatory filings relaxed for AI Funds Filings

Unlike conventional AIFs which have to submit their private placement memorandums **("PPMs")** thirty days in advance to SEBI (via a merchant banker) and incorporate the comments therein to launch scheme, an AI Fund may submit its PPMs at any time and isn't required to incorporate SEBI's comments in the concerned PPM.[33]

b. Extension of tenure beyond two years

Subject to the terms of the fund documents that govern the AI Fund, it is permitted to extend its term beyond two years unlike a conventional AIF which has to liquidate (or carry forward) its portfolio after it has exhausted the extension period of two years.[34] The flexibility of extensions protects AI Funds from the risk of having a poor vintage year.

c. Relaxation of diversification norms

As opposed to conventional AIFs which may only invest 25% (category I and category II AIFs)[35] or 10% (category III AIFs)[36] of the investible funds in a portfolio investment, an AI Fund is permitted to invest up to invest 50% (category I and category II AIFs) or 20% (category III AIFs) of the investible funds, as the case may be, in a single portfolio investment. This flexibility enables SWFs to bet big on its winners.[37]

Additionally, SWFs status as an AI exempts it from the minimum investment threshold of INR fifty lakh while opting for portfolio management services.[38]

---

30 Regulation 2 (ab), AIF Regulations.

31 Regulation 10 (c), AIF Regulations.

32 Regulation 16 (4) (a), AIF Regulation.

33 Regulation 12, AIF Regulations.

34 Regulation 13 (5), AIF Regulation.

35 Regulation 15(1) (c), AIF Regulation.

36 Regulation 15(1) (d), AIF Regulation.

37 The changing contours of AIF regime in India: third amendment regulations, 2021 and proposals, Nishith Desai Associates:http://nishithdesai.com/SectionCategory/33/Funds-Hotline/12/40/FundsHotline/4795/1.html.

38 Regulation 23, SEBI (Portfolio Managers) Regulations, 2020.

© Nishith Desai Associates 2025

Compliances under Competition Law

The Competition Act was promulgated in the year 2002 for the purpose of regulating (i) anti-competitive agreements, (ii) abuse of dominant position and (iii) combinations that are likely to have adverse impact on competition in India.

As the regime on anti-competitive agreements and abuse of dominant positions don't usually come into play in investment transactions, we will be limiting this chapter to a discussion on regulation of combinations. The Combination Regulations set out the manner in which the CCI regulates combinations in India.

A. Combination

In terms of Section 5 of the Competition Act, a 'combination' involves:

a. acquisition of control, shares, voting rights or assets of an enterprise by a person;

b. acquisition of control of an enterprise where the acquirer already has direct or indirect control of another enterprise engaged in identical business; or

c. merger or amalgamation between or amongst enterprises, that cross the financial thresholds set out in Section 5.

The above provisions are also applicable to the acquisition of units of a REIT or an InvIT.

The financial thresholds for a combination are determined with reference to (i) the combined asset value and the turnover of the acquirer and the target in the event of an acquisition, and the combined asset value and the turnover of the combined resultant company, in the event of an amalgamation or merger, and (ii) the combined asset value and the turnover of the "group" to which the target/resultant company will belong pursuant to the proposed acquisition/merger.

The financial thresholds pertaining to assets and turnover in India, or in India and outside India, for the purposes of determining whether a transaction qualifies as a "combination" are:

a. the acquirer and the enterprise that is acquired, jointly have either (i) in India, (A) assets of value higher than INR 25,000,000,000 (Indian Rupees Twenty Five Billion), or, (B) turnover more than INR 75,000,000,000 (Indian Rupees Seventy Five Billion); or (ii) in India or outside India, (A) assets of value more than USD 1,250,000,000 (United States Dollar One Billion Two Hundred and Fifty Million) in aggregate, with at least assets of INR 12,500,000,000 (Indian Rupees Twelve Billion and Five Hundred Million) in India, or, (B) turnover of more than USD 3,750,000,000 (United States Dollar Three Billion and Seven Hundred and Fifty Million), with at least INR 37,500,000,000 (Indian Rupees Thirty Seven Billion and Five Hundred Million) in India ; or

b. the group to which the target entity will belong post acquisition, jointly have or would jointly have, either (i) in India (A) assets of the value of more than INR 100,000,000,000 (Indian Rupees One Hundred Billion) or (B) turnover more than INR 300,000,000,000 (Indian Rupees Three Hundred Billion), or (ii) in India or outside India, in aggregate, (A) assets of value of more than USD 5,000,000,000 (United States Dollar Five Billion), with at least INR 12,500,000,000 (Indian Rupees Twelve Billion and Five Hundred Million) in India, or, (B) turnover more than USD 15,000,000,000 (United States Dollar Fifteen Billion), with at least at least INR 37,500,000,000 (Indian Rupees Thirty Seven Billion and Five Hundred Million) in India.

For determination of existence of combination, as mentioned above, a "group" of enterprises includes an enterprise that directly or indirectly,

a. have 26% (Twenty Six percentage) or more of the voting rights in the other enterprise; or

b. can appoint more than 50% (Fifty percentage) of board members other enterprise: or

c. control the management or affairs of the other enterprise.

Further, "control" refers to the ability to exercise material influence in any manner whatsoever, over management, affairs or strategic commercial decisions by:

a. one or more enterprises, jointly or singly, over another enterprise or group;

b. one or more groups, jointly or singly, over another group or enterprise.

B. Amendments to the Competition Act ("2024 Amendments")

On and from September 10, 2024, the merger control regime in India was overhauled through the notification of amendments to the Competition Act[1] and the notification of the following regulations / rules:

i. Competition (Minimum Value of Assets or Turnover) Rules, 2024 **("De-Minimis Rules")**;

ii. Competition Commission of India (Combinations) Regulations, 2024 **("2024 Combination Regulations")**;

iii. Competition (Criteria of Combination) Rules, 2024 **("Green Channel Rules")**; and

iv. Competition (Criteria for Exemption of Combinations) Rules, 2024.

The 2024 Combination Regulations has repealed the Competition Commission of India (Procedure in regard to the transactions of business relating to Combinations) Regulations, 2011 **("Erstwhile Combination Regulations")**.

C. Deal Value Threshold

The key change introduced pursuant to the amendment to the Competition Act is the introduction of the concept of 'Deal Value Threshold'.[2] Pursuant to the 'Deal Value Threshold', in cases where the value of any transaction exceeds INR 2,000 crores and the target has 'substantial business operations in India', such transactions shall require the prior notification to the CCI. It is also pertinent to note that, as per the Competition Amendment Act, even if the de minimis exemption is available but the transaction meets the requirements of deal value threshold, the transaction shall be notifiable to the CCI (unless an exemption under Competition (Criteria for Exemption of Combinations) Rules, 2024). Please refer to our detailed analysis of the 2024 Amendments here.[3]

1 Gazette Notification published on 09 September 2024 regarding The Competition Commission of India (Combinations) Regulations, 2024, available at:https://www.cci.gov.in/legal-framwork/regulations/67/0.

2 Section 5(d), Competition Act.

3 Revised Thresholds for Turnover and Assets Notified under Indian Competition Act, Nishith Desai Associates: https://www.nishithdesai.com/SectionCategory/33/Competition-Law-Hotline/12/63/CompetitionLawHotline/14949/1.html.

In order to determine if the value of the transaction exceeds INR 2,000 crores, the following components should be considered by the acquirer.

All consideration, whether direct or indirect, immediate or deferred, cash or otherwise, including but not limited to, consideration,

i. payable during 2 years after the date on which the transaction would come into effect;

ii. payable for all inter-connected steps / transactions;

iii. paid anytime during the period of 2 years before the relevant date of the transaction;

iv. payable for any covenant, undertaking, obligation or restriction imposed on the seller or any other person (if such consideration is agreed separately);

v. payable for call option and shares to be acquired assuming the full exercise of such options;

vi. payable, as per best estimates, based on the future outcome specified under the transaction documents.[4]

D. Substantial Business Operations in India Test

In cases where the value of the transaction (basis the abovementioned considerations) exceeds INR 2,000 crores, the transaction shall require the prior notification to CCI only in cases where the target has 'substantial business operation in India'. The target shall have 'substantial business operation in India', if:

i. In cases of 'digital services provided', the number of its business users or end users in India is 10% or more of its total global number of such users; or

ii. The gross merchandise value for the period of 12 months preceding the relevant date is:

   a. 10% or more of its global gross merchandise value; and

   b. more than INR 500 crores; or

iii. The turnover during the preceding financial year in India is:

   a. 10% or more of its global turnover derived from all the products and services; and

   b. more than INR 500 crores.[5]

Sub-clause (b) of clause (ii) and sub-clause (b) of clause (iii) shall not apply to "digital services".[6] In relation to the above, the term 'digital service' means "the provision of a service or one or more pieces of digital content, or any other activity by means of an internet whether for consideration or otherwise to the end user or business user, as the case may be".[7]

(Point numbers 1, 2 and 3 collectively being referred to as **"Substantial Business Operations Test"**).

Hence, in circumstances where the value of the transaction exceeds INR 2,000 crores and the target satisfies the conditions mentioned in the Substantial Business Operations Test, such transactions shall require the

4 Regulation 4(1), 2024 Combination Regulations.

5 Regulation 4(2), 2024 Combination Regulations.

6 Explanation 1 to Regulation 4(2), Combination Regulations.

7 Explanation 2 to Regulation 4(2), Combination Regulations.

prior notification to the CCI and the prior approval of CCI shall be required for consummating such transactions.

E. De-minimis Exemptions to Combination[8]

In circumstances where the value of the transaction does not exceed INR 2,000 crores, such transactions shall not require a prior notification to the CCI, in cases where the enterprises that are party to any form of combination as described above, where the value of assets of the acquired/to be acquired entity or the merged entity is not more than INR 4,500,000,000 (Indian Rupees Four Billion Five Hundred Million) in India or turnover is not more than INR 12,500,000,000 (Indian Rupees Twelve Billion Five Hundred Million) in India.[9]

F. Green Channel

The CCI had initially, through insertion of Regulation 5A to the Erstwhile Combination Regulations in the year 2019, introduced an automated approval system for certain transactions that do not have or are at risk of having appreciable adverse effect on competition in India. This Green channel route, which was brought into effect on August 15, 2019, was introduced in furtherance of ease of doing business initiatives of the Government of India, with the aim to provide a faster review and disposal of combination transaction.

Regulation 5A of the Erstwhile Combination Regulations was repealed by the 2024 Combination Regulations and the concept of green channel route is now codified under section 4 of the Competition Act, read with Regulation 3 of the Green Channel Rules.

To avail of the benefit of the green channel route, the qualifying criteria is that the parties to the combination, their respective group entities[10] and their affiliates[11] should: (i) not produce/provide similar or identical or substitutable product or service or; (ii) not engage in any activity relating to production, supply, distribution, storage, sale and service or trade in product or service which are at different stage or level of production or; (iii) not engage in any activity relating to production, supply distribution, storage, sale and service or trade in product or service which are complementary to each other.[12]

Once the form filed under the system is acknowledged, the combination transaction is deemed approved and can be consummated thereafter.

8 Notification No. S.O. 1131(E) dated March 07, 2024.

9 Section 5(e), Competition Act, read with Rule 3 of De-Minimis Rules.

10 The term parties to the combination and their respective group entities means: the ultimate controlling person of the acquirer and other entities forming part of the same group;the enterprise being acquired and its downstream entities forming part of its group;enterprises being merged or amalgamated, their controlling persons, and entities forming part of their group.

11 An enterprise is considered to be an affiliate of another enterprise if that another enterprise has–ten per cent. or more of the shareholding or voting rights of the enterprise; or right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; or right or ability to access commercially sensitive information of the enterprise.

12 Schedule III, Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011.

Conclusion: The Way Forward

SWFs and PFs have emerged as critical drivers of capital flow into India, fuelling growth across key sectors such as infrastructure, real estate, healthcare, and renewable energy. As India continues to position itself as a global economic powerhouse, these institutional investors are playing a pivotal role in shaping the future of the country's investment landscape. With their long-term investment horizons, stable returns, and robust risk mitigation strategies, SWFs and PFs are not only bolstering India's economic trajectory but also enhancing the country's attractiveness to global capital.

India's policy reforms and regulatory frameworks, particularly in sectors such as infrastructure investment, have created a conducive environment for SWFs and PFs to deploy their capital effectively. The rise of investment vehicles like REITs and InvITs has further solidified the country's appeal, offering liquidity, transparency, and favourable returns to these institutional investors. As these funds continue to diversify their portfolios and deepen their commitment to India, they are not merely contributing capital—they are actively shaping the nation's growth story.

However, challenges remain. Regulatory oversight, governance issues, and geopolitical uncertainties can impact the smooth flow of investments. To fully realize the potential of SWF and PF investments, continued focus on policy reforms, transparency, and a stable investment climate is essential.

As we look ahead, India's dynamic market, coupled with the growing interest of global SWFs and PFs, is poised for even greater opportunities. The synergies between these institutional investors and India's vast growth potential create a win-win scenario—driving both economic development and sustainable investment returns. With continued strategic partnerships, India is on track to become the premier destination for SWF and PF investments, ensuring a prosperous and inclusive future for its economy.

© Nishith Desai Associates 2025

© Nishith Desai Associates 2025

About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm — and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium Aligunjan, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly — the VISION — to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech and Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times–RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.

Research@NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Labs dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness — that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research publications.
Please feel free to contact us at **research@nishithdesai.com**.

© Nishith Desai Associates 2025

Recent Research Papers

Extensive knowledge gained through our original research is a source of our expertise.

January 2025

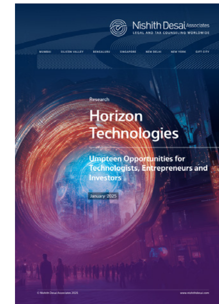
Fintech

Legal, Regulatory and Tax Considerations – Compendium

January 2025

Private Investments in India

A Comprehensive Guide to Equity, Debt, and Dispute Resolutions



January 2025

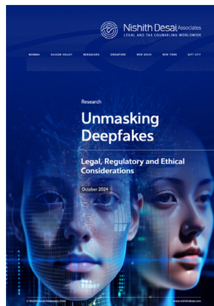
Horizon Technologies

Umpteen Opportunities for Technologists, Entrepreneurs and Investors

January 2025

Research Paper Compendium

Clickable Catalogue of Publications



October 2024

Unmasking Deepfakes

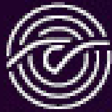
Legal, Regulatory and Ethical Considerations

October 2024

Are we ready for Designer Babies

Strategic, Legal, Tax and Ethical issues

For more research papers **click here**.



Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

Tel +91 22 6669 5000

SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA

Tel +1 650 325 7100

BENGALURU

Prestige Loka, G01, 7/1 Brunton Rd
Bengaluru 560 025, India

Tel +91 80 6693 5000

SINGAPORE

Level 24, CapitaGreen
138 Market St
Singapore 048 946

Tel +65 6550 9855

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

Tel +91 22 6159 5000

NEW DELHI

13-H, Hansalaya Building, 15
Barakhamba Road, Connaught Place
New Delhi 110 001, India

Tel +91 11 4906 5000

NEW YORK

1185 6th Avenue, Suite 326
New York, NY 10036, USA

Tel +1 212 464 7050

GIFT CITY

408, 4th Floor, Pragya Towers
GIFT City, Gandhinagar
Gujarat 382 355, India

Unlocking Capital

The Role of Sovereign Wealth and Pension Funds in India's Growth

© Nishith Desai Associates 2025

concierge@nishithdesai.com