



To,

2<sup>nd</sup> June, 2016

**Mr. Praveen Garg**  
**Joint Secretary (Capital Markets)**  
**Ministry of Finance**  
**North Block, New Delhi**

Dear Sir,

**Re: Treatment of FPI Shareholding in Listed Affiliates/ Parents of Fund Managers**

In furtherance of the Government's intent to attract foreign investment in Indian investment vehicles, the Reserve Bank of India had issued notifications dated 16<sup>th</sup> November 2015 (No. FEMA 355/2015-RB) and 15<sup>th</sup> February 2016 (No. FEMA 362/2016-RB) allowing foreign investment in Indian regulated investment vehicles (including Alternative Investment Funds or AIFs). A copy of the said notifications are attached for your reference.

The notification, *inter-alia*, provides that downstream investments by AIFs shall be regarded as foreign investment if neither the Sponsor nor the Manager nor the Investment Manager is Indian 'owned and controlled'. In other words, if the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled', the entire downstream investment by the AIF will qualify as foreign investment.

The above rule creates significant challenges for many AIFs which are sponsored and managed by Indian banks, Non-Banking Financial Companies, or holding companies of such financial institutions, which are listed on recognized stock exchanges in India. In many such cases, given the significant level of Foreign Portfolio Investors' (FPIs) ownership, the institutions fail to meet the criteria of being Indian owned and controlled. Consequently, the investments made by AIFs sponsored by such institutions or their subsidiaries have to comply with the rules applicable to foreign investment.

In view of the fact that financial institutions have been active in raising capital in AIFs and have successfully raised significant capital from domestic and foreign investors, in order to ensure that such companies continue to raise capital, we request that a separate test to determine ownership and control be provided for sponsors/managers that belong to a group that is listed on Indian stock exchanges. Our recommendation is that the test be defined on the following lines:

- Test for ownership - While determining the foreign ownership in widely held listed companies (or their direct or indirect subsidiaries), the stake held by FPIs should be excluded i.e. foreign ownership should be computed based on the composition of domestic investment and foreign investment made under the Foreign Direct Investment (FDI) route, only. A 'widely held' listed company should be considered to be one where no single foreign (non FPI) shareholder alongwith his/its affiliates has a shareholding exceeding 10%.



By way of an illustration, where an Indian listed company has a shareholder composition comprising 50% FPI investors, 24% FDI investors and balance 26% domestic investors, the Indian listed company should be treated as Indian owned so long as no single FDI investor alongwith his/its affiliates has a shareholding exceeding 10%.

- Test for control – The determination of control in listed companies should be made based on the composition of Indian resident and non-resident individuals in the Board of Directors of such companies; so long as the majority of the Board of Directors comprises Indian resident directors.

We appreciate your attention in this and would request you to consider the above recommendation.

Sincerely,

Gopal Srinivasan

Chairman, IVCA

Cc: Arvind Mathur, President