

INVESTMENT FUNDS INDIA PRACTICE ALERT

FVCI APPLICATIONS ON HOLD UNTIL FURTHER NOTICE



Earlier this week, Akin Gump was informed that the Reserve Bank of India (“RBI”) has put on hold all pending applications for the licensing and registration of non-Indian entities as Foreign Venture Capital Investors (“FVCIs”).

BACKGROUND

FVCIs are the principal means by which foreign funds have invested in the shares of unlisted Indian companies. Although subject to certain investment restrictions on the type and percentage amounts of securities they can hold, FVCIs benefit from some key advantages, such as being exempt from (i) regulations requiring foreign investors to obtain a “fair value” opinion (an opinion from a banker or accountant stating that the price is an accurate reflection of the value of the company), (ii) the one year lock-up period applicable to securities held after an IPO, and (iii) certain tender offer provisions.

In order for a foreign fund to be registered as an FVCI, approval from *both* RBI and the Securities and Exchange Board of India (“SEBI”) is required. Although SEBI has been approving FVCI applications, and may still continue to do so, RBI has not approved any such applications for the past few months.

RBI officials indicated that they are awaiting instructions and clarifications from the Ministry of Finance on certain policy level issues relating to FVCIs. No details have been disclosed by RBI about what these policy level issues may be, nor did RBI indicate when the Ministry of Finance is expected to respond to RBI’s queries.

POTENTIAL IMPACT OF THIS MEASURE

These delays are likely linked to recent changes made by SEBI to the Foreign Institutional Investor (“FII”) qualification guidelines. Although we cannot be certain as to when RBI will start approving FVCI applications again, we expect the Ministry of Finance, RBI and SEBI to resolve the outstanding policy issues quickly because of the significant impact that this development may have on capital inflows into India.

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CONTACT INFORMATION

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