ECONOMIC LAWS PRACTICE
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BUDGET BUZZ

# Portfolio Investment Scheme limits expanded. Category III AIFs may be negatively impacted

## BUDGET PROPOSAL

Schedule III of the FEMA (Non-Debt Instruments) Rules, 2019 **(Non-Debt Rules)** regulates investments by NRIs or OCIs on a "repatriation basis" through the Portfolio Investment Scheme **(PIS)**. Schedule III of the Non-Debt Rules provides that the total holding by any individual NRI or OCI cannot exceed 5% of the total paid-up equity capital (on a fully diluted basis of any Indian company or 5% of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company. Further, the total holdings of all NRIs and OCIs put together shall not exceed 10% of the total paid-up equity capital or of the paid-up value of each series of debentures or preference shares or share warrants. The aggregate ceiling of 10% can be raised to 24% if a special resolution to that effect is passed by the shareholders of the company.

Today the Finance Minister announced that individual persons resident outside India **(PROI)** can individually invest upto 10% in Indian equities. The aggregate limit for PROI holdings in the equity of a single company shall be 24%.

## IMPACT

Until now, an individual resident outside India who is not an NRI or an OCI, could not invest in Indian equities via PIS. Once the budget proposals are implemented, they will be able to do so. Further, the individual limits for NRIs and OCIs under PIS have increased from 5% to 10%. Aggregate investment by NRIs and OCIs could be 24% if the company receiving the investment passes a special resolution, but henceforth, this limit will be available to all non-resident individuals.

## ELP's INSIGHTS

Under Schedule VIII of the Non-Debt Rules, any non-resident, whether an individual or a corporate (other than a citizen of or an entity incorporated in Pakistan or Bangladesh or from any country with a land border) can invest in an AIF under the automatic route. Until now, if a non-resident who is not an NRI or an OCI wanted exposure to Indian listed equities, the easiest option was to invest in a Category III AIF since it came under the automatic route. Once the changes proposed by the foreign minister today are implemented, it would be possible for a non-resident to invest directly in Indian equities directly, subject to the caps provided for the PIS. Hence, Category III AIFs may see potential investors drift away and invest directly under PIS.

It is unclear if the budget proposals, when implemented, will require the company receiving the investment to pass a special resolution if the aggregate investment for non-resident individuals is to be 24%.