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INVESTMENT MANAGEMENT SERVICES

U.S. Regulatory Considerations for Indian Investors Accessing U.S. Capital Markets

What regulatory farmwork governs Indian investors in U.S. markets?

Under Indian investors seeking access to U.S. capital markets operate within a complex regulatory environment that extends well beyond traditional U.S. securities laws. Unlike domestic investors, Indian investors must simultaneously comply with U.S. securities regulations, cross-border tax rules, national security review requirements, and Indian outbound investment restrictions. The interaction of these overlapping regulatory regimes frequently influences investment structuring, tax efficiency, reporting obligations, and the availability of particular investment opportunities.

At a high level, Indian investors should consider the application of the Securities Act of 1933, the Securities Exchange Act of 1934, Investment Advisers Act requirements applicable to private fund investments, national security review under the Foreign Investment Risk Review Modernization Act ("FIRRMA") and the Committee on Foreign Investment in the United States ("CFIUS"), U.S. tax reporting obligations, the Foreign Account Tax Compliance Act ("FATCA"), Foreign Bank Account Report ("FBAR") requirements, and India's outbound investment restrictions under the Reserve Bank of India's Liberalized Remittance Scheme ("LRS"). Because these rules frequently overlap, investment decisions should be evaluated from both U.S. and Indian legal and tax perspectives before capital is deployed.

What SEC and brokerage requirements apply to Indian investors?

Indian investors generally access U.S. securities markets through broker-dealers registered with the SEC and members of the Financial Industry Regulatory Authority ("FINRA"). Utilizing a properly registered intermediary provides investors with important regulatory protections, including compliance with federal anti-money laundering ("AML") and know-your-customer ("KYC") requirements, custody protections under U.S. securities laws, and access to Securities Investor Protection Corporation ("SIPC") coverage, subject to applicable statutory limits.

Opening brokerage accounts, however, may present additional challenges for foreign investors. Although many U.S. brokerage firms now permit direct onboarding of Indian residents, account availability varies significantly among financial institutions due to enhanced AML reviews, documentation requirements, including Permanent Account Number ("PAN"), Aadhaar, and tax residency certifications, and firm-specific restrictions applicable to non-U.S. persons. Consequently, selecting an appropriate brokerage platform often becomes an important threshold compliance decision before any investment activity begins.

How can FIRRMA and CFIUS affect Indian investments?

Beyond traditional securities regulation, Indian investors should carefully consider the potential application of FIRRMA and CFIUS when investing in U.S. businesses. FIRRMA significantly expanded CFIUS jurisdiction beyond controlling acquisitions to include certain non-controlling investments involving businesses engaged in critical technologies, critical infrastructure, and sensitive personal data.

As a result, minority investments in venture capital and private equity transactions may still become subject to CFIUS review where investors receive governance rights, board representation, observer rights, or access to material nonpublic technical information. Investments involving artificial intelligence, semiconductor manufacturing, defense technologies, cybersecurity, biotechnology, and data-driven businesses receive particular regulatory scrutiny. Failure to comply with applicable CFIUS filing requirements may result in civil penalties, mandatory divestiture, or other remedial measures, making early regulatory review an important component of transaction planning.

What U.S. tax rules should Indian investors consider?

Tax planning remains one of the most significant considerations for Indian investors allocating capital to U.S. investments. Proper completion of IRS Form W-8BEN allows eligible investors to claim benefits available under the United States–India Income Tax Treaty, reducing U.S. withholding taxes on dividend income from the default statutory rate of thirty percent to the applicable treaty rate where available. To preserve these benefits, investors should ensure that Form W-8BEN accurately reflects beneficial ownership information and remains current throughout the investment period.

Dividend income generally remains subject to withholding in the United States while also requiring reporting in India. Although foreign tax credits are frequently available to mitigate double taxation, investors must coordinate tax reporting across both jurisdictions to maximize treaty benefits and avoid inconsistent filings.

Capital gains are treated differently. In many cases, nonresident Indian investors are not subject to U.S. taxation on long-term capital gains realized from publicly traded securities, although gains remain taxable in India. Short-term gains may produce different tax consequences depending upon the investor's U.S. presence and the characterization of the income. Accordingly, longer investment horizons often produce more favorable overall tax outcomes for cross-border investors.

What cross-border reporting obligations apply?

In addition to income tax compliance, Indian investors with U.S. tax reporting obligations should consider the extensive disclosure requirements imposed by FATCA and FBAR. Individuals meeting the applicable reporting thresholds may be required to file FinCEN Form 114 (FBAR) reporting foreign financial accounts with aggregate balances exceeding $10,000 during the calendar year. FATCA may separately require disclosure of specified foreign financial assets, including Indian bank accounts, investment accounts, equity interests, pension arrangements, and certain insurance products through IRS Form 8938.

These reporting regimes operate independently of income tax liability and frequently impose significant civil penalties for noncompliance even where no additional tax is owed. Consequently, maintaining accurate records of foreign financial assets remains an essential component of cross-border investment planning.

How do Indian regulations affect U.S. investments?

Indian investors must also comply with domestic regulations governing outbound investments. Under the Reserve Bank of India's Liberalized Remittance Scheme ("LRS"), resident Indians generally may remit up to $250,000 per financial year for permissible capital account transactions, including investments in foreign securities. While the program provides meaningful opportunities for international diversification, the annual remittance limitation may require investors to stagger capital contributions or otherwise structure investments over multiple years.

Recent changes to India's Tax Collected at Source ("TCS") regime also affect the timing and liquidity associated with foreign remittances. Accordingly, investors should consider both Indian tax implications and remittance restrictions when planning cross-border investment strategies.

How do Indian regulations affect U.S. investments?

Non-Resident Indians ("NRIs"), U.S. citizens, and green card holders frequently encounter additional compliance obligations resulting from their connections to both jurisdictions. Indian investments generally must be routed through designated Non-Resident External ("NRE") or Non-Resident Ordinary ("NRO") accounts depending upon the source of funds and repatriation objectives.

Perhaps more significantly, U.S.-based Indian investors should carefully evaluate potential exposure to the Passive Foreign Investment Company ("PFIC") rules. Many Indian mutual funds and exchange-traded funds qualify as PFICs under U.S. tax law, triggering punitive tax treatment, interest charges on deferred gains, and extensive reporting obligations through IRS Form 8621.

These rules frequently make otherwise attractive Indian investment products significantly less tax efficient for U.S. taxpayers.

U.S. citizens and lawful permanent residents likewise remain subject to worldwide income taxation and comprehensive reporting obligations covering Indian bank accounts, direct equity investments, retirement accounts, insurance products, and other foreign financial assets. Coordinating these obligations with Indian tax reporting requirements is essential to avoiding duplicate reporting issues and unnecessary tax exposure.

What practical steps should counsel and investors take?

Since Indian investors remain subject to multiple overlapping legal regimes, successful cross-border investing requires proactive planning rather than reactive compliance. Counsel should evaluate treaty eligibility, optimize withholding tax treatment through timely completion of Form W-8BEN, identify potential CFIUS issues before transactions are negotiated, and assess whether particular investment vehicles create undesirable PFIC consequences.

Investors should likewise coordinate U.S. and Indian tax reporting, maintain consistent documentation across jurisdictions, utilize SEC-registered and FINRA-member brokerage platforms, and preserve comprehensive records supporting cross-border transactions. As both U.S. and Indian regulators continue refining cross-border investment rules, periodic review of compliance procedures and investment structures remains critical to minimizing regulatory risk.

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