



पेंशन निधि विनियामक और  
विकास प्राधिकरण  
बी-14/ए, छत्रपति शिवाजी भवन,  
कुतुब संस्थागत क्षेत्र,  
कटवारिया सराय, नई दिल्ली-110016  
दूरभाष : 011-26517501, 26517503, 26133730  
फैक्स : 011-26517507  
वेबसाइट : www.pfrda.org.in

PENSION FUND REGULATORY  
AND DEVELOPMENT AUTHORITY  
B-14/A, Chhatrapati Shivaji Bhawan,  
Qutub Institutional Area,  
Katwaria Sarai, New Delhi-110016  
Ph : 011-26517501, 26517503, 26133730  
Fax : 011-26517507  
Website : www.pfrda.org.in

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**CIRCULAR**

To

- CEOs of All Pension Funds

Dear Sir/Madam,

**SUBJECT: Guidelines on aggregate holding of equity shares by a foreign company in Pension Funds as provided under Section 24 of the PFRDA Act, 2013 - Manner of calculation of such aggregate holding of equity shares by a foreign company in a Pension Fund under National Pension System.**

1. Section 24 of the Pension Fund Regulatory and Development Authority Act, 2013 states that:

*The aggregate holding of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees or by an individual or by an association of persons whether registered or not under any law of a country outside India taken in aggregate in the pension fund shall not exceed twenty-six percent of the paid-up capital of such fund or such percentage as may be approved for an Indian Insurance company under the provisions of the Insurance Act, 1938, whichever is higher.*

*Explanation- For the purposes of this Section, the expression "foreign company" shall have the meaning assigned to it in Clause 23A of Section 2 of the Income Tax Act, 1961.*

2. Insurance Laws (Amendment Act), 2015 raised the Foreign Holding limit in Indian Insurance Company to 49% by amending Section 2 (7A) of the Indian Insurance Act, 1938, accordingly, the Foreign Holding limit in the Pension Funds stands raised to 49% of the paid-up capital.
3. Foreign investment in pension sector was permitted through automatic route up to 49 per cent vide notification dated 17<sup>th</sup> October, 2019 issued by Department of Economic Affairs, Ministry of Finance on Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

4. To provide for the mode and manner of calculation and determination of the aggregate holding limit by a foreign company in the Pension Fund, as laid down under Section 24 of the PFRDA Act, 2013 and as specified in the PFRDA (Pension Fund) Regulations, 2015 and subsequent amendments thereto, the Authority, in exercise of powers conferred under Section 14 (1) of the PFRDA Act, 2013, hereby issues the following guidelines to be complied with:-

5. **Definitions:-**

(a) **Sponsor:** Sponsor under these guidelines shall mean an entity engaged in financial business activity and regulated by any of the financial sector regulators in the country including the Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India, this Authority and which satisfies the eligibility conditions to act as such, as specified under the PFRDA (Pension Fund) Regulations, 2015 and which also meets one or more conditions laid down under Section 2 (69) of the Companies Act, 2013.

(b) **"Foreign investors"** for the purpose of these guidelines shall mean a foreign company either by itself or through its subsidiary companies or its nominees or by an individual or by an association of persons whether registered or not under any law of a country outside India, investing in equity shares of a Pension Fund, as permitted to do so through the Foreign Direct Investment and Foreign Portfolio Investment windows under FEMA Regulations, 2000.

(c) **"Indian investors"** mean Investors other than foreign investors.

(d) **Indian Control:**

"Indian Control" of a Pension Fund means control of such Pension Fund by resident Indian citizens or Indian companies, which are owned and controlled by resident Indian citizens. Control can be exercised by any one or more of the following mode:

- (a) Virtue of shareholding; (or)
- (b) Management rights; (or)
- (c) Shareholders agreements; (or)
- (d) Voting agreements; (or)
- (e) Any other manner as per the applicable laws.

(e) **"Indian Ownership"** of a Pension Fund means more than fifty per cent of the equity capital in such Pension Fund is beneficially owned by resident Indian citizens or Indian companies, which are owned and controlled by resident Indian citizens.

6. **Methodology for calculating total foreign investment in Pension Funds:**

Both direct and indirect foreign investment would be considered for calculating the total foreign investment in Pension Funds irrespective of whether the direct and the indirect investments in Pension Fund are both by the same foreign investors or otherwise so as to ensure that the total foreign holding, whether direct or indirect, remains capped at 49%.

For the purposes of Section 24 of the PFRDA Act 2013, and PFRDA (Pension Fund) Regulations 2015 and subsequent amendments thereto, the calculation of the holding of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees or by an individual or by an association of persons whether registered or not under any law of a country outside India in the Pension Fund, shall be made as under and shall be aggregate of:-

- (i) the quantum of paid up equity share capital held by the foreign investors including foreign venture capital investors, in the Pension Fund; and
- (ii) the proportion of the paid up equity share capital held or controlled by foreign investor(s) either by itself or through its subsidiary companies in the sponsor of Pension Fund or Indian investor(s),

Provided that Clause (ii) shall not be applicable to Pension Fund whose sponsor(s) is/are-

(a) a banking company as defined in Sub-section(c) of Section 5 of the Banking Regulations Act, 1949, but does not include a foreign bank or branch thereof functioning in India; or

(b) a public financial institution as defined in Section 2(72) of the Companies Act, 2013 (18 of 2013).

The illustrative examples of calculation of the foreign investment are provided under **Annexure I**.

7. Every Pension Fund registered under PFRDA (Pension Fund) Regulations, 2015 shall comply with 'Indian Control' and 'Indian Ownership' as defined in these guidelines and further the Pension Fund shall ensure the following:

- (i) Majority of the directors excluding independent directors should be nominated by the Indian sponsor(s)/ Indian investor(s) of such Pension Fund;
- (ii) Appointment of key management person including Chief Executive Officer/Managing Director /Principal Officer should be through the Board of Directors or by the Indian sponsor(s) and / or Indian investor(s) of such Pension Fund;

However, Key Management Person(s), excluding CEO, may be nominated by the foreign investor provided that the appointment of such Key Management Person is approved by the Board of Directors, wherein majority of the directors excluding independent directors are the nominees of Indian sponsor(s)/ Indian investor(s) of such Pension Fund.

(iii) The control over significant policies of the Pension Fund should be exercised by the Board of such Pension Fund, provided that the constitution of the Board is compliant with para (i) above.

(iv) Where the Chairman of the Board is having a casting vote, such Chairman should be nominated by the Indian sponsor(s) and / or Indian investor(s) of such Pension Fund.

(v) Quorum: Quorum shall mean and include presence of majority of the Indian directors irrespective of whether a foreign investor's nominee is present or not. The right of a foreign investor's nominee to constitute valid quorum for meetings is only a protective right and to that extent would not amount to control as long as the presence of nominees of Indian sponsor(s) / Indian investor(s) of such Pension Fund are also mandatorily taken into account for the purposes of quorum.

Provided that the provisions of Companies Act, 2013 shall come into force in case of an adjournment.

8. The Pension Fund shall comply with the requirement of aggregate holding of equity shares by a foreign company as provided under Section 24 of the PFRDA Act, 2013 and these guidelines in the following manner:

(i) An undertaking to this effect shall be filed by all Pension Funds duly signed by the Chief Executive Officer and Chief Compliance Officer of such fund, confirming the compliance of Section 24 of PFRDA Act, 2013 and these guidelines.

(ii) Every undertaking shall be accompanied by-

a) A certified copy of resolution passed by the Board of Directors confirming the compliance of "Indian owned and controlled";

b) Where applicable, certified copy of the Agreement / Joint Venture Agreement, where amendments have been carried out to these Agreements / Joint Venture Agreements to give effect to the provisions contained in these guidelines.

The above undertakings shall be submitted by the Pension Funds to the Authority at the time of registration and thereafter at the end of the second and fourth quarter of each financial year as per the formats specified by the Authority.

9. Every Pension Fund, which has been granted registration under the PFRDA Act 2013, shall, within 15 days of occurrence of such change, furnish to the Authority a statement indicating changes exceeding 1% of the paid up capital of the sponsor or of the Pension Fund. However, in case of any proposed change in excess of 5% of the paid up capital of the sponsor or the Pension Fund, prior approval of the Authority shall be taken.

10. Any increase of foreign investment in a Pension Fund shall be to the extent allowed under PFRDA Act, 2013 and in accordance with the guidelines/Regulations specified by Reserve Bank of India under the FEMA for the purpose.
11. These guidelines shall be effective from the date of issuance. However, all the existing sponsors/Pension Funds shall be required to report compliance of these guidelines within six months post their selection as Pension Fund based on the fresh RFP process initiated by the Authority or as may be decided by the Board, failing which their Certificate of Registration, shall be liable to be suspended. A further extension of three months may be given by Authority upon a specific request from the sponsor/Pension Fund, for the reasons beyond the control of the sponsors/Pension Funds.
12. These guidelines are liable to be governed in accordance with the overall FDI Policy issued by the Central Government and/or law in place in the country on this matter.
13. These guidelines are only in respect of foreign investment permissible under the PFRDA Act, 2013 and not in respect of other restrictions, if any, applicable on sponsor(s) in terms of any other enactment.
14. Interpretation: The interpretation of these guideline as made by the Authority, shall be final and binding on all applicants / Pension Funds and their sponsors. Only Courts at New Delhi (with exclusion of all other Courts) shall have the jurisdiction to decide or adjudicate on any matter or dispute which may arise in connection with the above.

Yours sincerely,



A. G. Das  
Executive Director



## Annexure I

### **Example 1 (Where sponsors are other than Banking companies/Public Financial Institutions):**

In Pension Fund- 'A' Pension Management Co. Ltd., X Co. Ltd. is the sponsor with the following shareholding:

#### **Shareholding pattern of 'A' Pension Management Co. Ltd. (Pension Fund) (including name of shareholders):-**

| Name of Shareholder   | % of Holding |
|-----------------------|--------------|
| X Co. Ltd. (Domestic) | 99.9995      |
| Mr. B (Nominee)       | 0.0001       |
| Mr. C (Nominee)       | 0.0001       |
| Ms. D (Nominee)       | 0.0001       |
| Ms. E (Nominee)       | 0.0001       |
| Mr. F (Nominee)       | 0.0001       |
| Total                 | 100.00       |

#### **Shareholding pattern of X Co. Ltd. (Sponsor) (including name of shareholders):-**

| Name of Shareholder  | % of Holding | Remarks   |
|--|--------------|---|
| Y Co. Ltd. (Domestic)  | 55.00        | (61% of it is held by foreign investors as detailed in below table) |
| Promoter (Foreign)   | 25.00        | Total foreign holding in X Co. Ltd. is 45%                          |
| Public (Foreign- Foreign Portfolio Investors/Foreign Bodies/Non-resident Indians/NRI-Non Repatriation)             | 10.00        |   |
| Others (To be clearly specified whether domestic or foreign)<br>In this case we presume that it is foreign holding | 10.00        |   |
| Total  | 100.00       |   |

#### **Shareholding pattern of Y Co. Ltd. (Promotor of Sponsor) (including name of shareholders):-**

| Name of Shareholder  | % of Holding |
|----------------------|--------------|
| Promoters (Domestic) | 39.00        |
| Promoter (Foreign)   | 61.00        |
| Total                | 100.00       |

**Calculation of total foreign investment in 'A' Pension Management Co. Ltd. - Pension Fund (Both direct and indirect)**

**Direct FI:-** Nil

**Indirect FI:-**

Through X Co. Ltd.: Foreign holding= 99.9995 X 45% = 44.99%

Through Y Co. Ltd.: Foreign holding= 55 X 61% = 33.55%

**Total Direct and Indirect Foreign Investment in 'A' Pension Management Co. Ltd.: 44.99 + 33.55 = 78.54%**

**That means the 'A' Pension Management Co. Ltd. does not meet the foreign investment qualification criteria.**

**Example 2 (Where sponsor is a Banking company/Public Financial Institution):**

In Pension Fund- 'A' Pension Management Co. Ltd., X Bank Ltd. and Y Co. Ltd. are the sponsors with the following shareholding:

**Shareholding pattern of 'A' Pension Management Co. Ltd. (Pension Fund) (including name of shareholders):-**

| Name of Shareholder                       | % of Holding | Remarks                                   |
|---|--------------|---|
| X Bank Ltd. (Domestic) – Sponsor 1        | 76.9997      |   |
| Y Co. Ltd. (Foreign Investor) – Sponsor 2 | 23.00        | Direct foreign investment in Pension Fund |
| Mr. B (Nominee)                           | 0.0001       |   |
| Mr. C (Nominee)                           | 0.0001       |   |
| Ms. D (Nominee)                           | 0.0001       |   |
| Total                                     | 100.00       |   |

**Shareholding pattern of X Bank Ltd. (Sponsor 1) (including name of shareholders):-**

| Name of Shareholder  | % of Holding | Remarks   |
|--|--------------|---|
| Z Co. Ltd. (Domestic)  | 51.00        | (16% of it is held by foreign investors as detailed in below table) |
| Promoter (Foreign)   | 44.00        | Total foreign holding in X Bank Ltd. is 49%                         |
| Public (Foreign- Foreign Portfolio Investors/Foreign Bodies/Non-resident Indians/NRI-Non Repatriation)             | 03.00        |   |
| Others (To be clearly specified whether domestic or foreign)<br>In this case we presume that it is foreign holding | 02.00        |   |
| Total  | 100.00       |   |

**Shareholding pattern of Z Co. Ltd. (Promotor of Sponsor 1) (including name of shareholders):-**

| Name of Shareholder  | % of Holding                |
|----------------------|-----------------------------|
| Promoters (Domestic) | 74.00 (No foreign holdings) |
| Promoter (Foreign)   | 16.00                       |
| Others (Domestic)    | 10.00                       |
| Total                | 100.00                      |

**Calculation of total foreign investment in 'A' Pension Management Co. Ltd. - Pension Fund (Both direct and indirect)****Direct FI:-**

Through Y Co. Ltd. (Sponsor 2): 23.00%

**Indirect FI:-**

Through X Bank Ltd. (Sponsor 1) : Foreign holding= 76.9997 X 49% = 37.72%

And 51 X 16% = 8.16% (Foreign holding in Z Co. Ltd.)

Total Indirect FI is 45.88%

**Total Direct and Indirect Foreign Investment in 'A' Pension Management Co. Ltd.: 23.00 + 45.88 = 68.88%**

However, indirect foreign shareholding need not be included for calculation Foreign Investment in Pension Fund due to carve out available to Banking Companies/Public Financial Institutions in terms of Clause 6(ii) of the above guidelines.

**Accordingly, the same would be construed as compliant with the guidelines.**