SOVEREIGN WEALTH FUNDS IN INDIA AND OPPORTUNITIES FOR ANDERSEN NETWORK

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I. INTRODUCTION:

SWFs are investment fund engines owned by the Government to achieve pre-determined objectives of the Government. The Government invests through SWFs, *inter-alia*, to diversify their assets, to secure better gains on their investment, to tap into new jurisdictions, to promote industrialization, etc. The SWFs investment activities have grown substantially with SWFs having over USD 11.5 trillion in AUM as of February, 2023[1]. In the first 2 (two) decades of the 21st century, the number of SWFs has jumped fivefold from 20 to more than 100 active SWFs[2]. Over the past decade, the investments by SWFs have increased in the Asian markets owing to wide range of opportunities in the emerging and developing markets. In India as well, the growth of SWFs investments have been exceptional with SWFs increasing their direct investments in India at USD 6.712 billion in 2022 versus USD 3.797 Billion in 2021[3]. By analysing multiple resources and databases, this paper seeks to give an overview of SWFs, their evolution, investment activities and their regulatory framework in India.

II. THE CONCEPT OF SWFs:

SWFs denote investment funds or entities that are owned by the Government. The major sources to establish SWFs are out of balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, fiscal surpluses, and/or receipts resulting from commodity exports.

III. SWFs VIS-À-VIS PFs[4]:

PFs could be defined as funds set up by Governments or social security institutions with the objective of contributing to financing the relevant pay-as-you-go pension plans.

There are 2 (two) such types of funds:

(a) those set up and owned directly by Government (Sovereign Pension Reserve Funds, or SPRFs) where inflows are mainly from direct fiscal transfers from the Government; and
(b) those belonging to the social security system where the inflows are mainly surpluses of employee and/or employer contributions.

SPRFs may be considered a type of SWF with an exclusive mandate to finance future public pension expenditures. Examples include the Australian Future Fund, the New Zealand Superannuation Fund, the Norwegian Government Pension Fund, and the French Fonds de Réserve pour Les Retraites.

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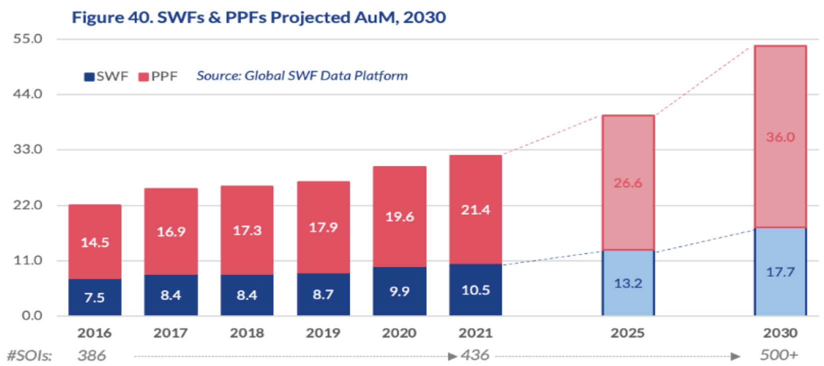
[1] Megginson, W.L., Malik, A.I. & Zhou, X.Y., SWFs in the post-pandemic era. J Int Bus Policy 6, 253–275 (2023), https://doi.org/10.1057/s42214-023-00155-2

[2] The rise of the Sovereign Wealth Fund, https://www.top1000funds.com/2020/03/the-rise-of-the-sovereign-wealth-fund/

[3] Direct Investments: Sovereign Wealth Funds Double Down in India in 2022, https://www.swfinstitute.org/news/95321/direct-investments-sovereign-wealth-funds-double-down-in-india-in-2022

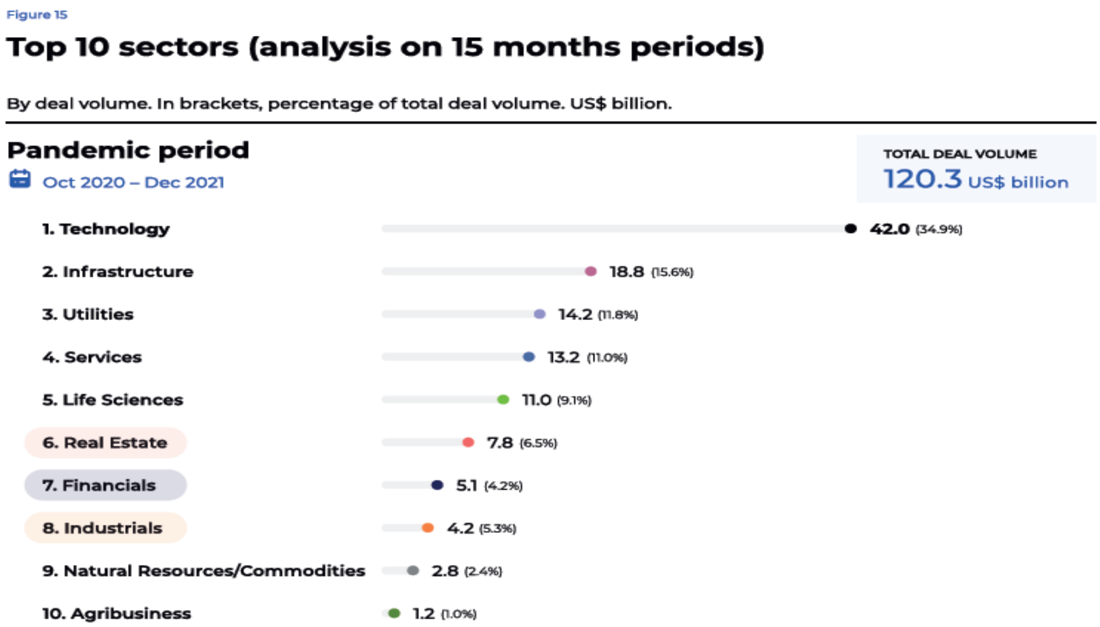
[4] Sovereign Wealth and Pension Fund Issues, Adrian Blundell-Wignall, Yu-Wei Hu and Juan Yermo, OECD 2008.

IV. GLOBAL SCENARIO OF GROWTH:

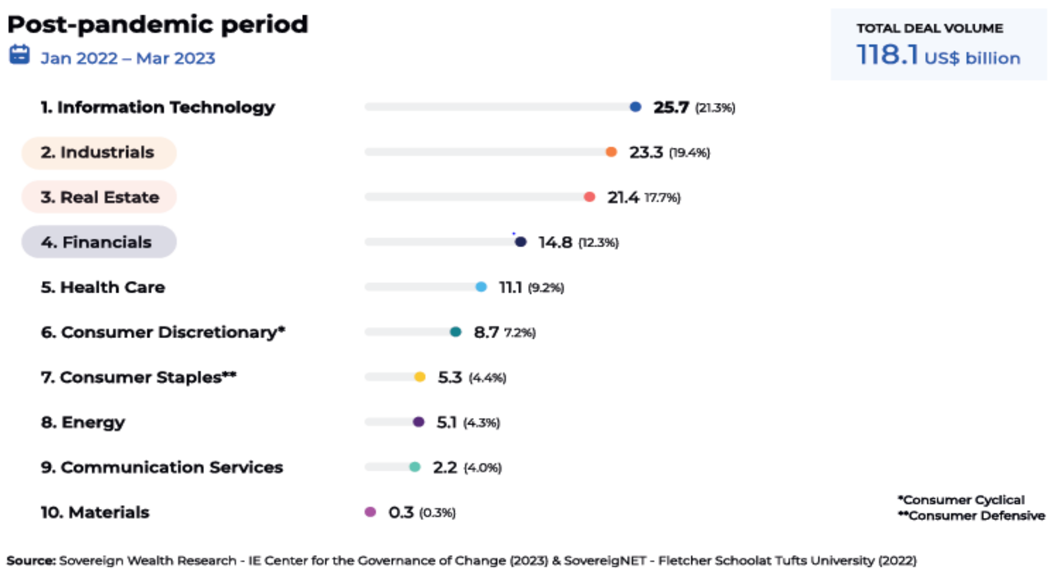


* *AUM (In trillion USD)*

- Basis the above data, it is observed that the AUM of the Global SWFs and PFs has continuously shown a rising trend, despite the geopolitical issues, Covid-19 pandemic and other macro-economic challenges. It is projected that the total AUM of SWFs would be as much as USD 17.7 trillion by the year 2030.
- Technology (2021), Infrastructure (2022) and Healthcare (2023) have been classified as '*industry*' of the year by the Global SWFs Reports published every year.
- China and India have been classified as regions of the year wherein India has received more than USD 50 billion in investment from SWFs since 2015, of which a 1/5th (one-fifth) has been devoted to infrastructure[5].



[5] Global SWF Report – 2021 (https://globalswf.com/reports/2021annual)



[6]

- An analysis of the above would indicate that the SWFs majorly invested in technology (*approx. 34.9%)* and infrastructure (*approx. 15.6%)* during the pandemic period.
- In post pandemic period, that is, during the period between January, 2022 to March, 2023, as the industrial activity started in full phase, the share of investments in sectors such as industrials, real estate and the financial sectors increased considerably.
- Further, it can be seen that the investments in the healthcare sector post pandemic saw a robust growth. It gained an approximate share of 9.2%, whereby an amount of USD 11.1 Billion were invested by the SWFs.

V. THE INDIAN SCENARIO OF GROWTH:

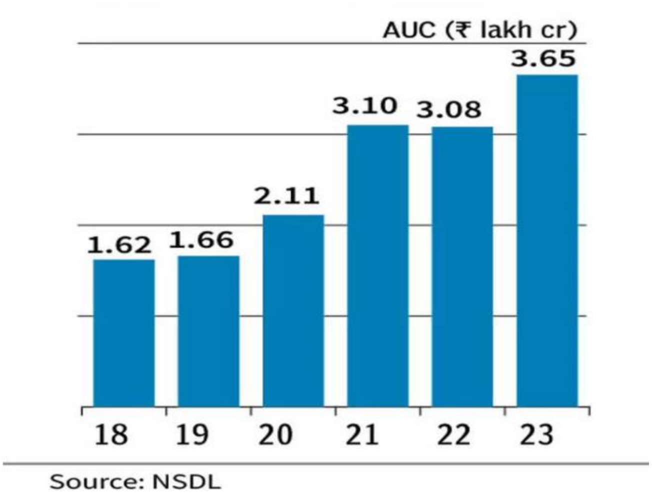
- The GDP of India has been growing consistently making it one of the fastest-growing major economies in the world with 6.3% of the growth rate being projected by the International Monetary Fund for the year 2023[7].

- India's highly skilled workforce, strong demographics, large pool of educated and trained professionals, has propelled foreign companies to invest in India and also to play a strategic role by opening offices and driving research and development from India.

- The current global economic turmoil on account of rising interest rates, wars and sanctions imposed by various countries on each other, it is likely that India would be one of the preferred option for investment.

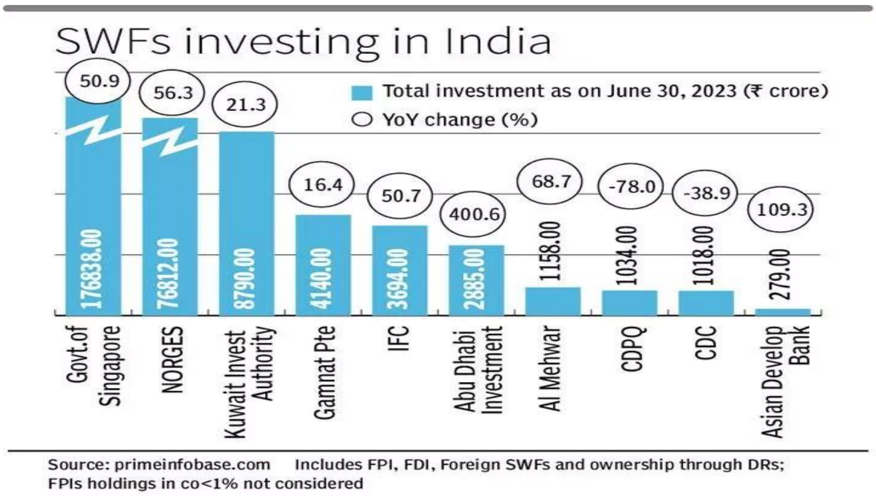
[6]Global SWF Report – 2023 (https://globalswf.com/reports/2023annual#industry-of-the-year-8)
[7] https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/IND?zoom=IND&highlight=IND

A. *A trend of Increasing Investments by SWFs in India:*



- The above data indicates that the SWFs have invested an amount of INR 3.65 trillion in India as on August, 2023 through the FPI Route. The investment has almost grown by an exponential rate of 25% (*year-on-year basis*). Despite the Covid-19 pandemic affecting the world economies during the FY 2021-22, the investment by SWFs in India has doubled in 2023 compared to 2019. These trends could be backed by India's large domestic demand, young talented population, infrastructure growth and country wide digitalization.

B. *SWFs investing in India*



- The total assets of 6 of the top 10 SWFs investing in Indian equities rose by more than 50% compared to previous year.
- The GIC was the largest SWF, with investments of INR 1.76 trillion at the end of June, 2023, followed by Norway's Norges (INR 0.7 trillion) and Kuwait Investment Authority (INR 0.8 trillion).
- Investments from ADIA rose 400% to INR 2.8 billion, the maximum change in percentage terms amongst the top 10 (ten) SWFs.

C. *Image of India as a preferred investment destination*[8]

- Viewed increasingly positively for its improved business and political stability, favourable demographics, regulatory initiatives, and a friendly environment for sovereign investors, India has now overtaken China as the most attractive emerging market for investing in emerging market debt.

- India is among a number of countries, including Mexico and Brazil, that are benefitting from increased foreign corporate investment aimed at both domestic and international demand through "friend-shoring" and "near-shoring".

VI. INVESTMENT BY MAJOR SWFs/PFs IN INDIA:

A. NORGES:

- This fund has invested about INR 0.7 trillion in India as on June 2023. The Investment by this fund has grown by 56.3% Year to Year as on June 2023[9].

- Following are the top 10 investments made by the Norges in India, as of December 31, 2022[10]:

Sr. No.	Company	Investment Amount as on 31.12.2022 (In Million USD)
1.	Reliance Industries Ltd.	1296.93
2.	Infosys Ltd.	1213.83
3.	Axis Bank Ltd.	1174.53
4.	Varun Beverages Ltd.	979.90
5.	Housing Development Finance Corp Ltd.	936.26
6.	ICICI Bank Ltd.	637.52
7.	Bharti Airtel Ltd.	576.73
8.	Cipla Ltd.	531.67
9.	Mahindra & Mahindra Ltd.	505.60
10.	Grasim Industries Ltd.	504.65

- The above data shows, that this fund has majorly invested in the finance sector in India. Further there have been investments in the consumer sector and the IT sector as well.

B. *Singapore's GIC and Temasek:*

Singapore's GIC and Temasek are gradually ramping up their investments in India and is set to grow its technology portfolio in the country due its growing importance as an innovation hub. Major recent investments by the said SWFs are as follows:

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[8] https://globalswf.com/reports/2023annual
[9] https://www.primeinfobase.com/index.aspx?ReturnUrl=%2f
[10] https://www.nbim.no/en/the-fund/investments/#/2022/investments/equities

- ***Singapore GIC***:

1. In October 2023, Vedanta Group's Sterlite Power Transmission Limited has joined hands with GIC, to create a USD 1 billion joint venture platform to encash the renewable energy boom in the country. GIC will put up USD 500 million in the infrastructure business for a 49% stake. (However, this investment will depend on Sterlite Power winning project tenders)[11].

2. In May 2023, GIC announced that together with Brookfield India REIT that they will acquire 2 large commercial assets (totalling 6.5 million square feet) from Brookfield Asset Management's private real estate funds in an equal partnership. The acquisition includes commercial properties in Brookfield's downtown Powai, Mumbai and Candor TechSpace, Sector 48, Gurugram (G1), for a combined enterprise value of USD 1.4 Billion. This marks the first-of-its-kind partnership in India between a listed REIT and a global institutional investor[12].

3. GIC joined a syndicate of investors to acquire KKR's equity share of Max Healthcare Institute, a deal valued at USD 1.1 billion[13].

- ***Temasek Holdings***:

4. Temasek has acquired India's leading hospital chain Manipal Health Enterprises by owning about 59% stake. Temasek-owned Sheares Health, which held 18% stake in Manipal, has acquired an additional 41% stake from the promoters and existing investors for INR 290 billion (USD 3.6 billion)[14].

5. Temasek is looking to invest as much as USD 9-10 billion in India over the next 3 years as it is seeing more opportunities to deploy larger sums of capital in the Indian economy[15].

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[11] Vedanta's Sterlite Power Transmission ties up Singapore's GIC for $1-bn joint venture, Business Today https://www.businesstoday.in/latest/corporate/story/vedantas-sterlite-power-transmission-ties-up-singapores-gic for-1-bn-joint-venture-403141-2023-10-25

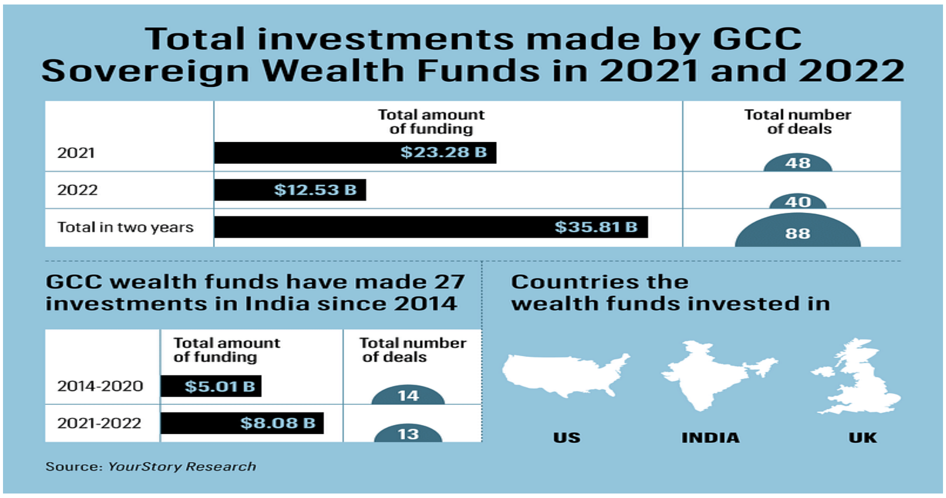
[12] Brookfield India REIT, GIC form partnership to acquire 2 assets in India, the Economic Times, https://economictimes.indiatimes.com/industry/services/property-/-cstruction/brookfield-india-reit-gic-form partnership-to-acquire-2-assets-in-india/articleshow/100344468.cms

[13] GIC, Capital Group buy KKR's entire stake in Max Health; stock surges 10%, Business Standard, https://www.business-standard.com/article/markets/max-health-stock-surges-12-as-gic-capital-group-buy-kkr-s-entire-stake-122081600807_1.html

[14] Singapore's Temasek buys majority stake in Manipal Hospitals for USD 2 Billion, https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/temasek-buys-majority-stake-in-manipal-hospitals/articleshow/99313658.cms

[15] Economic Times, https://economictimes.indiatimes.com/news/company/corporate-trends/temasek-eyes-up-to-10-bn-investment-in-india-over-three-years/articleshow/101826287.cms

C. *Gulf based SWFs in India*



Gulf SWFs have been very active in the Asian markets wherein India has emerged as an investment stronghold for such Gulf funds. Following are some of the major investments by Gulf Countries in Indian markets:

- The QIA has purchased around 1% stake in Reliance Retail Ventures Limited (RRVL) for a purchase consideration of INR 82.8 billion, in the latest sign of Gulf investors' deepening exposure to India's fast-growing economy[16].

- In the housing sector, the wholly-owned subsidiary of ADIA took a 20 percent stake in IIFL Home Finance in June, 2022 for about USD 22 billion[17].

- In August 2022, ADIA acquired a stake of 9.99% at INR 66.5 billion in Aditya Birla Health Insurance Company Limited[18].

- Lupa Systems and Uday Shankar have entered into a strategic partnership to form "Bodhi Tree", an investment platform that will be financially supported by QIA and focusing on media and consumer technology opportunities in Southeast Asia, with a particular focus on India; QIA decided to commit up to USD 1.5 billion to the venture and its opportunities[19].

[16] Reliance Retail receives INR 8,278 crores from Qatar Investment Authority, allots 6.86 crore shares, Economic Times, https://economictimes.indiatimes.com/markets/stocks/news/reliance-retail-receives-rs-8278-cr-from-qatar-investment-authority-allots-6-86-crore-shares/articleshow/103440711.cms

[17] Uncovering the attraction: Why sovereign funds are flocking to India, Financial Express, https://www.financialexpress.com/market/cafeinvest-uncovering-the-attraction-why-sovereign-funds areflocking-to-india-3075259/

[18] https://www.fortuneindia.com/enterprise/adia-buys-999-stake-in-aditya-birla-health-insurance-for-665 cr/109283#:~:text=Abu%20Dhabi%20Investment%20Authority%20(ADIA,company%20at%20%E2%82%B96%2C650%20crore.

[19] QIA gives financial backing to Bodhi Tree investment platform - A strategic partnership of Lupa Systems and Uday Shankar, QIA, https://www.qia.qa/en/Newsroom/Pages/QIA-GIVES-FINANCIAL-BACKING-TO-BODHI-TREE-INVESTMENT-PLATFORM---A-STRATEGIC-PARTNERSHIP-OF-LUPA-SYSTEMS-AND-UDAY-SHANKAR.aspx

- ADIA bought 1.16% stake in Jio Platforms for INR 56.8 billion[20].
- Mubadala, together with BlackRock, invested close to INR 40 billion for a 10.53% stake in Tata Power Renewable Energy[21].

VII. THE INDIAN SWF - NIIF:

- Recently, India also established its own SWF - the NIIF. NIIF is a non-commodity strategic SWF. It is different from conventional SWFs in 2 (two) key ways. First, it is not 100% owned by the Government of India, that is, the Government of India holds a minority stake at 49% and 51% is funded by big domestic or foreign financial institutions. Second, unlike other SWFs which invest both domestically and abroad, NIIF exclusively invests in India in sectors of strategic importance for the economy[22].

- As per the data available on the website of NIIF in October 2023, it manages a corpus of USD 4.9 billion[23]. Various SWFs/ Provident Funds like the ADIA, Canadian Pension Plan Investment Board, Temasek have invested in NIIF. Recently, the NIIF has entered into a collaboration with Japan Bank for International Cooperation (JBIC) to unveil a USD 600 Million India-Japan Fund[24]. The fund will have JBIC and Government of India as anchor investors. Further NIIF also forged a partnership with DP World (an Emirati multinational Logistics Company based in Dubai), acquiring a 22.5% stake in Hindustan Ports Private Ltd (HPPL) by investing primary capital of INR 22.5 billion, as part of its objective to invest in ports, terminals, and logistics businesses in India[25]. HPPL operates five terminals across the country representing a 20% market share.

VIII. REGULATORY FRAMEWORK:

- **Foreign exchange laws**:

FEMA, regulates the foreign exchange in India with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Any investments made by any person resident outside India have to comply with the provisions of FEMA read with the rules/ regulations/ directions made thereunder including the NDI Rules and the Consolidated FDI Policy (2020) ("**FDI Norms**").

Investments in an Indian entity can be broadly divided into 3 (three) categories:

a) FDI;
b) FPI;

[20]ADIA-JIO deal | Another sovereign fund bets on the proxy for the Indian digital economy, Money Control, https://www.moneycontrol.com/news/business/moneycontrol-research/adia-jio-deal-another-sovereign-fundbets-on-the-proxy-for-the-indian-digital-economy-5371961.html
[21]BlackRock, Mubadala invest in Tata's green energy unit, Livemint https://www.livemint.com/industry/energy/blackrock-and-mubadala-to-invest-525-million-for-10-53-stake-in-tata-power-renewables-new-platform-11649944166352.html
[22] https://www.niifindia.in/uploads/NIIF%20Factsheet_April%202021[33].pdf
[23] https://www.niifindia.in/about
[24] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1963922
[25]https://www.dpworld.com/news/releases/dp-world-niif-announce-partnership-in-India

c) FVCI

***"FDI*"** means investment through equity instruments by a person resident outside India in (i) an unlisted Indian company; or (ii) in 10 per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company[26].

"***FPI***" means any investment made by a person resident outside India through equity instruments where such investment is less than 10 percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than 10 percent of the paid-up value of each series of equity instrument of a listed Indian company[27].

"***FVCI***" means a foreign venture capital investor incorporated and established outside India and registered with the SEBI under the FVCI Regulations[28]. Schedule VII of the NDI Rules also prescribes the investment criteria's for an FVCI, *inter-alia*, specifying the list of sectors in which the FVCI is allowed to invest in that is, bio-technology, nanotechnology, IT related to hardware and software, diary and poultry industry, etc.

Any FDI or FPI by a SWF in an Indian entity will have to, *inter-alia*, comply with the entry routes, sectoral caps, pricing guidelines and other attendant conditions. An FVCI is required to comply with the sectoral caps, entry routes and attendant conditions, however, the pricing norms have been eased as FVCI can invest based on a price that is mutually acceptable to the buyer and the seller/ issuer.

A. Entry Routes[29]:

Foreign investment is freely permitted in almost all sectors. Under the FDI Norms, the investments can be made by non-residents in the equity shares; fully, compulsorily and mandatorily convertible debentures; or fully, compulsorily and mandatorily convertible preference shares, partly paid equity shares and warrants of an Indian company, through 2 (two) routes:

"**Automatic Route**" means the entry route through which investment by a person resident outside India does not require the prior approval of the RBI or the Central Government.

"**Government Route**" means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

B. Sectoral caps and conditions[30]:

The FDI Norms prescribe industry specific caps on investments that can be made in an Indian entity. The total foreign investment cannot exceed the sectoral or statutory cap. For *illustration*, 100% foreign investment under 'automatic route' is permitted in '*manufacturing*' industry, whereas, 74% foreign investment is permitted in '*banking-*

26 Rule 2(r) of NDI Rules
27 Rule 2(t) of NDI Rules
28 Rule 2 (n) of NDI Rules
29 Paragraph 3 (b) of Schedule I of NDI Rules
30 https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf

private sector' out of which is 49% is permitted under the 'automatic route' and beyond 49% and up to 74% is permitted under the 'Government route' for the said sector.

C. Pricing guidelines[31]:

The FDI Norms prescribe for pricing guidelines for issuances of equity instruments to a person resident outside India and transfer of equity instruments from person resident outside India to person resident in India, and vice versa. Accordingly, the price of equity instrument issued or transferred has to comply with the pricing norms/ guidelines as far as any issue/ transfer concerns a person resident outside India.

D. Additional caps for FPIs[32]**:**

- **Individual limit**:

FPIs can purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange up to a maximum holding by each FPI or an investor group of less than 10% of the total paid-up equity capital of the company on a fully diluted basis or less than 10% of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company.

- **Aggregate limit**:

With effect from April 1, 2020, the aggregate limit for investment by FPIs shall be the sectoral caps applicable to the Indian company as laid out under the NDI Rules, with respect to its paid-up equity capital on a fully diluted basis.

In any case, the aggregate limit with respect to an Indian company in a sector where FDI is prohibited shall be 24%.

- **Investor Group criteria**

In case, 2 (two) or more FPIs including foreign Governments/ their related entities are having common ownership, directly or indirectly, of more than 50% or common control[33], all such FPIs shall be treated as forming part of an investor group.

➢ **SEBI norms and registration requirements for FPI:**

FPI Regulations:

SEBI had promulgated the FPI Regulations in 2019 in order to improve the regulatory framework for FPIs including to ease registration requirements, relax eligibility conditions and revise categorization of FPIs, etc.

[31] Rule 21 of NDI Rules
[32] Schedule 10 of NDI Rules
[33] ***Control*** *includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.*

Prior registration with SEBI:

It is prescribed that no person shall buy, sell or otherwise deal in securities as a FPI unless it has obtained a certificate granted by a designated depository participant on behalf of the SEBI[34]. The registration can only be granted if the applicant fulfils the required eligibility conditions prescribed under the FPI Regulations[35] which *inter-alia,* includes applicant being a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commissions (IOSCO) or a signatory to the bilateral Memorandum of Understanding (MOU) with the SEBI, applicant or its specified underlying investors[36]shall not be the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as having deficiencies[37].

As far as eligibility conditions for Government or Government related investors are concerned, it is provided that such applicants shall be considered as eligible for registration, if such applicants are a resident in the country as may be approved by the Government of India[38].

Categories of FPIs:

An applicant seeking registration as a FPI may apply in one of the categories specified by SEBI. Currently, there are 2 (two) categories of FPIs:

(a) **Category I FPI -** which includes Government and Government related investors such as central banks, SWFs, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s), pension funds and university funds and others as specified; and

(b) **Category II FPI –** which shall include all the investors not eligible under Category I FPI such as endowments and foundations, charitable organisations, corporate bodies and others as specified.

SWFs can be categorized as Category-I FPIs as per the FPI Regulations.

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[34] Regulation 3 (1) of FPI Regulations.
[35] Regulation 4 of the FPI Regulations.
[36] Underlying investors contributing more than the threshold prescribed under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (that is, in the corpus of the applicant or identified on the basis of control [***Note***: *The threshold prescribed under the said rules is: ownership of or entitlement to more than 10% of shares or capital or profits of the company*.]

[37] *Applicant should not be a resident in the country identified in the public statement of Financial Action Task Force as –*

(a) *a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or*

(b) *a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.*

(c)

[38] Proviso to Regulation 4 (d) of the FPI Regulations.

Investment conditions and restrictions[39]:

It is prescribed that no FPI shall make any investment in securities in India without complying with the norms for investment conditions and restrictions prescribed under the FPI Regulations. The provisions, *inter-alia*, enumerate that a FPI shall transact in the securities in India only on the basis of taking and giving delivery of securities purchased or sold, except for certain identified list of transactions, and that any transaction by FPI involving dealing in securities by FPI shall be only through stock brokers registered with the SEBI, except for certain identified list of transactions.

- **<u>IT Act</u>**

Given the rise of SWFs in India, Government of India *vide* the Finance Act, 2020, introduced Section 10(23FE) in the IT Act, with the intent to promote investments of SWFs in India. It provides exemption to any income of a specified person in the nature of dividend, interest, long-term capital gains arising from an investment made by it in India, whether in the form of debt or equity, provided prescribed conditions are fulfilled.

Since the Finance Act 2020, 14 SWFs and 21 PFs have been notified under Section 10(23FE) indicating the enthusiastic participation of SWFs / PFs in the Indian investment eco-system[40].

- **<u>Anti-trust aspects</u>**:

The Competition Act aims to prevent anti-competitive practices, promote, and sustain competition, protect the interests of the consumers, and ensure freedom of trade. For this purpose, Competition Act regulates (i) anti-competitive agreements, (ii) abuse of dominant position and (iii) combinations that are likely to have adverse impact on competition in India. Section 5 of the Competition Act deals with the regulations pertaining to combinations, a combination mainly involves:

(a) acquisition of control, shares, voting rights or assets of an enterprise by an acquirer;

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution, or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service;

(c) merger or amalgamation between or amongst enterprises;

(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds INR 20 billion, provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

For a transaction to be classified as a 'combination', it is necessary that the relevant financial thresholds prescribed under the Competition Act for a combination are being met. If such financial thresholds are met and the transaction is a 'combination' in terms of the Competition

[39] Regulation 19 to 21 of the FPI Regulations.
[40] Sovereign Wealth Funds and Pension Funds: Investments into India - Report by Nishith Desai Associates

Act, then subject to any exemptions granted, any person or enterprise, who or which proposes to enter into a combination, shall obtain approval of the CCI.

De-minimis Exemptions to Combination[41]

Enterprises that are party to any form of combination as described above, but, where the value of assets of the acquired/ to be acquired entity or the merged entity is not more than INR 3.5 billion in India or turnover is not more than INR 10 billion in India, are exempted from provisions of Section 5 of the Competition Act.

IX. SWFs AND OPPORTUNITIES FOR ANDERSEN:

SWFs present opportunities for the Andersen network in the following areas:

- **M&A**: Work would range from due diligence, negotiations, documentation, tax advisory and investment structuring, valuation, and compliance. Additionally, the work may also comprise of land transfer, due diligence, registration, and stamp duty. As SWFs are also engaged in debt financing, there may also be opportunities in this area as well.

- **Project Financing**: Work would range from transaction structuring, due diligence, drafting and negotiation of agreements.

- **Disputes**: In a few cases in the past, SWFs have gotten into disputes in India. International arbitration with seat outside India is the most common form of dispute resolution. Bilateral investment treaties with foreign countries offer additional protection through which foreign investors can go against the Indian government to arbitral tribunals under those treaties.

X. SOME THOUGHTS ON GO TO MARKET STRATEGIES THAT CAN BE IMPLEMENTED

- **Understanding SWF Objectives:**

  Understand the specific investment goals and objectives of the SWFs and showcase Andersen's expertise in areas of interest to SWFs, such as international finance, cross-border transactions, regulatory compliance, and investment law.

- **Industry Relationships:**

  Andersen firms with local presence can leverage existing relationships with government bodies that are involved with SWFs.

- **Thought Leadership:**

  Andersen firms can collaborate to produce thought leadership content, including whitepapers, articles, and seminars, on topics of interest to SWFs. This will help establish the Andersen network as a trusted authority in the field.

[41] Notification No. S.O. 998(E) dated March 27, 2017.

- **<u>Networking:</u>**

  Attend industry conferences, seminars, and events where SWFs representatives may be present to build relationships.

- **<u>Global Reach:</u>**

  Highlight Andersen's global reach and ability to navigate international legal frameworks, which is essential for SWFs with diverse investments.

XI. CONCLUSION:

SWFs have now become a vital vehicle of funding for the developed and developing nations which help the Governments of such nations to deploy their surplus reserves in other economies of the world enabling such Governments to diversify their portfolio and investments across the globe and thereby resulting in monetary benefits for the country. Most of the investments by SWFs in India have been made by SWFs based in the Middle East and the nations of the Asia Pacific region having rich foreign exchange reserves, who have been on the lookout for better investment opportunities for their respective national surpluses. The long-term investment goals and the healthy risk appetite of SWFs portray that they intend on cementing their status as reliable pools of foreign capital. Countries like India having a high growth outlook tend to be preferred destinations for the SWFs. Further, India is also an attractive investment destination for SWFs due to its independent judicial system, its current geo-political situation, political stability, and demographic constitution, in addition to the attractive returns that it provides the investors. Participation by SWFs will play a crucial role in helping India to achieve its economic objectives and the Indian regulators will continue to ease the requirements for such SWFs to cater to their needs and create an investor friendly climate for the SWFs. Andersen firms can collaborate to exploit this opportunity.

GLOSSARY OF TERMS:

Abbreviation	Particulars
ADIA	Abu Dhabi Investment Authority
AUM	Assets Under Management
CCI	Competition Commission of India
Competition Act	Competition Act, 2002
FDI	Foreign Direct Investment
FPI	Foreign Portfolio Investor
FEMA	Foreign Exchange Management Act, 1999
FVCI	Foreign Venture Capital Investor
FVCI Regulations	Sebi (Foreign Venture Capital Investors) Regulations, 2000
FY	Financial Year
Government	Government of the relevant country
GDP	Gross Domestic Product
GIC	Government of Singapore Investment Corporation
IFSWF	International Forum of Sovereign Wealth Funds
INR	Indian Rupees
IT Act	Income Tax Act, 1961
M&A	Mergers and Acquisitions
NDI Rules	Foreign Exchange Management (Non-Debt Instruments) Rules, 2019
NIIF	National Investment and Infrastructure Fund
NORGES	Government Pension Fund of Norway
PF	Pension Fund
QIA	Qatar Investment Authority
RBI	Reserve Bank of India
REIT	Real Estate Investment Trust
SEBI	Securities and Exchange Board of India
SWF(s)	Sovereign Wealth Fund(s)
USD	United States Dollar

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