

SEBI releases consultation paper on "Easing of access norms for investments by FPIs"

The Securities and Exchange Board of India (SEBI) overhauled the entry norms for overseas investors by introducing the Foreign Portfolio Investors (FPIs) regime in 2014 and adopting a risk based approach for KYC. Since then, SEBI has constantly endeavored to simplify the entry and investment norms for FPIs.

In order to further ease the access norms for investments by FPIs in Indian securities market, SEBI released a consultation paper¹ yesterday on "Easing of access norms for investment by FPIs" outlining the following proposals:

Eligibility criteria

Expansion of eligible jurisdictions for grant of Category I FPI registration:

Currently, in order to seek FPI registration, the applicant, amongst others, is required to be resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A signatories) or a signatory to bilateral Memorandum of Understanding with SEBI.

It is proposed to expand the list of eligible jurisdictions for grant of FPI registration to Category I FPIs by including countries which are compliant with the extant regulatory framework laid down in Foreign Exchange Management Act and has formal diplomatic ties with India. List of such countries will be notified by SEBI in consultation with the Government of India.

Rationalization of "fit and proper" criteria:

Currently, the FPI applicant, in addition to satisfaction of "fit and proper" person criteria is also required to satisfy various requirements such as legally permitted to invest outside its home country, should be authorised by its Memorandum of Association/Articles of Association or agreement to invest, has sufficient experience, good track record, is professionally competent, financially sound, has a generally good reputation of fairness and integrity and grant of FPI certificate in the interest of the development of securities market.

It is proposed that Category I and II FPI applicants will have to satisfy only the criteria of "fit and proper person" and not other requirements mentioned above. Category III FPIs shall however, be required to satisfy all the above requirements, including the "fit and proper" person requirement. Further, the criteria of "fit and proper" person shall be added as part of the General Obligations and Responsibilities of FPIs.

Permitting appropriately regulated Private Bank/Merchant Bank to invest on their behalf and also on behalf of their clients:

Currently, Private Banks and Merchant Banks are allowed to undertake only proprietary investments.

It is proposed to allow Private Banks and Merchant Banks to undertake investments on behalf of their clients provided, (1) details of beneficial owners are available and will be provided as and when required by the regulators; and (2) they do not have secrecy arrangements with the investors and secrecy laws do not apply to the jurisdiction in which the bank is regulated.

Expansion of entities considered as "appropriately regulated" persons:

It is proposed to broaden the definition of "appropriately regulated" persons by including broker-dealer, swap dealer, etc. that are regulated by an appropriate regulator. Such entities will be allowed to seek Category II FPI registration if they provide details of beneficial ownership of their clients as and when required by SEBI and/or any other enforcement agencies.

Broad based criteria

- Currently, if the FPI applicant has a bank as an underlying investor, then such applicant is deemed to be broad-based in nature. It is proposed to extend this rationale to other investors such as Sovereign Wealth Fund, Insurance/Re-insurance companies, Pension Funds and Exchange Traded Funds subject to the

condition that these underlying investors either individually or jointly hold majority stake in the FPI at all times.

- It is proposed to grant three months' time to a Fund to regain its broad-based status if it loses such status (and consequently the Category II FPI status) because of exit of some of the offshore global investors in the Fund.
- It is proposed that in case of addition of one or more than one share class which are not broad-based and having a segregated portfolio, an undertaking may be obtained by the Designated Depository Participant (DDP) that all the newly added share classes shall attain broad-based status within 180 days from the date of approval issued by the DDP.
- It is proposed to extend the benefit of conditional Category II FPI registration to existing funds as against only newly established India dedicated funds currently.

Approvals

Discontinuation with the requirement of seeking prior SEBI approval for change in local custodian/DDP and placing reliance on due diligence carried out by erstwhile local custodian/DDP at the time of change of local custodian/DDP:

It is proposed to discontinue with the requirement of seeking prior SEBI approval for change in local custodian/DDP. FPI or its Global custodian will be allowed to place a request for change of local custodian with the new local custodian/DDP. The transferor local custodian/DDP is required to provide a no objection certificate to the transferee local custodian/DDP to facilitate this change. The transferor local custodian/DDP shall also inform the Compliance Officer of the FPI regarding change in their local custodian/DDP if request for such change was received from the Global Custodian. Further, the transferee local custodian/DDP can place reliance on registration granted by the transferor local custodian/DDP.

Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of Free of Cost transfer of assets:

It is proposed to allow DDPs (instead of SEBI currently) to process requests for Free of cost (FOC) transfer of assets submitted by FPIs registered under the MIM structure. For other cases, SEBI shall continue to approve such requests.

Simplification of process for addition of share class:

It is proposed to do away with the requirement of seeking prior approval of DDP for addition of share class if common portfolio is maintained and broad based criteria is fulfilled at the portfolio level. However, prior approval of DDP shall be required for addition or deletion of share classes where segregated portfolio is maintained.

General

- Currently, DDPs are required to ensure that equity shares held by FPIs are free from all encumbrances. It is proposed to provide that this requirement shall not be applicable if the obligation is created to meet statutory and regulatory requirements.
- Currently, FPIs operating under the MIM structure are allowed to appoint only one custodian. It is proposed to allow such FPIs to appoint multiple custodians in case they so require. In any case, the depositories (NSDL and CDSL) are required to monitor the investment limits of the FPIs.
- Currently, FPIs holding Foreign Venture Capital Investor (FVCI) registration are required to have the same custodian. It is proposed to permit different custodians for FPI and FVCI registrations for the same entity. To facilitate proper information flow with respect to such group accounts to NSDL, the FPIs are proposed to be advised to report details of all other FVCI accounts that share 50% or more of common beneficial ownership to DDP at the time of seeking registration.
- It is proposed to do away with the requirement of re-submitting certain declarations and undertaking and information regarding FPI investor groups at the time of payment of registration fee for continuance of registration if there is no change in information previously furnished to the DDP. FPIs in such cases are only required to submit a declaration to the DDP confirming no change in information previously furnished.

The last date for submission of comments on the above proposals to SEBI is 27 July, 2017. Please let us know if you have any comments or suggestions.

If your interest lies in a specific area or subject, do advise us so we can send you only the relevant alerts. For any additional information, please reach out to your PwC relationship manager or write in to **pwctrs.knowledgemanagement@in.pwc.com**

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