

# What's New

## News Flash



September 2018

### **Foreign Portfolio Investment (FPI) - KYC Requirements - Interim Report Recommendations**

SEBI had issued a circular in April 2018, proposing new norms on KYC and Beneficial Owner ('BO') identification. However, several FPIs expressed concerns over the proposed changes in the rules.

SEBI constituted a working group ('the Group') to examine the issues arising out of proposed rules.

It was brought to the notice of the Group that the BO criteria laid down in Rule 9(3) of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ('PMLA Rules') is only for the purpose of KYC and need not apply *mutatis mutandis* as eligibility criteria for FPIs including those having NRIs / OCIs / RIs as their constituents. Further, clubbing of investment limit for FPIs need not be done on the basis of BO as per PMLA Rules. Accordingly, the Group considered separate set of norms for determining the eligibility conditions where NRIs / OCIs / RIs are constituents of FPIs and also the basis for clubbing of investment limits.

Post the wide spread consultations and deliberations, the Group has come up with following recommendations and **invited public comments on the same by September 17, 2018.**

#### **A) Recommendations relating to NRIs / OCIs / RIs**

- NRIs, OCIs and RIs should be allowed to be constituents of FPIs provided the single holding of NRI / OCI / RI is under 25% of the Assets Under Management (AUM) and aggregate holding is under 50% of AUM in a fund
- NRI / OCI / RI should not be in control of an FPI. However, no restriction should be imposed on them to manage non-investing FPIs or SEBI registered offshore funds provided any of the following conditions are satisfied:
  - The Investment Manager ('IM') of the FPI is appropriately regulated in its home jurisdiction and registers itself with SEBI as a non-investing FPI; or
  - The IM is incorporated or set up under the Indian laws; or
  - Where such FPIs are 'offshore funds' as approved by SEBI

Existing FPIs not in conformity with the above requirement may be allowed reasonable time to take appropriate actions to comply with the conditions

Temporary breaches if any due to unavoidable business reasons will need to be rectified within 90 days to comply with the above eligibility conditions. If FPI remains non compliant over 90 days, no fresh purchases may be permitted and may be asked to liquidate its positions in Indian securities market over the next 180 days.

- No restriction on NRI/OCI/RI to be the Senior Managing Official ('SMO') of the FPI
- Current restrictions to be applied upon NRIs and OCIs only and Persons of Indian Origin ('PIO') (without OCI status) should be excluded from the applicability of the April 2018 circular. Since PIO as a concept has been done away with, no restrictions may be placed on the erstwhile PIOs

#### **B) Recommendations relating to clubbing of investment limit**

- BO criteria under PMLA Rules may be made applicable only for the purpose of KYC and not for clubbing of investment limits
- Clubbing of investment limit may be on the basis of common ownership (direct or indirect common shareholding / beneficial interest of more than 50%) or based on common control
- Clubbing of investment limit having common control may not be applicable in any of the following cases:

- FPIs are appropriately regulated public retail funds; or
  - FPIs are appropriately regulated public retail funds majority owned by public retail funds on look through basis; or
  - FPIs are public retail funds and IMs of such FPIs are appropriately regulated
- Public retail funds would generally include (i) mutual funds or unit trusts which are open for subscription to retail investors, (ii) insurance companies and (iii) pension funds.
  - Indian depositories should maintain details of controlling entities for the purpose of monitoring investment concentration.
  - Clubbing of investment limit of FPIs having common control identified on the basis of SMO may not be made applicable.

### **C) Recommendations on identification and verification of Beneficial Owner**

- Government related FPIs (Category I FPIs) are exempt from additional KYC documentation requirements including declaration related to BO and issuance of bearer shares
- An entity would be considered to be a 'foreign government agency' only if more than 75% ownership entitlement and control is held by the Government of a foreign country
- In absence of clear definition, the Group recommended that the term SMO should mean an individual as designated by the FPI who holds a senior management position and makes key decisions relating to the FPI
- SEBI may specifically clarify that exemption in respect of identification and verification of BO is only available to an FPI or its BO, which is a company listed on a stock exchange in certain kinds of jurisdictions and such stock exchange is recognized and supervised by its home regulators
- BO declaration on control basis is not required for a General Partner ('GP') / Limited Partnership ('LP') structure. In case a view is taken it is so required, appropriate changes may be made in KYC requirements

### **D) Other Recommendations**

- SEBI should allow 6 months' time from the date revised circular is published for appropriate compliance with the new requirements
- With respect to non-compliant FPIs, Custodians should not allow the FPI to make fresh purchases till the time the KYC documentations are completed. They will however be allowed to sell their positions
- Non-compliant FPIs would be given 180 days to close their existing positions from the expiry of the timeline. Beyond that period, FPI registration will no longer be valid and it would need to disinvest its holdings immediately
- All new rules will also be applicable to FPI investment through Offshore Derivative Instrument
- Changes have been suggested regarding disclosure of personal information of BO and SEBI may also formulate a suitable policy of sharing of personal information of BOs
- SEBI should also clarify whether details of intermediate entities holding above material threshold are required or not
- SEBI could clarify suitable actions that FPIs need to take for divestment or re-classification of holdings according to FDI limits, after consulting with the RBI
- SEBI to consult the government to evolve a more objective criteria for defining high-risk jurisdictions

Please click [here](#) to access the Interim Report of Working Group on KYC requirements for FPIs.

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\*\*\*](mailto:pwctrs.knowledgemanagement@in.pwc.com)

With Best Regards  
PwC TRS Team

## About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR, Hyderabad, Jamshedpur, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit [www.pwc.com/in](http://www.pwc.com/in). PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

©2018 PwC. All rights reserved

Follow us on [Facebook](#), [Linkedin](#), [Twitter](#) and [YouTube](#).

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity

---

***Our Tax & Regulatory Services*** Direct Tax Indirect Tax Transfer Pricing Regulatory M & A  
Tax Controversy and Dispute Resolution Financial Services

---

NOTE : If you wish to unsubscribe receiving communications, please send in a blank email as reply to this mail with subject line "Unsubscribe".

---