

Know Your Client requirements for Foreign Portfolio Investors

The Securities and Exchange Board of India (SEBI) guidelines provide for risk based Know Your Client (KYC) documentation for Foreign Portfolio Investors (FPIs). SEBI has issued a Circular on April 10, 2018, amending KYC requirements for FPIs. The key takeaways from the SEBI Circular are:

1. Identification and verification of Beneficial owners:

- Beneficial Owner (BO) is the natural person(s) who ultimately owns or controls an FPI. BO should be identified as per Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLA Rules) as follows:
 - For FPIs organised as a company or trust: on the basis of ownership/entitlement interest or control basis
 - For FPIs organised as partnership firm and an unincorporated association of individuals: on the basis of ownership/entitlement basis.
 - The materiality threshold for identification of BOs shall be same as prescribed in PMLA Rules i.e.:
 - 25% in case of companies;
 - 15% in case of partnership firm, trust & unincorporated association of persons;
 - 10% if FPI comes from 'high risk jurisdictions' as referred in SEBI Master Circular No. CIR/ISD/AML/3/2010 dated 31 December 2010. Such FPIs are required to maintain KYC documentation as applicable for Category III FPIs.
- Materiality threshold should be first applied at the FPI level and then look through principle should be applied to identify the BO of the material shareholder of the FPI. Only BO with holdings equal & above the materiality thresholds in the FPI need to be identified through the aforesaid look through principle.
- Where no material shareholder/owner entity is identified in the FPI based on the above principles, BO shall be the senior managing official of the FPI.
- In case of companies/ trusts represented by service providers like lawyers/ accountants, FPIs to provide information of the real owners/ effective controllers of those companies / trusts.
- If the BO exercises controls through means like voting rights, agreements, arrangement etc., that should also be specified.
- BO should not-
 - be a nominee of another person
 - be a person mentioned in the United Nations Security Council's Sanctions list notified from time to time
 - be from the jurisdiction identified in the public statement of Financial Action Task Force (FATF) as :
 - A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF.

2. Format for Reporting of BOs- for Category II and III FPIs

- Category II & III FPIs are required to maintain a list of BOs in the following format:-

Si No.	Name & Address of the Beneficial owner	Date of birth	Tax residency jurisdiction	Nationality	Whether acting alone or together through	BO Group's percentage Shareholding/Capital/ Profit in	Tax Residency Number/Social Security Number/Pas
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	(Natural person)				one or more natural persons as group with their name & address	ownership in the FPIs	port Number of BO (please provide any)
1							
2							

- The list should be certified by an FPI. Existing FPIs are required to provide the list of BOs (in the aforesaid format) within 6 months from the date of this Circular.

3. Indians as BO of FPIs

It is clarified that Non Resident Indians (NRIs) / Overseas Citizen of India (OCI) and Resident Indians cannot be BO of FPIs. However, if the FPI is Category II Investment Manager of other FPIs & is non-investing entity, it may be promoted by NRIs/ OCIs.

Existing FPI structures not in conformity with the above requirements henceforth should not create fresh position at the end of expiry of derivative contract of April 2018. Further, these FPIs are given time of six months from the date of this Circular to change their structure or close their existing position in Indian securities market.

4. Bearer Share Structure

- It should be ensured that:
 - FPIs or investors identified on the basis of threshold for identification of BO in accordance with the PMLA Rules in FPIs have not issued any bearer shares; or
 - If the legal constitution of FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules and/or applicable home jurisdiction regulations permit issue of bearer shares, then FPIs should certify that they have not issued and do not maintain any outstanding bearer shares. Also, FPIs should certify that they will not issue bearer shares.

In case existing FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules do not conform to the above requirements, they shall ensure compliance within six months of the date of this Circular.

5. KYC Reviews:

Currently, FPIs are subject to KYC review as and when there is any change in material information/disclosure.

Going forward, a comprehensive KYC review of FPIs should be done on a periodical basis. The KYC review (including change in BOs /their holdings) should be done as follows:

- High Risk Clients including those coming from high risk jurisdiction - On a yearly basis;
- Others - Once in every three years preferably at the time of continuance of FPI registration.

6. KYC documentation for Category III FPI

Additional clarifications on KYC documentation for Category III FPIs have been provided:

SI No.	Query	Present Status	Reply
1	There is uncertainty around the specific financials required for Category III FPIs. Kindly clarify the specific documents that are acceptable for the financial data and whether there is need for these to be audited.	SEBI has prescribed "Financial Data" as mandatory for Category III FPIs only. During discussions with Designated Depository Participants (DDPs) it is gathered that there is no clarity on nature of financial data needed.	Audited Annual financial statement or a certificate from auditor certifying net worth may be obtained from Category III FPIs. In case of new funds/ companies/ family offices, the audited financial statement of promoter person may be obtained.

2	Whether prospectus and information memorandum are acceptable in lieu of an official constitutional document.	SEBI Circular prescribes the requirement of “Constitutional document” for all category of FPIs.	Yes
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7. Exempted documents to be provided during investigations/enquiry

- Where FPIs have been exempted from furnishing certain KYC related supporting documents, an undertaking is required to be provided by the FPIs to the DDP/ Custodians, that upon demand by Regulators/Law Enforcement agencies, the relevant documents would be provided.
- Category III FPIs are exempted from the submission of proof of address of BOs, senior management & authorised signatories. A declaration on the letterhead is required to be provided by Category III FPIs as they are high risk investors.

Existing FPIs are required to be submit the above documents within 6 months from the date of this Circular.

8. Clubbing of investments limits for FPIs

- Clubbing of investment limit for FPIs should be on the basis of BO identified above. All existing FPIs are required to comply with this Circular within a period of 6 months. In respect of any future breach of clubbing limit there shall be two options:
 - The said investments shall be treated as Foreign Direct Investment from the date of breach, or,
 - FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company

Click [here](#) to access the copy of the SEBI Circular for your ready reference.

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