

SEBI issues Circular providing clarifications in respect of investment by certain Category II FPIs

The Securities and Exchange Board of India (SEBI) had released a circular on 15 February 2018 on 'Easing of Access Norms for investments by Foreign Portfolio Investors (FPIs)'.

In view of queries from stakeholders, the SEBI has now provided clarity with respect to investment by certain Category II FPIs vide circular dated 13 March 2018. The key takeaways from the SEBI circular are:

I. Collective investment vehicles of Private Banks/Merchant Banks investing money on behalf of their clients need to adhere to the following:

- The client/investor should fulfil the know your client (KYC) norms. The beneficial owners (BO) of such clients/investors should be identified in accordance with the Prevention of Money Laundering Rules, 2005.
- The client/investor or their BO should not be Resident Indian/ NRI/ Overseas Citizen of India.
- The client/investor should be a resident in a country that is Financial Action Task Force (FATF) compliant.
- The client/investor should not have 'opaque structure'(s) or Bearer share structure.

'Opaque structure shall mean any structure such as protected cell company, segregated cell company or equivalent, where the details of the ultimate beneficial owners are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement'.

- The collective investment vehicle of the Bank (other than for ODIs) should be broad based and a common portfolio should be maintained for all clients/investors.

PwC comments - It appears that Private Banks/Merchant Banks can register pooled structures where the details of investors are known and which satisfies the requirement of Category II FPIs. Going forward, omnibus structures will be possible but one to one linkage to the end clients/investors may still not be permitted.

II. Insurance/ reinsurance companies to maintain undivided common portfolio

Presently, appropriately regulated broad based insurance/reinsurance companies are investing proprietary funds and for unit linked/ investment products. In this regard, it is clarified that investment in India by insurance/reinsurance companies must be maintained as an undivided common portfolio. Segregated portfolio or investor/policy-holder level investment structure shall not be permitted.

PwC comments - Insurance companies need to re-look how they have registered themselves from India investment stand point to make sure that they are compliant with the latest clarification. This is unlikely to impact those insurance companies which are investing through separate investment vehicles.

III. For appropriately regulated persons viz. asset management companies, investment manager/advisers, portfolio managers, Broker- dealer and Swap-dealer under Category II, it is clarified that:

- They are permitted to invest their proprietary funds.
- Appropriately regulated persons by taking separate registration can also invest client funds as an ODI issuing FPI or after fulfilling the condition of being broad based and having a common portfolio. However, asset management companies having thematic portfolios can also have segregated structure if each theme is broad based.

PwC comments - Appropriately regulated Broker-dealers and Swap-dealers seem to be specifically included in Category II FPIs.

All other investment restrictions and due diligence requirements as applicable to FPIs shall continue to be applicable on entities referred above.

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

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