

CIRCULAR

CIR/IMD/FPIC/ 26 /2018
February 15, 2018

To,

1. All Foreign Portfolio Investors ("FPIs") through their Designated Depository Participants ("DDPs")/ Custodian of Securities.
2. All Recognized Stock Exchanges
3. The Depositories (NSDL and CDSL)

Sir/ Madam,

Subject: Easing of Access Norms for investment by FPIs

SEBI in consultation with stakeholders has decided to make following changes in extant regulatory provisions to ease the access norms for investment by Foreign Portfolio Investors (FPIs):-

(a) Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/ Designated Depository Participant (DDP):

A Global Custodian generally manages a large number of FPI accounts in India. Sometimes they shift these FPIs accounts from one local custodian to another. At that time, taking specific request letter from each FPI regarding change of local custodian may create operational and logistical challenges. Accordingly, the following changes have been made:-

Clause 5.4 of Operational Guidelines for DDPs ref. SEBI circular dated January 08, 2014 – Change in DDP/Custodian	
Existing provision	Revised provision
In case the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian. On receipt of no objection from the existing transferor DDP/Custodian and acceptance from the proposed transferee DDP/Custodian, then approval from SEBI shall be sought by concerned FPI.	In case, the FPI or its Global Custodian wishes to change the local custodian/DDP, the request for change shall be forwarded to new local custodian/DDP. In case, the Global Custodian of FPI wishes to change the local custodian/DDP, then the request for change can be sent by the Global Custodian on behalf of its underlying FPI clients provided such Global Custodian has been explicitly authorized to take such steps by the client.

	Upon receipt of no objection from the transferor local custodian/DDP, the transferee local custodian/DDP shall approve the change and intimate SEBI about the change. In case, the request for change in local custodian/DDP is received from Global Custodian, the transferee local custodian/DDP shall inform Compliance Officer of the concerned FPI(s) regarding the change in their local custodian/DDP.
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(b) Rationalization of procedure for submission of PCC/MCV Declarations and Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs:

At the time of FPI registration / conversion, PCC/MCV D&U and information regarding FPI investor group is provided and the same are recorded in NSDL portal. In case there is no change in the information already submitted, the requirement to resubmit PCC/MCV D&U and information regarding FPI investor groups at the time of continuance is being dispensed with. Accordingly, FAQ 51 has been changed in the following manner:

FAQ 51. Is a DDP required to collect Form A from an FPI at the time of payment of registration fee for continuance of its registration as FPI?	
Existing provision	Revised provision
In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA is not required to submit Form A. However, it is required to submit certain documents namely Declaration and Undertaking as specified in SEBI circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010 and Information regarding FII groups along with a confirmation to the effect that there is no change in structure of the FII and SA as compared to that furnished to SEBI earlier. The same practice shall continue in the FPI regime.	In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA was not required to submit Form A. The same practice shall continue in the FPI regime. Further, FPIs are not required to re-submit 'Declaration and Undertaking' (as specified in the SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010) and information regarding FPI investor groups, in case there is no change in the information as compared to that furnished to the DDP earlier. DDPs may rely on the specific declaration from the FPI that there is no change in the information, as

	previously furnished. However, it may be noted that the DDP/Custodians will continue to ensure compliance with the KYC due diligence requirement prescribed by SEBI/RBI and changes therein as may be notified from time to time.
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- (c) **Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/ DDP of FPIs:** At the time of change of local custodian/DDP by an FPI, the new local custodian/DDP is required to carry out the adequate due diligence requirement to ascertain the eligibility of the FPI. The due diligence by the new DDP on an already registered FPI at the time of change of local custodian/DDP often leads to increased documentation and sometimes delays the transition. Accordingly, the following change has been made:-

Existing provision (e-mail dated July 02, 2015)	Revised provision
With respect to the process of change of Custodian/DDP by an FPI, it is informed that both old (i.e. transferor) as well as new Custodian/DDP (i.e. transferee) shall be required to carry out the adequate due diligence in the process.	With respect to the process of change of local custodian/DDP by an FPI, it is informed that the new DDP (i.e. transferee) may rely on the due diligence carried out by the old DDP. However, the new DDP is required to carry out adequate due diligence at the time when the FPI applies for continuance of its registration on an ongoing basis.

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

As per Regulation 21(4)(d) of SEBI (FPI) Regulations, 2014, *“the transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by the Board.”*

Notwithstanding the above, it is proposed that requests for FOC between FPIs operating under MIM structure (with same PAN issued by Income Tax Department) shall be permitted and can be processed by DDPs at their end. Accordingly, the following change has been made:-

FAQ 28. Who would consider application for free of cost transfer of assets?	
Existing provision	Revised provision
The request for free of cost transfer of assets by the FPI should be forwarded	The request for free of cost transfer of assets between FPIs having same PAN and also registered with SEBI

to SEBI for its consideration through the concerned DDP.	showing Multiple Investment Managers (MIM) structure may be processed by DDPs at their end.
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(e) Simplification of process for addition of share class: FAQs 49 and 100 have been changed as below:

FAQ 49. Does every fund / sub fund / share class need to separately fulfil broad based criteria? Is prior approval required for launch of new share class from DDP?	
Existing provision	Revised provision
Yes, every fund / sub fund / share class needs to separately fulfil broad based criteria, where segregated portfolio is maintained. In case of addition of classes of shares, the FPI shall be required to obtain prior approval from DDP. For granting of such prior approval, DDPs shall obtain following documents from the FPI applicant: a) A declaration and undertaking with respect to PCC, MCV status as specified in SEBI circular ref. no. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010; b) In cases where segregated portfolios are maintained, where the newly added share class is already broad based, the FPI will continue to be considered as being broad based. i. Where the newly added share class is not broad based, then an undertaking is to be obtained by the DDP that the newly added share class will become broad based within 90 days from the date of DDP approval letter. ii. In case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter.	In case common portfolio of Indian securities is maintained across all classes of shares/fund/sub-fund and broad based criteria are fulfilled at portfolio level after addition of share class, prior approval from DDP is not required. However, in case of segregated portfolio in India, every fund / sub fund / share class needs to separately fulfil broad based criteria. Further, in case of addition of classes of shares for segregated portfolio, the FPI shall be required to obtain prior approval from DDP. However, for deletion of share classes of shares of segregated portfolio, an intimation should be provided to DDP forthwith. For granting of such prior approval, DDPs shall obtain declaration and undertaking with respect to PCC, MCV status. Further, in case of addition of one or more than one share class, which are not broad based, an undertaking may be obtained by the DDP that all the newly added share classes shall attain broad based status within 180 days from the date of approval issued by DDP.

FAQ 100. If the prospectus of a fund (registered as FPI) allows for share classes such as various currencies, can such an FPI request for addition of share class for every single iteration/variant of a share-class at one time irrespective of whether it actually launches the share-class or not?	
Existing provision	Revised provision
It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter. However, where common portfolio is maintained, the approval of launch of share class/variant shall be taken prior to its launch.	It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class (where segregated portfolio is maintained), which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will attain broad based status within 180 days from the date of approval issued by DDP.

- (f) **Permitting FPIs operating under the Multiple Investment Managers (MIM) structure to appoint multiple custodians:** FAQs 6 and 103 have been changed as below:

FAQ 6. Can an entity obtain more than one FPI registration (similar to the one allowed for MIM structures in the FII regime)?	
Existing provision	Revised provision
Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.	Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. Further, investments made under such multiple registrations were clubbed for the purpose of monitoring of investment limits. The same position shall continue in the FPI regime. Also, such applicants can appoint different local custodians/DDPs.
FAQ 103. Can a DDP register proprietary accounts for the purposes of internal segregation (other than for MIM purposes)? Are there any limitations on how many such proprietary FPIs can be registered?	
Existing provision	Revised provision
It has already been clarified in reply to Q6 of the FAQs that in the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required	It has already clarified in reply to Q 6 of the FAQs that in the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. Further, investments made

to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.	under such multiple registrations were clubbed for the purpose of monitoring of investment limits. The same position shall continue in the FPI regime. Also, such applicants can appoint different local custodians/DDPs.
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- (g) **Permitting appropriately regulated Private Bank/ Merchant Bank to invest on their behalf and also on behalf of their clients:** It has been decided that private bank/ merchant bank may invest on behalf of their clients provided that the banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated. Further, details of beneficial owners of investors are available and would be provided as and when required by Regulators. Accordingly, the following changes has been made:

FAQ 20. How would the Private Banks and Merchant Banks be classified? Should they be considered as appropriately regulated if they are regulated or supervised by the banking regulator of the concerned foreign jurisdiction and thus qualify to be Category II FPI?	
Existing provision	Revised provision
Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, such entities shall be allowed to undertake only proprietary investments. [Ref. Regulation 5(b)]	Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, they will be permitted to undertake investments on behalf of its investors provided the private banks/ merchant banks submit a declaration that - The details of beneficial owners are available and will be provided as and when required by the regulators; - The banks do not have any secrecy arrangement with the investors and all required legal/ regulatory arrangements have been put in place in order to ensure that any secrecy laws or confidentiality clauses do not impede disclosure of beneficial owner details as and when required by Indian regulators. - In addition to (i) and (ii), such entities shall also be allowed to undertake proprietary investment by taking separate registration with SEBI.

FAQ 21. Can a Private Bank/Merchant Bank invest on behalf of its clients?	
Existing provision	Revised provision
No. Private Bank/Merchant Bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.	Please refer to reply to FAQ 20.
FAQ 162. A private bank namely "Y" is one of the investors in a fund namely "X", which seeks to get registered as an FPI. "Y" intends to invest on behalf of multiple clients. Can a DDP consider "X" eligible for grant of registration as an FPI?	
Existing provision	Revised provision
While assessing the eligibility of an FPI applicant, a DDP may refer to the reply to Q# 21 of the FAQs, which states that private bank/merchant bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.	FAQ 162 is deleted.

- (h) **Other Clarifications on Conditional registration:** Clause 2.5 of operational guidelines mandated in Circular No. CIR/IMD/FIIC/02/2014 dated January 08, 2014, states that conditional registration facility is available only to “newly established” India dedicated fund. The facility of granting conditional registration shall also be extended to existing funds, proposing to convert as India dedicated funds. However, existing India dedicated funds will be given time of 90 days to achieve Broad based status.

This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

A copy of this circular is available at the links “Legal Framework→Circulars” and “Info for →F.P.I” on our website www.sebi.gov.in. The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

Yours faithfully,

(Achal Singh)