

## **OPERATING GUIDELINES FOR FOREIGN PORTFOLIO INVESTORS AND DESIGNATED DEPOSITORY PARTICIPANTS**

These Operating Guidelines (OG) are the consolidated operating guidelines for Foreign Portfolio Investor (FPI) investment in India, framed by the SEBI. The existing Circulars, FAQs, operating guidelines, other guidance issued on various subjects will stand withdrawn with the issue of these Operating Guidelines. Any further change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. Any such future changes will be appropriately updated in the Operating Guidelines.

A term not defined in the OG will have the same meaning as defined in the SEBI Foreign Portfolio Investor Regulations [2019].

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## PART A - FPI REGISTRATION RELATED ACTIVITIES

Pursuant to the implementation of Foreign Portfolio Investor ("FPI") regime, Securities and Exchange Board of India (SEBI) approved Designated Depository Participants ("DDPs") would grant registration to FPIs on behalf of SEBI and also carry out other allied activities in compliance with Regulations and Circular, issued thereunder.

### 1. Guidance for Processing of FPI application by DDPs

FPI applicant to submit application forms along with all supporting documents. All relevant fields should be duly filled. Where the application form is incomplete, or lacks clarity, the applicant shall be advised by the DDP to clarify or furnish the desired information within a reasonable time.

- i. **FPI Eligibility - Country Check** - The residency status of the FPI applicant may be ascertained from the tax residency status or from the place of incorporation/ establishment through appropriate document such as any identification / registration document issued by the Income Tax authority or appropriate incorporation document. In case FPI applicant has more than one residency/ nationality, test of compliant jurisdictions has been applied on both.
  - a. List of countries where the securities market regulator is a signatory to IOSCO MMOU shall be verified by the DDP from the website of IOSCO.
  - b. List of countries that have bilateral MOU with SEBI shall be verified by the DDP from the website of SEBI.
  - c. The list of countries whose Central Bank is a member of the BIS shall be verified by the DDP from the website of BIS.
  - d. List of countries that are listed in the public statements issued by FATF shall be verified by the DDP from the website of FATF.

With respect to the eligibility of FPI applicants from a country where there are separate securities market regulators for different provinces/ states within that country, FPIs from only those provinces whose securities market regulators are signatories to IOSCO MMOUs are eligible for grant of registration as an FPI and the entities from rest of the states/ provinces are not eligible for grant of registration as an FPI.

- ii. **FPI Eligibility - non-resident Indian** - DDP may obtain requisite declaration from Category II and III FPI applicant for satisfying with regulation 4 (e) regarding details of non-resident Indians or overseas citizens of India or resident Indians in the FPI. Category I FPIs are deemed to be compliant with this requirement.
- iii. **Other FPI Eligibility** – As applicable, DDP may obtain requisite declaration from FPI applicant for satisfying with regulation 4 (f), regulation (g), regulation (i) and regulation (j).

- iv. **FPI Eligibility – Track record** - For unregulated Category III FPI applicants, for satisfying with regulation 4 (h), DDP may obtain a certificate from its bank certifying that the applicant is having satisfactory banking relationship for more than a year. In case FPI applicant does not have a banking relationship for more than a year, DDP may consider the track record of its investment manager/promoter company/group company, etc. Regulated Category III FPI applicant shall be deemed to have satisfied the track record requirement.

Where the FPI applicant changes its banking relationship from one bank to another with whom it had a banking relationship for more than a year before applying for FPI registration, it can submit the satisfactory banking relationship certificate from its earlier bank.

- v. **FPI Categorization requirement – Category I FPI** - DDP may verify the eligibility of Category I FPI by obtaining a declaration from the applicant that it fulfils the eligibility criteria of category I FPI. Additionally, the DDP may verify the relevant details under which the entity has been established – e.g. Govt Charter, Act, Legislation, the shareholding pattern provided by the FPI applicant, etc.
- vi. **Regulatory check** - The DDP may verify if the applicant is regulated or supervised by the securities market regulator or banking regulator and that its registration/license granted by its regulator has not been cancelled and is still valid through any one of the following:
  - a) Obtain a copy of certificate issued by such regulator or;
  - b) verify the registration details directly from the registry or the website of such regulator.

The DDP is required to check that the registration/license granted by its regulator has not been cancelled and is still valid.

- vii. For the purpose of determining whether an applicant meets the Broad Based Fund criteria, DDPs may obtain investor information from the FPI applicant in the below format –

Sr. No.	Generic Type* of Investors having controlling ownership interest	No. of Investors	Percentage of Holding	If pooling vehicle, mention number of investors
Total Corpus of the Fund (USD)				

*\*Generic types of investors include Mutual Funds, Investment Trusts, Pension Funds, Insurance, Collective Investment Schemes, Endowments, Charitable Trusts, Corporates, Individuals, etc.*

- viii. To determine whether an entity has been set up for the sole purpose of pooling funds and making investments, the DDP may obtain suitable declaration from the FPI applicant. For the purpose of considering entities for pooling of funds, the DDP may also consider structures in the nature of pension funds, mutual funds, insurance and reinsurance companies to be investment pooling vehicles. Corporate Bodies/ Endowments, Charitable Trusts/ Societies/ foundations, university funds are not pooling vehicles.
- ix. Any past action taken by FPI applicant's regulator may not necessarily render such an applicant ineligible as long as such action did not result in cancellation of its registration. Further, if an FPI applicant, which is present in multiple jurisdictions, is suspended by one of its foreign regulator and if this suspension does not affect the entity or any of its affiliates' ability to trade in any other country around the world, DDP can consider such an applicant eligible for grant of FPI registration subject to fulfillment of applicable eligibility requirements.
- x. The DDP shall satisfy itself that securities held by FPIs shall be free from all encumbrances through declaration.
- xi. DDP shall mention name of the signatory while communicating registration approval to the FPI. Further, the approval shall be issued by the person belonging to the team handling the DDP activities.
- xii. While verifying the registration details of an FPI applicant (i.e. fund/sub fund/scheme), a DDP may consider the name of its investment manager/ umbrella fund etc. as part of its name (i.e. FPI applicant) while verifying its registration details. However, the DDP shall ensure that such an FPI applicant is appropriately regulated in terms of SEBI (FPI) Regulations, 2014.
- xiii. DDP's obligation is limited to verifying that investor is meeting the eligibility criteria for the respective category for which the application has been made. Accordingly, a regulated fund can seek FPI registration as category III whether it is meeting broad based or not. [AZB: This sentence is a bit confusing.]

## 2. Fast Track Registration

- i. (a) Public retail funds coming from Financial Action Task Force member jurisdiction or; (b) entity seeking registration as non Investing FPIs or (c) entity intends to invest only in G-sec/mutual fund shall not be required to provide below information at the time of seeking FPI registration:
  - Generic investor details for satisfying broad based requirement. FPI can declare that they are meeting broad based required as per FPI Regulations.
  - NRI/RI/OCI declaration

- Intermediate material shareholder/owner details and
  - Information in respect of Authorized signatories/ senior management
  - Identity number of Government issued document for beneficial owner(s)
- ii. KYC reliance on Global Custodian–
- a. Local Custodian can rely on KYC performed by Global Custodian (GC) of same group entity for non-PAN related KYC documents.
  - b. Local Custodian can rely on KYC performed by third party GC for non-PAN related KYC documents provided local custodian has contractual relationship with GC including no privacy condition and basic KYC documents are collected by GC.
  - c. FPI/GC shall provide an undertaking that upon demand by regulator/law enforcement agency/ government/ Tax departments etc., the relevant KYC documents would be submitted to the DDP/ Custodian.

### 3. Entity type/specific guidance

#### i. **Bank or Subsidiary of Bank applicant**

An FPI applicant under bank category would be deemed to be appropriately regulated if it is regulated by the unified financial sector regulator in its jurisdiction or by the specific banking sector regulator in its jurisdiction provided such applicant satisfies eligibility conditions specified under Regulation 4.

In case an applicant/ its group entity is (i) bank or its subsidiary and has a bank branch/representative office in India or (ii) a central bank or its subsidiary, the respective DDP shall forward the application form to SEBI. SEBI would in turn request RBI to provide its comments. Based on the comments received from RBI, SEBI would intimate the comments of RBI to DDP accordingly. No such reference to SEBI/ RBI shall be required for continuance of registration.

#### ii. **Insurance/Reinsurance entity**

Insurance and reinsurance entities shall be deemed to be appropriately regulated for the purpose of the Regulations, if they are regulated or supervised by the relevant regulator in their concerned foreign jurisdiction in the same capacity in which they propose to make investments in India. Such entities shall also be required to satisfy the eligibility criteria as laid down in Regulation 4 of the Regulations.

Insurance/Reinsurance entity shall be deemed to be broad based for Category II FPI registration provided such applicant does not maintain segregated portfolio with one to one correlation with a single investor.

FPI applicant seeking registration under Insurance/Reinsurance category is required to obtain separate registration to invest their shareholder money or participant money or investment for unit linked/investment products.

#### iii. **Pension fund**

Pension/retirement/ providend plans or any such benefit funds shall be deemed to be broad based for Category II FPI registration.

Pension/retirement/ providend plans or any such benefit funds of international or multilateral organizations or agencies or state owned pension/ retirement/ providend or any such benefit funds shall be categorized as Category II Pension Funds.

iv. **Appropriately regulated persons under regulation 5(b)(ii)**

Appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers, broker dealers, swap dealers, private bank or merchant bank will be permitted to undertake investments on behalf of its investors/clients in addition to undertake proprietary investment by taking separate registration.

Where such entities are undertaking investments on behalf of its investors/clients and seeking Category II FPI registration, the collective investment vehicle should be broad based (more than 20 investors and no investor having more than 49% stake) and there should be common portfolio for all clients/ investors. Similar condition is applicable for such entity as substantial investor in Category II FPI. Only FPI registered as asset management companies having thematic portfolio can have segregated structure with each theme is broad based.

These appropriately regulated persons by taking separate registration can also invest with client funds as an Offshore Derivative Instrument (ODI) Issuing FPI.

#### 4. Conditional Registration

If the applicant seeking to register itself as a broad based fund under Category II, but does not satisfy the broad based criteria at the time of making application, the DDP may consider grant of conditional registration, with validity period of 180 days to such applicant if:

- i. The applicant is an India dedicated fund or undertakes to make investment of at least 5% corpus of the fund in India;
- ii. The applicant undertakes to comply with the broad based criteria before the validity of its conditional registration i.e. within 180 days;
- iii. While communicating conditional registration to FPIs, DDP shall mention the exact date by when the validity of its conditional registration will expire.
- iv. In order to assess the compliance with the broad based criteria, the FPI shall provide details of investors to the DDP. The DDP may, after, appropriate due-diligence, issue acknowledgement regarding fulfilment of broad based criteria, if it is satisfied.

- v. In case the DDP issues acknowledgement regarding fulfilment of broad based criteria, the conditional registration shall be treated as registration, henceforth.
- vi. If the FPI fails to satisfy the DDP that it has attained broad based status within 180 days, it shall be reclassified as category III.

## 5. Multiple Investment Managers (MIM)

- i. Where an entity engages Multiple Investment Managers (MIM), it can obtain multiple FPI registrations mentioning name of Investment Manager for each registration. There can be internal or external investment managers in case of MIM Structures and such applicants can appoint different DDPs for each registration.
- ii. In case of MIM structures, if the entity has already furnished registration details to a DDP at the time of its registration as FPI, then for new FPI registration under MIM structure, the entity need not be required to provide the registration details. However, such FPI need to provide the name of its Investment Manager at the time of request for new registration along with the confirmation that information provided in earlier application is updated and valid.

## 6. Continuance of Registration

- i. FPI registration is valid till it is suspended, cancelled or surrendered in accordance with SEBI (FPI) Regulations, 2014, subject to the payment of fees every three years. FPIs who wish to continue with their registration should file their continuance application along with applicable fee to its DDP.
- ii. If there are changes to any of the information/documentation previously submitted DDP, FPI shall update the information at the time of continuance. DDPs may rely on the specific declaration from the FPI that there is no change in the information, as previously furnished.
- iii. FPI shall provide the complete set of documents/information including fees for continuance of its registration at least one month prior to their registration expiry in order to facilitate a smooth continuance process. In case of non-receipt, the FPI is required to submit a reason for delay to the DDP.
- iv. Where the FPI did not pay the fees for continuance of registration, its registration shall be expired after the date, up to which, the last registration fees were duly paid by the FPI. An FPI cannot apply for continuance of its registration after expiry of its registration. Such an FPI will have to make a fresh application for registration, if it so desires after completion of surrender its earlier registration.

## 7. Rejection of FPI application

- i. A DDP shall consider an FPI application which has been previously rejected by another DDP. However, before considering such an application, the DDP shall ascertain the reasons for which the application was rejected. In case the application was rejected on technical grounds, the DDP shall ensure that such deficiencies have been rectified by the applicant, before assessing the application afresh on its own merits. If the application has been rejected for any other reason, then the DDP shall assess the application on its own merit as per FPI Regulations.
- ii. The depositories (NSDL and CDSL) will maintain a database of FPI applicants. Every DDP shall input the details of FPI applicants in the database. Where an FPI application is rejected by a DDP, the DDP shall mention the reason for such rejection in the database, which would be accessible to all DDPs.

## 8. Reporting:

- i. Every DDP shall submit monthly reports on application received from FPI applicants as per enclosed in the Annexure A to SEBI and such other reports as may be required by SEBI. The report pertaining to a month may be submitted by DDPs to SEBI latest by 10<sup>th</sup> of the following month.
- ii. Every DDP shall submit monthly reports fee collected for all the foreign portfolio investors registered by it as per enclosed in the Annexure B to SEBI and such other reports as may be required by SEBI.

## 9. Name change

- i. In case the FPI has undergone a change in name, the request for updation/ incorporation of new name should be submitted by the FPI to the DDP accompanied by documents certifying the name change. The documents relevant for name change are:
  - Certified copy of document(s) from home regulator evidencing the name change;
  - Certified copy of document(s) from Registrar of Company (or equivalent authority) (wherever applicable) issued, thereby evidencing the name change.
- ii. An undertaking by the FPI stating that it is a mere name change and does not involve change in beneficial ownership.
- iii. Upon receipt of the request for name change along with abovementioned documents, the DDP shall effect the change in name in the Registration Certificate and in its database. The DDP shall issue a letter to such applicant acknowledging the change in name. NSDL shall make necessary arrangements for DDPs to provide an acknowledgement from its database including a statement that the name change has been granted without prejudice to any tax liability/ implication in India

## 10. Surrender of Registration

- i. Where an FPI desires to surrender its certificate of registration, it may make an application to the DDP.
- ii. Where the FPI did not pay the fees for continuance of registration, its registration shall be expired after the date, up to which, the last registration fees were duly paid by the FPI. The registration of such FPIs shall be deemed to have applied for surrender.
- iii. The DDP shall forward such surrender application to Board after ensuring the following:
  - There are no dues by the applicant outstanding to SEBI.
  - The holdings of the concerned applicant in security account and bank account is nil.
- iv. Post successful processing of the surrender application, the DDP shall issue a confirmation to the FPI in that regard.

## 11. Change in Custodian/DDP

- i. 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.
- ii. Upon receipt of no objection from the transferor local custodian/DDP, the transferee local custodian/DDP shall approve 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.
- iii. Once the change of DDP/Custodian is approved by DDP, the FPI will need to transfer accounts and assets to the new DDP/Custodian within a period of 30 days. In case the transition does not take place within the stipulated time, the FPI shall provide reasons for the same and seek extension from DDP for a further period of 30 days. Once the transition is complete, transferee local custodian/DDP shall intimate SEBI about the change.
- iv. 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.

## 12. Addition of share class

- i. 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 even after addition of new share class, prior approval from DDP is not required.
- ii. However, in case of segregated portfolio in India, every fund / sub fund / share class that invests in India, needs to separately fulfil broad based criteria. Further, in case of addition of classes of shares for segregated portfolio that invests in India, the FPI shall be required to inform DDP within 180 days of launch of share class along with broad based confirmation. To evidence addition of share class that invests in India, the DDP may obtain copy of prospectus or its equivalent document.
- iii. However, for deletion of share classes of shares of segregated portfolio that invests in India, an intimation should be provided to DDP forthwith.
- iv. The requirement for fulfilling the broad based requirement shall not be applicable to those share classes, which do not invest in India. The FPI shall also ensure that such share classes shall not invest in India in future. However, if such share class starts investing in India, they should inform DDP within 180 days from the date of investment along with broad based information.

## 13. Reclassification

If an FPI registered under a particular category fails to comply with applicable eligibility requirements, it shall be reclassified under appropriate category. For this purpose, FPI shall be required to provide the DDP with additional KYC documents as applicable. In this regard, the concerned Custodian shall not allow such FPI to make fresh purchases, by blocking the accounts for any further investments, till the time KYC documentary requirements, as applicable, are complied with. However, such FPI shall be allowed to continue to sell the securities already purchased by it. If such FPI continues to hold securities 180 days after blocking, such FPI shall be referred to SEBI for any further action.

## 14. Change in Material Information

- i. If there is any material change in the information previously furnished by it to the DDP and/or SEBI, which has a bearing on the certificate granted by the DDP on behalf of the Board, it shall forthwith inform the DDP and/or the Board.
- ii. Such Material change include: direct or indirect change in control, change in regulatory status, merger, demerger or restructuring, change in category/ structure/ jurisdiction/ name of FPI/ beneficial ownership etc.
- iii. The DDP shall examine all such material changes and re-assess the eligibility of the FPI including requiring FPIs to seek fresh registration. Any change in jurisdiction must always result in a new registration.

- iv. Where there is a delay of more than six months in intimation of material change by the FPI to the DDP, the DDP shall, forthwith, inform all such cases to SEBI for appropriate action, if any.

#### 15. Permission of Disinvestment

- i. FPIs which are not desirous of continuing with the registration but are holding certain securities, such FPIs shall be permitted for subsequent disposal, after the expiry of FPI registration, subject to receipt of specific permission from DDP in this regard.
- ii. After the expiry of registration, the FPI desiring permission for disinvestment shall make a request to DDP along with details of its holdings.
- iii. The DDP may grant such permission for disinvestment with a validity period of 12 months from the date of expiry of registration. The required sale trades shall be carried out by the FPI only after receipt of permission from DDP.
- iv. The disinvestment permission shall be granted only for securities held by the FPI as on date of expiry of registration. No purchase transactions or fresh derivative position shall be permitted after the expiry of registration. Any open derivative position on the date of expiry of registration is required to be closed within the granted approval period. However, credit of corporate benefits and disposal there of in respect of existing securities would be permitted. Subscription of right issue is not permitted.
- v. Post expiry of disinvestment period, if the FPI continue to hold securities, such FPI will be referred to SEBI for any further action.

#### 16. Change in Status of a Compliant Jurisdiction

- i. If a jurisdiction, which was compliant with SEBI (FPI) Regulations at the time of grant of registration to FPI, becomes non-compliant i.e. ceases to be member of IOSCO/BIS or the concerned jurisdiction is listed in FATF public statement as "high risk" and "non-cooperative" jurisdiction, then concerned Custodian shall not allow the FPIs belonging to such jurisdictions to make fresh purchases till the time the jurisdiction is compliant with SEBI (FPI) Regulations. However, the FPI shall be allowed to continue to hold the securities already purchased by it.
- ii. The concerned DDP shall inform to SEBI a list of such jurisdiction along with the details of FPIs belonging to the jurisdiction.

#### 17. Off-Market transfer of securities

- i. FPIs may make request for 'Off Market' transfer of assets between FPIs operating under MIM structure (with same PAN issued by Income Tax Department) to their DDPs and such requests can be processed by DDPs at their end.

- ii. FPIs may hold unlisted securities as referred at regulation 21(2) and those received under involuntary corporate actions and shall be permitted to sell such securities can be sold through off-market transaction in compliance with pricing guidelines as applicable to a foreign investor having acquired the securities as a foreign direct investor under the provisions of Foreign Exchange Management Act, 1999. FPIs shall make such request to their DDPs who may process the request at their end.
- iii. An FPI may undergo restructuring of investment manager overseas including sale of investment manager entity without any change in Beneficial Ownership of the fund. An existing FPI, which has undergone such a change of investment manager, can request to its DDP an off market transfer of its assets to another FPI due to such restructuring provided such new FPI is in the same jurisdiction as the existing FPI. DDPs may process such request at their end applying SEBI defined fees, if any.

Any such approval of off market transactions of assets by DDPs will be without prejudice to tax authorities in India.

#### 18. Other Changes relating to FPI

- i. DDP shall take note of the other changes such as change in Compliance Officer, change in contact details and address and update the records accordingly.
- ii. Where there is a delay of more than six months in intimation of the change by the FPI to the DDP, the FPI shall be advised by DDP to avoid repetition of such instances.

#### **Annexure A – Monthly application**

#### **Annexure B - Fee report**

## PART B - KNOW YOUR CLIENT REQUIREMENTS FOR FOREIGN PORTFOLIO INVESTORS (FPIS)

### Know-Your-Client (KYC) Framework

The introduction of the Foreign Portfolio Investors (FPI) regime in 2014 facilitated the adoption of risk based KYC mechanism, wherein, the documentation requirement will vary according to the category applicable to the FPI

Once the KYC is completed, the intermediary will upload the supporting documents on the KRA portal for other market intermediaries to access and complete their KYC requirements. Apart from the KYC requirement stated below, each intermediary might have additional documentation requirement for conducting enhanced due diligence as per their internal policies.

### 1 KYC documentation requirements for FPI

Document Requirement	Documentation	FPI Category - I	FPI Category – II**	FPI Category - III***
<b>Entity Level</b>	Constitutive Docs	Required	Required	Required
	Proof of Address	Required - Power of Attorney (POA), mentioning the address, is acceptable as address proof	Required - POA, mentioning the address, is acceptable as address proof	Required - POA, mentioning the address, is acceptable as address proof for FPIs from non-high risk jurisdiction - Address proof other than POA to be provided for FPIs from high risk jurisdiction.
	PAN	Required	Required	Required
	Financials	Exempt *	Exempt *	- Audited Annual financial statement or a certificate from auditor certifying net worth
	Board Resolution	Exempt*	Required.	Required
	FATCA / CRS form	Required	Required	Required
	KYC Form / CAF (herein after called "Form")	Required	Required	Required
<b>Senior Management (Whole Time Directors/ Partners/</b>	List	Required	Required	Required
	Proof Of Identity	Exempt*	Exempt *	Required.  Entity to provide full name, nationality

<b>Trustees etc.)</b>				and date of birth in the form
	Proof of Address	Exempt*	Exempt*	Required. Entity to provide address in the Form
	Photographs	Exempt	Exempt	Exempt*
<b>Authorised Signatories</b>	List & Signatures	Required - List of Global Custodian (GC) signatories can be given in case of POA to GC - Exemption provided if SWIFT is used as a medium of instruction	Required - List of GC signatories can be given in case of POA to GC - Exemption provided if SWIFT is used as a medium of instruction	Required - Exemption provided if SWIFT is used as a medium of instruction
	Proof Of Identity	Exempt*	Exempt*	Required (must have photo)
	Proof of Address	Exempt*	Exempt*	Declaration/ details on Letterhead required.
	Photographs	Exempt	Exempt	Exempt*
<b>Ultimate Beneficial Owner (UBO)<sup>6</sup></b>	List	Exempt*	Required – UBO to be identified - as per prescribed threshold. - on basis of beneficial ownership as well as on control basis - Data points to be provided in specified format (Annexure A & B)	Required - UBO to be identified - as per prescribed threshold. - on basis of beneficial ownership as well as on control basis - Data points to be provided in specified format (Annexure A & B)
	Proof Of Identity	Exempt*	Exempt*	Required (must have photo)
	Proof of Address	Exempt*	Exempt*	Declaration/ details on Letterhead required
	Photographs	Exempt	Exempt	Exempt*

**Notes to the Table:**

\* FPIs concerned to submit an undertaking that upon demand by Regulators/ Law Enforcement Agencies the relevant document/s would be submitted to the intermediary.

\*\* For Category II FPIs who are pension funds, KYC documentation equivalent to Category-I FPI will apply.

\*\*\* For appropriately regulated Category III FPIs, KYC documentation equivalent to Category-II FPI will apply.

- i. Prospectus and information memorandum are acceptable in lieu of an official constitutional document
- ii. Valid FATCA / CRS documentations is required to be submitted at the time of account opening.
- iii. Intermediary can verify the PAN of FPIs online from website authorized by the Income-Tax department.
- iv. PAN is not mandatory for UBO, senior management and authorized signatories of FPI.
- v. PAN is not mandatory for UN entities/multilateral agencies exempt from paying taxes/filing tax returns in India. In case of new funds/ companies/ family offices, the audited financial statement or networth certificate of promoter person can be provided
- vi. Alternate documents in lieu of Board Resolution for KYC purposes
- vii. Power of Attorney granted to Global Custodian/ Local Custodian
- viii. Prospectus/ Information Memorandum/ Offer Document/ Investment Management Agreement/ Regulatory Filings.
- ix. Board Resolution not required for clients accessing through a Global Custodian.
- x. Requirement of photograph for authorized signatory for category III FPIs are not required provided has been removed. However, all identity proof document must carry photograph of the person.
- xi. Existing risk based KYC requirement should also be made applicable to FDI, FVCI/DR and FCCB accounts/entities if the same entities is registered as FPIs.

## 2 Sharing of KYC documents with banks towards opening of bank accounts of FPIs

- a. Intermediaries are advised to share the relevant KYC documents with the banks concerned based on appropriate authorization.
- b. Accordingly, a set of hard copies of the relevant KYC documents furnished by the FPIs to Intermediaries may be transferred to the concerned bank through their authorised representative.
- c. While transferring such documents, Intermediaries shall certify that the documents have been duly verified with the original or notarised documents have been obtained, where applicable. In this regard, a proper record of transfer of documents, both at the level of the Intermediaries as well as at the bank, under signatures of the officials of the transferor and transferee entities, may be kept.

## 3 Identification and verification of Beneficial Owners – For Category II & III FPIs

- i. Beneficial Owner (BO) is the natural person(s) who ultimately owns or controls an FPI and should be identified in accordance with Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules).
- ii. Accordingly, BOs of FPIs having structure of company or trust should be identified on controlling ownership interest (also termed as ownership or entitlement) and control basis. The BOs in case of partnership firm and unincorporated association of individuals should be identified on ownership or entitlement basis. BOs of FPIs having General Partner/Limited Partnership structure shall be identified on ownership or entitlement basis and control basis.
- iii. FPIs are required to maintain a list of BOs and should provide such list of their BOs as per Annexure A.
- iv. The materiality threshold for identification of BOs of FPIs on controlling ownership interest (or ownership/ entitlement) basis shall be same as prescribed in PMLA Rules i.e. 25% in case of company and 15% in case of partnership firm, trust & unincorporated association of persons.
- v. In respect of FPIs coming from “high risk jurisdictions” as referred in SEBI Master circular No. CIR/ISD/AML/2010 dated December 31, 2010, the intermediaries may apply lower materiality threshold of 10% for identification of BO and also ensure KYC documentation as applicable for category III FPIs.

- vi. The materiality threshold to identify the beneficial owner should be first applied at the level of FPI and next look through basis shall be applied to identify the beneficial owner of the intermediate shareholder/ owner entity. Beneficial owner and intermediate shareholder/ owner entity with holdings equal & above the materiality thresholds in the FPI need to be identified through the look through basis. For intermediate material shareholder/ owner entity/ies, name and percentage holding shall also be disclosed as per Annexure B. In case the intermediate shareholder/ owner entity is eligible for registration as Category I FPI, there is no need for identification and verification of beneficial owner of said entity eligible as Cat. I FPI.
- vii. Where no material shareholder/owner entity is identified in the FPI using the materiality threshold (referred at (iv), (v) & (vi) above) for controlling ownership interest basis and also on control basis, BO shall be the senior managing official of the FPI. The term senior managing official (SMO), for identification as BO, means an individual as designated by the FPI who holds a senior management position and makes key decisions relating to the FPI.
- viii. No foreign company shall be entitled to exemption under Rule 9(3)(f) of PMLA Rules.
- ix. In case of companies/ trusts represented by service providers like lawyers/ accountants, FPIs should 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. It is clarified that BO should not be a nominee of another person and real BO should be identified.
- x. Offshore Derivative Instrument (ODI) issuing FPIs shall also identify and verify the BOs in the subscriber entities, as per these guidelines.
- xi. BO should not be from jurisdiction, which is identified in the public statement of Financial Action Task Force (FATF) as:
  - a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
  - b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

## 4 Periodic KYC review

KYC Review means steps taken to ensure that documents, data or information collected under the due-diligence process are kept up-to-date and relevant by undertaking reviews of existing records on a periodical basis.

- i. FPIs shall be subject to KYC review as and when there is any change in material information / disclosure.
- ii. The KYC review (including change in BOs / their holdings) should be done based on risk categorization of FPIs. In case of Category II FPIs from high risk jurisdictions (except pension funds) and all Category III FPIs (except regulated FPIs from non-high risk jurisdiction), KYC review should be done on yearly basis. In case of all other clients, the KYC review should be conducted during continuance of FPI registration. In case of all other clients, the KYC review should be conducted along with the continuance of FPI registration i.e. every three years. Accordingly, the KYC review may be conducted anytime during 3 months prior to FPI registration continuance due date.
- iii. In the event of non-submission of KYC documents, if any, on the applicable due date for KYC review, DDP / custodian / intermediary may send a notice to FPI advising expeditious completion of KYC requirement and under no circumstances permit further purchase transactions to such clients after 60 days of the KYC review date

Jurisdiction	Category 1 FPI	Category 2 FPI	Category 3 FPI
High Risk	During continuance of registration	Annually	Annually
Non-High Risk	During continuance of registration	During continuance of registration	Regulated FPIs – During continuance of registration  All others - Annually

## 5 Data security

The KYC Registration Agencies (KRAs) shall lock personal information provided with regard to beneficial owner including SMO of FPI. Such information should be made available to intermediaries only on 'need to know basis' using an authentication method wherein an intermediary, can access the information from KRA using the authentication (similar to OTP) after the KRA gets confirmation from the FPI or its Global custodian. For this purpose, KRA need to maintain email ids of the FPI and its Global custodian. This functionality will be optional and it will be deactivated only upon receipt of instruction from the FPI to KRA.

The Key features as below:

- a. Upto 3 email ids of the FPI can be recorded with 1 mandatory id and 2 optional email ids
- b. Download Consent Flag – Yes / No (Default value is set as “Yes”)
  - i. ‘Yes’ means Consent required for download
  - ii. ‘No’ means download without consent
- c. Where Download Consent Flag is “Yes”, an email with the consent link with decision tab “Approve” or “Reject” , will be sent to the Authorised Representative of FPI (as per the details updated in “a” above) , requesting their consent to provide the KYC records to the requesting intermediary.
- d. KRA will send an email to the requesting intermediary that consent request email has been sent to the authorised representative of the FPI, to enable them to follow up for the consent.
- e. KRA will permit download of KYC records and information once the consent is received from the authorised representative of the FPI.
- f. Whenever KYC details of client are modified by intermediaries, KRA system sends unsolicited download of KYC information to all intermediaries who have either uploaded/downloaded/modified KYC information of the FPI. The unsolicited KYC download including UBO details of the FPI will be available to the intermediaries who have uploaded/downloaded/modified, such FPIs KYC details in the past, even when the Download Consent Flag is set as “Yes” or otherwise.
- g. In case the FPI closes the account with an intermediary, the FPI or the intermediary shall inform KRA to delink the KYC of such FPI, so that unsolicited download request can be discontinued.

## 6 Period for maintenance of records

The Custodian should maintain the KYC records in original for a minimum period of five years from the date of cessation of the transactions with the said FPI. In case any litigation is pending, these records should be maintained till the completion of the proceedings.

## 7 GUIDELINES FOR KYC/CAF (hereinafter referred to as ‘Form’):

- i. Copies of all the documents submitted by the applicant should be accompanied by originals for verification. In case the original of any document is not produced for verification, then the copies should be properly attested by entities authorized for attesting

the documents, as per the mentioned list in (vii) below. Self-attestation of documents is not required.

- ii. If any proof of identity or address is in a foreign language, then translation into English is required.
- iii. Name & address of the applicant mentioned on Form, should match with the documentary proof submitted.
- iv. If more than one address is provided, proof should be enclosed.
- v. The Global Custodian or the Local Custodian may fill the Form, if authorized through the PoA.
- vi. In person verification is not applicable for a non-individual Client. IPV for individual clients through web camera shall be allowed.
- vii. **Reliance on information available from reliable public sources-** In addition to information provided by the client, the intermediaries can rely on documents / information available from reliable public sources (for e.g. websites of Regulators, Exchanges, SROs, Registrars) while collecting documents / information required for an FPI. Attestation of these documents (by way of mentioning the source of the document and signature against the same) may be carried out by a duly authorized official of the Intermediary. No further attestation of such documents is required.
- viii. **List of people authorized to attest the documents:** Notary Public, officials of Multinational Foreign Banks or any Bank regulated by Reserve Bank of India (Name, Designation & Seal should be affixed on the copy).

## 8 List of supporting documents:

### A. **Proof of Identity (POI):** - *List of documents admissible as Proof of Identity:*

#### **FOR INDIVIDUALS (including authorized signatories, senior management and UBO)**

- i. Identity card/ document with applicant's Photo, issued by any of the following: Central/State Government and its Departments, Statutory/Regulatory Authorities, Tax Authorities such as Passport, Driving license etc.

#### **FOR NON-INDIVIDUALS**

- i. Certificate of Incorporation/ Formation/ Registration Certificate
- ii. Resolution of Board/ Managing Committee
- iii. Memorandum and/ or Article of Association/ Partnership Deed/ Trust Deed/Prospectus/offering memorandum or any equivalent document
- iv. Officially valid document(s) in respect of person authorized to transact.

### B. **Proof of Address (POA):** - *List of documents admissible as Proof of Address:*

(\*Documents having an expiry date should be valid on the date of submission.)

- i. Document specifying the address issued by any of the following: Central/State Government and its Departments, Statutory/Regulatory Authorities, Tax Authorities such as Passport, Driving license, etc.
- ii. Utility bills like Telephone Bill, Electricity bill or Gas bill - Not more than 2 months old.
- iii. Bank Account Statement/Passbook -- Not more than 3 months old.

- iv. Category 1, Category 2 and regulated Category 3 (from non-high risk jurisdiction) FPIs: Power of Attorney given by FPI to Custodians specifying the address (duly notarized and/or apostilled or consularised).
- v. Intermediary may rely on constitutive documents to establish Proof of residency for multilateral organisations.

POA to be submitted only if the submitted POI does not have an address or address as per POI is invalid or not in force.

## 9 Annexure A : BO Format

<b>BO Format:</b> Sl. No.	Name & Address of the Beneficial Owner (Natural Person)	Date of Birth	Tax Residency Jurisdiction	Nationality	Whether acting alone or together through one or more natural persons as group, with their name & address	BO Group's percentag e Sharehold ing / Capital / Profit ownership in the FPIs	Tax Residency Number/ Social Security Number/ Passport Number of BO/ any other Governme nt issued identity document number (example driving license) (Please provide any)

This List should be certified by FPI. FPI should also certify that there are no other BOs other than those referred in list.

10 Annex B – Information of intermediate material shareholder/ owner entity illustration:

- FPI ABC, a trust, is held 75% by XYZ Ltd. (intermediate material shareholder/ owner) – therefore XYZ needs to be identified and the identification of underlying individuals / non-individuals having controlling ownership interest in the FPI OR control of XYZ should be identified
- XYZ is further controlled by PQR fund (trust)– Hence, PQR fund also needs to be identified on a look through basis.
- Mr. ST is holding 35% in PQR fund and Mr. UV is holding 15% in PQR fund - So, Mr. ST needs to be identified as BO.

Information of Intermediate material shareholder/ owner- on Ownership basis Name	Direct / Indirect Stake	Names of the entity(ies) through which the stake in the FPI is held indirectly	Percentage stake held in the applicant	Individual /Non-Individual
<i>XYZ Ltd.</i>	Direct		75	Non-Individual

Information of Intermediate material shareholder/ owner- on control basis

Name	Method of Control (Give Details including names of the intermediate structures, if any, through which control is exercised )	Percentage control on the applicant, if applicable	Individual/Non-Individual
<i>PQR fund</i>	Management Share in XYZ Ltd.		Non-Individual
<i>Mr. ST</i>	Holds 35% shares of PQR Fund		Individual

## 11 Index of Circulars:

Date of Circular	Reference	Title	Weblink
12-Sep-13	CIR/MIRSD/ 07 /2013	KYC Requirements for Eligible Foreign investors	<a href="https://www.sebi.gov.in/legal/circulars/sep-2013/kyc-requirements-for-eligible-foreign-investors_25366.html">https://www.sebi.gov.in/legal/circulars/sep-2013/kyc-requirements-for-eligible-foreign-investors_25366.html</a>
16-Jun-14	CIR/IMD/FIIC/11/2014	KYC for FPIs	<a href="https://www.sebi.gov.in/legal/circulars/jun-2014/know-your-client-kyc-requirements-for-foreign-portfolio-investors-fpis-27092.html">https://www.sebi.gov.in/legal/circulars/jun-2014/know-your-client-kyc-requirements-for-foreign-portfolio-investors-fpis-27092.html</a>
17-Nov-16	CIR/IMD/FPIC/123/2016	Review of requirement of copy of PAN card to open accounts of FPIs	<a href="https://www.sebi.gov.in/legal/circulars/nov-2016/review-of-requirement-for-copy-of-pan-card-to-open-accounts-of-fpis_33672.html">https://www.sebi.gov.in/legal/circulars/nov-2016/review-of-requirement-for-copy-of-pan-card-to-open-accounts-of-fpis_33672.html</a>
30-Jun-17	SEBI/HO/IMD/FIIC/CIR/P/2017/068	Acceptance of e-PAN card for KYC purpose	<a href="https://www.sebi.gov.in/legal/circulars/jun-2017/acceptance-of-e-pan-card-for-kyc-purpose_35210.html">https://www.sebi.gov.in/legal/circulars/jun-2017/acceptance-of-e-pan-card-for-kyc-purpose_35210.html</a>
10-Apr-18	CIR/IMD/FPIC/CIR/P/2018/64	Know Your Client Requirements for Foreign Portfolio Investors (FPIs)	<a href="https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-38618.html">https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-38618.html</a>
21-Aug-18	IMD/FPIC/CIR/P/2018/124	Amendment to SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client Requirements for Foreign Portfolio Investors (FPIs)	<a href="https://www.sebi.gov.in/legal/circulars/aug-2018/amendment-to-sebi-circular-no-cir-imd-fpic-cir-p-2018-64-dated-april-10-2018-on-know-your-client-requirements-for-foreign-portfolio-investors-fpis-40065.html">https://www.sebi.gov.in/legal/circulars/aug-2018/amendment-to-sebi-circular-no-cir-imd-fpic-cir-p-2018-64-dated-april-10-2018-on-know-your-client-requirements-for-foreign-portfolio-investors-fpis-40065.html</a>
21-Sep-18	CIR/IMD/FPIC/CIR/P/2018/131	Know Your Client Requirements for Foreign Portfolio Investors (FPIs)	<a href="https://www.sebi.gov.in/legal/circulars/sep-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-40408.html">https://www.sebi.gov.in/legal/circulars/sep-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-40408.html</a>

## **PART C - Investment Conditions / Restriction on Foreign Portfolio Investors registered SEBI (Foreign Portfolio Investor) Regulations, 2014**

This section consolidates the requirements prescribed by SEBI relating to investment restrictions as applicable to Foreign Portfolio Investors (FPIs) and matters connected therewith. A list of underlying circulars which form the basis of this Master Circular is annexed herewith.

### **1. Risk management framework for FPIs**

#### **1.1 Margining of trades undertaken by FPIs in the Cash Market**

- a) The trades of FPIs shall be margined on a T+1 basis in accordance with SEBI circular MRD/DoP/SE/Cir-18/2008 dated May 22, 2008.
- b) However, the trades of FPIs who are Corporate bodies, Individuals or Family offices shall be margined on an upfront basis as per the extant margining framework for the non-institutional trades.

#### **1.2 Facility for allocation of trades: The following framework shall be implemented to facilitate allocation of trades of a FPI to other FPIs:**

- a) Entities who trade on behalf of FPIs shall inform the stock brokers of the details of FPIs on whose behalf the trades would be undertaken.
- b) The stock broker, in turn, shall inform the stock exchanges the details of such related FPIs.
- c) Stock exchanges shall put-in place suitable mechanism to ensure that allocation of trade by a FPI is permitted only within such related FPIs.

#### **1.3 Custodians / DDPs shall provide necessary details related to FPIs, including categorisation of FPIs, to the stock exchanges for the purpose of implementing the aforementioned provisions.**

### **2. FPIs investments in corporate debt securities**

#### **2.1 FPIs are permitted to invest in corporate bonds with minimum residual maturity of above one year, subject to the condition that short-term investments (i.e. investment in securities with residual maturity up to 1 year) in corporate debt securities by an FPI shall not exceed 20% of the total investment of that FPI in corporate bonds.**

#### **2.2 The requirement that short-term investments shall not exceed 20% of total investment by an FPI in any category applies on an end-of-day basis. At the end of any day, all investments with residual maturity of up to one year will be reckoned for the 20% limit.**

#### **2.3 Short-term investments by an FPI may exceed 20% of total investments, only if such short-term investments consist entirely of investments made on or before the date prescribed by RBI vide circular dated AP (DIR Series) Circular No. 24 dated April 27, 2018; that is, short-term investments do not include any investment made after aforesaid date prescribed by RBI.**

- 2.4 Investment by any FPI (including investments by investor group as determined on the basis of clubbing requirement on the basis of common beneficial owner in accordance with Regulation 23(3) of SEBI (FPI) Regulations, 2014), in corporate debt securities, shall be subject to the following concentration limits:
- (i) Long-term FPIs: 15% of prevailing investment limit.
  - (ii) Other FPIs: 10% of prevailing investment limit.
  - (iii) In case an FPI has investments (INV0) in excess of the concentration limit on the effective date (date on which these concentration limits come into existence as prescribed by RBI), it will be allowed the following relaxations, subject to availability of overall limits, as a one-time measure:
    - a) In case an FPI has investments (INV0) in excess of the concentration limit on the effective date, it will be allowed to undertake additional investments such that its portfolio size at the end of any day (INVt) does not exceed INV0 plus 2.5% of investment limit on the effective date. Once INVt falls below the prevailing concentration limit, the FPI shall be free to make investments up to the applicable concentration limit.
    - b) In case an FPI has investments (INV0) within the concentration limit, but in excess of 7.5% (12.5% in case of FPIs in the 'Long-term' sub-category) of the investment limit on the effective date, that FPI shall be allowed to undertake additional investments such that its portfolio size at the end of any day (INVt) does not exceed INV0 plus 2.5% of the investment limit on the effective date. Once INVt falls below the prevailing concentration limit, the FPI shall be free to make investments up to the applicable concentration limit.
    - c) All other FPIs will be allowed to invest up to the applicable concentration limit.
- 2.5 FPI investment in corporate bonds shall be subject to the following requirements:
- (i) Investment by any FPI (including investments by investor groups as determined on the basis of clubbing requirement on the basis of common beneficial owner in accordance with Regulation 23(3) of SEBI (FPI) Regulations, 2014), shall not exceed 50% of any issue of a corporate bond. In case an FPI, including investments by investor groups, has invested in more than 50% of any single issue, it shall not make further investments in that issue until this stipulation is met.
  - (ii) These stipulations would not apply to investments by FPIs which are Multilateral Financial Institutions in which Government of India is a member and investment by FPIs in Security Receipts issued by Asset Reconstruction Companies.
- 2.6 FPIs are not permitted to invest in partly paid debt instruments.
- 2.7 FPI corporate debt investments are subject to Combined Corporate Debt Limit (CCDL) as announced by SEBI from time to time.
- 2.8 The CCDL shall be available on tap for investment by foreign investors till the overall investment reaches 95% of the CCDL.

2.9 In the event the overall FPI corporate debt investments exceeds 95% of the CCDL (as indicated by the debt utilisation status updated daily on the websites of NSDL and CDSL), the following procedure shall be followed:

- a. The depositories (NSDL and CDSL) shall direct the custodians to halt all FPI purchases in corporate debt securities.
- b. The depositories shall then inform the exchanges (NSE and BSE) regarding the unutilised debt limits for conduct of auction. Upon receipt of information from the depositories, the exchange (starting with BSE) shall conduct an auction for the allocation of unutilised debt limits on the second trading day from the date of receipt of intimation from the depositories. Thereafter, the auction shall be conducted alternately on NSE and BSE.
- c. The auction shall be held only if the free limit is greater than or equal to INR 100 cr. However, if the free limit remains less than 100 cr for 15 consecutive trading days, then an auction shall be conducted on the sixteenth trading day to allocate the free limits.
- d. The auction shall be conducted in the following manner:

<b>Particulars</b>	<b>Details</b>
Duration of bidding:	2 hours (15:30 to 17:30 hrs)
Access to platform	Trading members or custodians
Minimum bid	INR 1 crore
Maximum bid	One-tenth of free limit being auctioned
Tick Size	INR 1 crore
Allocation Methodology	Price time priority
Pricing of bid	Minimum flat fee of INR 1000 or bid price whichever is higher
Time period for utilization of the limits	10 trading days from the date of allocation

- e. Once the limits have been auctioned, the FPIs will have a utilisation period of 10 trading days within which they have to make the investments. The limits not utilised within this period shall come back to the pool of free limits.
- f. Upon sale/redemption of debt securities, the FPI will have a re-investment period of 2 trading days. If the reinvestment is not made within 2 trading days, then the limits shall come back to the pool of free limits.
- g. A single FPI/ FPI Group cannot bid for more than 10% of the limits being auctioned.

2.10 The subsequent auction would be held 12 trading days after the previous auction, subject to the fulfilment of the condition mentioned at Point (3c) above.

2.11 The auction mechanism shall be discontinued and the limits shall be once again available for investment on tap when the debt limit utilisation falls below 92%. It is clarified that in such a scenario, the reinvestment facility mentioned at Point (3f) shall be terminated and cannot be availed for the same limits when the utilisation crosses 95% again. The custodians shall monitor and report the reinvestment facility availed by the FPIs to the depositories.

2.12 In partial modification to Para (2a) of the SEBI circular SEBI/HO/IMD/FPIC/CIR/P/2017/16 dated February 28, 2017, FPI investments in unlisted corporate debt securities shall compulsorily be in dematerialized form and subject to end use restrictions.

### 3. Position limits available to FPIs for stock and stock index derivative contracts

3.1 Position limits available to Category I & II FPIs for stock derivative contracts shall be same as of Trading Member level limits as advised by SEBI from time to time.

3.2 Position limits available to Category III FPIs shall be same of client-level limits as advised by SEBI from time to time.

### 4. FPI Position Limits in Exchange Traded Interest Rate Futures (IRF)

4.1 Following position limits shall be applicable for Category I & II FPIs:

a) A limit of INR 5,000 crore on aggregate basis to FPIs for taking long position in IRFs

b) This limit will be calculated as follows:

i. For each interest rate futures instrument, position of FPIs with a net long position will be aggregated. FPIs with a net short position in the instrument will not be reckoned.

ii. No FPI can acquire net long position in excess of INR 1,800 crore at any point of time.

c) The limits prescribed for investment by FPIs in Government Securities shall be exclusively available for investment in Government Securities and shall not be reckoned for the purpose of computing utilisation under above mentioned limit of INR 5,000 crore.

d) The gross open positions of an FPI across all contracts shall not exceed 10% of the total open interest or INR 600 crores, whichever is higher.

4.2 For Category III FPIs, the gross open positions across all contracts within the respective maturity bucket shall not exceed 3% of the total open interest in the respective maturity bucket or INR 200 crore, whichever is higher.

4.3 For Category I, II & III FPIs, the total gross short (sold) position of an FPI in IRF shall not exceed its long position in the government securities and in Interest Rate Futures, at any point in time, and

4.4 Monitoring mechanism

a) Stock Exchanges shall put in place necessary mechanism for monitoring and enforcing limits of FPIs in IRFs.

- b) Stock Exchanges shall aggregate net long position in IRF of all FPIs taken together at end of the day and shall jointly publish/ disseminate the same on their website on daily basis.
- c) Once 90% of the limit is utilized, Stock Exchanges shall put in place necessary mechanism to get alerts and publish on their websites the available limit, on a daily basis.
- d) In case, there is any breach of the threshold limit, the FPI/s whose investment caused the breach shall square off their excess position/s within five trading days or by expiry of contract, whichever is earlier.

## 5. Participation of FPIs in the Currency Derivatives segment and Position limits for currency derivatives contracts

4.1 FPIs are permitted to trade in the currency derivatives segment of stock exchanges, subject to terms and conditions as stipulated by SEBI and RBI

4.2 Position limits in the permitted currency pairs

a) Category I & II FPIs

<b>Currency Pair</b>	<b>Position limits</b>
USD-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or USD 100 million, whichever is higher.
EUR-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or EUR 50 million, whichever is higher.
GBP-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or GBP 50 million, whichever is higher.
JPY-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or JPY 2000 million, whichever is higher.

b) Category III FPIs

<b>Currency Pair</b>	<b>Position limits</b>
USD-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or USD 10 million, whichever is higher.
EUR-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or EUR 5 million, whichever is higher.
GBP-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or GBP 5 million, whichever is higher.

JPY-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or JPY 200 million, whichever is higher.
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4.3 Within the applicable position limits specified in Clause 4.2 above, positions taken by the FPIs in the currency derivatives segment of a recognised stock exchange shall be subject to the following conditions:

- a) FPIs may take long as well as short positions in the permitted currency pairs upto USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable, per stock exchange without having to establish the existence of any underlying exposure.
- b) FPIs shall ensure that their short positions at a stock exchange across all contracts in a permitted currency pair do not exceed USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable. In the event a FPI breaches the short position limit, stock exchanges shall restrict the FPI from increasing its existing short positions or creating new short positions in the currency pair till such time FPI complies with the said requirement.
- c) To take long positions in the permitted currency pair in excess of USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable, FPIs shall be required to have an underlying exposure in Indian debt or equity securities, including units of equity/debt mutual funds.

4.4 Primary onus for ensuring compliance with the above provisions shall rest with the FPI

4.5 With regard to enabling monitoring of positions of FPIs as per the provisions of the RBI A.P. (DIR Series) Circular no. 148 dated June 20, 2014, the following shall be implemented by the clearing corporations and the custodians of securities of the FPIs:

- a) The clearing corporation shall provide details on the FPI's day-end and day's highest open positions at end of day to the custodians of securities of the FPI.
- b) The custodian of securities of the FPI shall aggregate the positions taken by the FPI on the currency derivatives segments of all the stock exchanges and forward such details to the designated bank of the FPI as defined at regulation 2(1)(e) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. The custodian of securities of the FPI shall also provide the market value of applicable underlying exposure of the FPI to the designated bank of the FPI.

4.6 Stock exchanges shall impose appropriate penalties for violation of position limits by FPIs

4.7 In case of positions taken to hedge underlying exposure, the position limit linked to open interest shall be applicable at the time of opening a position. Such positions shall not be required to be unwound in the event a drop of total open interest in a currency pair at a stock exchange. However, participants shall not be allowed to increase their existing positions or create new positions in the currency pair till they comply with the position limits.

## 6. Investments by FPIs in REITs, InvIts, AIFs and corporate bonds under default

- 5.1 FPIs are permitted to invest in units of REITs, InvITs and Category III AIFs in terms of Regulation 21 (1) of SEBI (FPI) Regulations, 2014 subject to such other terms and conditions as may be prescribed by SEBI from time to time.
- 5.2 A FPI shall not hold more than twenty five percent stake in a category III AIF.
- 5.3 Investments in REITs and InvITs shall be captured under the category “Hybrid Security” for the purpose of capturing and disseminating FPI investment data.
- 5.4 Investments by FPIs in corporate bonds under default
- a) FPIs are permitted to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of an amortising bond. FPIs shall be guided by RBI’s definition of an amortising bond in this regard
  - b) Such NCDs/bonds restructured based on negotiations with the issuing Indian company, with applicable minimum maturity period.
  - c) The FPIs shall disclose to the Debenture Trustees, the terms of their offer to the existing debenture holders/beneficial owners of such NCDs/bonds under default, from whom they propose to acquire.
  - d) All investments by FPIs in such bonds shall be reckoned against the prevalent corporate debt limit. All other terms and conditions pertaining to FPI investments in corporate debt securities shall continue to apply.
- 6.1 With respect to FPIs investments into government (Central and State) securities, exchange traded currency and interest rate derivatives, FPIs shall be guided by directions issued by RBI from time to time.
- 6.2 Further, in accordance with Regulation 21(5) of SEBI (FPI) Regulations, 2014, in respect of investments in the debt securities, the FPI shall also comply with terms, conditions or directions, specified or issued by the Board or RBI, from time to time, in addition to other conditions specified in these regulations. Thus, it is clarified that all the circulars and directions issued hereinafter by RBI w.r.t investment conditions for FPI Investment in corporate debt securities shall be complied with as per the timelines specified in the RBI circular(s). No separate circular(s) shall be issued by SEBI. All the intermediaries may take steps required to operationalize the RBI Circular(s).
- 6.3 Any non-compliance with the requirements prescribed by RBI from time to time w.r.t corporate debt securities shall be liable for action in terms of SEBI (Foreign Portfolio Investors) Regulations, 2014.

## 7. Rescission and saving

- 7.1 The following circulars issued by the Board shall stand rescinded:

1. Board's circular ref. no. FITTC/CUST/14/2001 dated October 31, 2001

2. MRD/DoP/SE/Cir-35/2004 dated October 26, 2004 – partial rescission
3. CIR/MRD/DP/15/2014 dated May 15, 2014 – rescind
4. SEBI/HO/MRD/DP/CIR/P/2016/143 dated December 27, 2016
5. CIR/MRD/DP/15/2014 dated May 15, 2014
6. DNP/Cir-30/2006 dated January 20, 2006

## **PART D - Issuance of Offshore Derivative Instruments by Foreign Portfolio Investors under SEBI (Foreign Portfolio Investor) Regulations, 2014**

This section consolidates the requirements prescribed by SEBI relating to issuance of Offshore Derivative Instruments (ODIs) by Foreign Portfolio Investors (FPIs) and matters connected therewith. A list of underlying circulars which form the basis of this section is annexed herewith.

### **1. Conditions for issuance of ODIs**

- 1.1 An FPI shall issue ODIs only to those subscribers which do not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014.
- 1.2 FPIs shall not issue ODIs with derivative as underlying, with the exception of those derivative positions that are taken by the ODI issuing FPI for hedging the equity shares held by it, on a one to one basis.
- 1.3 ODIs outstanding as on July 07, 2017 with derivatives as underlying, where the said underlying derivatives position are not for purpose of hedging the equity shares held by it, shall be liquidated by the ODI issuing FPI latest by the date of maturity of the ODI instrument or by December 31, 2020, whichever is earlier. However, ODI issuing FPIs should endeavour to liquidate such ODI instruments prior to the said timeline.
- 1.4 In the case of issuance of fresh ODIs with derivatives as underlying, a certificate has to be issued by the compliance officer (or equivalent) of the ODI issuing FPI, certifying that the derivatives position, on which the ODI is being issued, is only for hedging the equity shares held by it, on a one to one basis. The said certificate shall be submitted to SEBI along with the monthly ODI reports.
- 1.5 It is clarified that the term “hedging of equity shares” means taking a one-to-one position in only those derivatives which have the same underlying as the equity share.
- 1.6 Investment restrictions prescribed under the Regulation 21(7) of SEBI (Foreign Portfolio Investor) Regulations, 2014 shall apply to ODI subscribers also.
  - a) For this purpose, two or more ODI subscribers having common Beneficial Owner (BO) shall be considered together as a single ODI subscriber, in the same manner as is being done in the case of FPIs.
  - b) Further, where an investor has investments as FPI and also holds positions as an ODI subscriber, these investment restrictions shall apply on the aggregate of FPI investments and ODI positions held in the underlying Indian Company. In other words, the investment as FPI and positions held as ODI subscriber will be clubbed together with reference to the said investment restrictions.

## 2. Know Your Client (KYC) norms for ODI subscribers and reporting of suspicious transactions

- 2.1 Offshore Derivative Instrument (ODI) issuing FPIs shall identify and verify the BOs in the subscriber entities in terms of SEBI Circular CIR/IMD/FPIC/CIR/P/2018/131 dated September 21, 2018 as applicable for identification and verification of Beneficial Owners for Category II & III FPIs.
- 2.2 The ODI issuing FPIs shall maintain with them at all times the KYC documents regarding ODI subscribers as prescribed above and should be made available to SEBI on demand.
- 2.3 ODI issuing FPIs shall file suspicious transaction reports, if any, with the Indian Financial Intelligence Unit, in relation to the ODIs issued by it.

## 3. Reporting of ODIs and Maintenance of Control Systems

- 3.1 ODI issuing FPIs shall report the details of the holder/s of ODIs to SEBI on a monthly basis in the prescribed format (enclosed at Annexure to this circular).
- 3.2 ODI issuing FPIs shall also report all the intermediate transfers of ODIs during the month as part of along with the monthly report.
- 3.3 ODI issuing FPIs shall carry out reconfirmation of the ODI positions on a semiannual basis. In case of any divergence from reported monthly data, the same should be informed to SEBI in the prescribed format.
- 3.4 The FPIs issuing ODIs shall provide information about their ODI activity and their underlying trade(s) activity in India in the following manner: -
  - a. Following reports to be submitted by 10th of every month with a six month's lag (e.g. report providing details of ODI/PN activity for the month of April shall be submitted in the month of October):-
    - (i) Annexure A - Details of ODI/PN activity.
    - (ii) Annexure B\_Equity - Details of underlying trade(s) in the Indian market where the type of underlying Indian security is Equity.
    - (iii) Annexure B\_Debt - Details of underlying trade(s) in the Indian market where the type of underlying Indian security is Debt.
    - (iv) Annexure B\_Derivative - Details of underlying trade(s) in the Indian market where the type of underlying Indian security is Derivative.
    - (v) Annexure C\_Equity - Details of assets under management in Indian market where the type of underlying Indian security is Equity.
    - (vi) Annexure C\_Debt - Details of assets under management in Indian market where the type of underlying Indian security is Debt.
    - (vii) Annexure C\_Derivative - Details of assets under management in Indian market where the type of underlying Indian security is Derivative.

b. Monthly Summary Report –

- (i) This report shall capture the summary of the India ISIN-wise PN/ODI activity for the preceding month.
- (ii) The report shall be provided in the prescribed format as enclosed and submitted to SEBI by 7th of every month providing summary of its ODI/PN activity for the previous month.

3.5 The reports shall be submitted with the following undertaking:-

*“We undertake that the beneficial owner and the person(s) to whom the Offshore Derivative Instrument is issued in compliance with Regulation 22 of SEBI (FPI) Regulations, 2014. We also undertake that the KYC compliance norms have been followed for the beneficial owner of the Offshore Derivative Instrument”*

3.6 Clarifications regarding reporting:-

- a. If an ODI (e.g. on MSCI India Index) is hedged with multiple types of Indian securities and left partly unhedged, it may be split in separate rows with each row for each Indian security and a blank column for the unhedged portion. The outstanding value of ODIs shall be summation of all such rows.
- b. The current methodology of reporting F&O positions will be continued. The outstanding value of ODIs shall continue to be represented in notional terms.
- c. The ODI issuers shall link hedges to the extent that such a link can be made.
- d. The column 'Location of end beneficial owner of the Offshore Derivative Instrument' in Annexure A shall state the country of the end beneficial owner.
- e. It is to be clarified with reference to Para 5 of the SEBI circular dated January 17, 2011, as regards FII to FII ODI/PN activity, the reporting/ issuer FII shall provide the SEBI Registration No. of the subscriber FII in addition to the name of the FII. [Note to draft : SEBI to check the above highlighted portions.]

3.7 In case an ODI issuer (A) issues an ODI to another FPI (B) that further issues the ODI, then the ODI reporting for (A) would be limited to naming (B) as the subscriber, on the basis that (B) in its FPI capacity is providing a monthly ODI report to SEBI. The reporting from (B) would meet SEBI's requirements and avoid duplication of reporting.

3.8 It is to be clarified that the threshold for non-proprietary indices (eg MSCI World or MSCI EM Asia) shall be taken as 20%, i.e. those trades need not be reported in which the materiality of Indian underlyers is less than 20% of the index, even if such exposure was hedged onshore. However, custom baskets would always be reportable if hedged onshore regardless of percentage of the Indian component that is hedged onshore.

3.9 The above-mentioned reports shall be submitted in a password secured excel format. The e-mail should be sent only by the compliance officer of the respective FPI to the dedicated

e-mail ID – odireporting@sebi.gov.in with the subject line “ODI/PN Report of [FPI Name and Registration No.] for the month of [...]”. Please note that the password should be sent to SEBI in a subsequent e-mail.

- 3.10 ODI issuing FPIs shall put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A certificate in this regard should be submitted on an annual basis to SEBI by the Chief Executive Officer or equivalent of the ODI issuing FPIs. The said certificate should be submitted within one month from the close of every calendar year.

#### 4. Rescission and saving

- 4.1 The following circulars issued by the Board shall stand rescinded:

7. Board's circular ref. no. FITTC/CUST/14/2001 dated October 31, 2001
8. Board's circular ref. no. IMD/CUST/8/2003 dated August 8, 2003
9. Board's circular ref. no. IMD/CUST/9/2003 dated November 20 , 2003
10. Board's circular ref. no. IMD/CUST/15/2004 dated April 02, 2004
11. Board's circular ref. no. CIR/IMD/FIIC/1/2011 dated January 17, 2011
12. Board's circular ref. no. CIR/IMD/FIIC/2/2011 dated January 18, 2011
13. Board's circular ref. no. CIR/IMD/FIIC/6/2011 dated May 12, 2011
14. Board's circular ref. no. CIR/IMD/FIIC/7/2011 dated June 15, 2011
15. Board's circular ref. no. CIR/IMD/FIIC/14/2012 dated June 07, 2012
16. Board's circular ref. no. CIR/IMD/FIIC/ 20 /2014 dated November 24, 2014
17. Board's circular ref. no. CIR/IMD/FPI&C/59/2016 dated June 10, 2016
18. Board's circular ref. no. CIR/IMD/FPI&C/61/2016 dated June 29, 2016
19. Board's circular ref. no. CIR/IMD/FPI&C/76/2017 dated July 07, 2017

- 4.2 ODIs outstanding as on November 24, 2014, if not in conformity with the Regulation 22 of SEBI FPI Regulations, 2014 and the clause 1.1 above may continue till the expiry of such ODI contract/s or till December 31, 2020, whichever is earlier. No additional issuances/renewal/rollover of such positions shall be permitted. Fresh issuance of ODIs shall be made only to the eligible subscribers subject to the compliance with the SEBI (Foreign Portfolio Investors) Regulations, 2014 and other applicable norms.

**Annexure: ODI Reporting Format**

**Monthly ODI statement on SEBI website**