

FAQ 1. The Beneficial Owner is defined in sub rule (3) of Rule (9) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (“PMLA Rule 9”) as a natural person holding in excess of the threshold, 15% or 25% as applicable. The SEBI Circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016 reiterates that the above shall apply for the purposes of KYC of ODI subscribers. Please clarify whether the identification and verification of “the *beneficial owner of the material shareholder/owner entity*”, referred to under clarification (c), paragraph 2.1 of the said Circular, means Beneficial Owner of the ODI subscriber entity.

Reply. Yes the identification and verification of “the *beneficial owner of the material shareholder/owner entity*”, referred to under clarification (c), paragraph 2.1 of the said Circular, means Beneficial Owner of the ODI subscriber entity.

FAQ 2. As per clarification (d) of SEBI circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016, “where no material shareholder/owner entity is identified in the ODI subscriber using the materiality threshold (referred above at 2.1), the identity and address proof of the relevant natural person who holds the position of senior managing official of the material shareholder/owner entity should be obtained (as given in Annexure (I) enclosed with this circular)”. Kindly clarify if the said documents are required for the ODI subscriber entity as in such cases there will be no material shareholder.

Reply. It is hereby clarified that “Where no material shareholder/owner entity is identified in the ODI subscriber using the materiality threshold (referred at 2.1 of SEBI circular dated June 10, 2016), the identity and address proof of the relevant natural person who holds the position of senior managing official of the ODI *subscriber entity should be obtained*.”

FAQ 3. In those cases where the ODI subscriber is a company listed on a stock exchange or is a subsidiary of such a company then it is not necessary to identify and verify the identity of any shareholder or beneficial owner of the ODI subscriber, or the Senior Managing Official of the Investment Manager/ Investment Advisor/ Investment Controller of the ODI subscriber, in line with sub rule (3) (f) of PMLA Rule 9.

Reply. Yes.

FAQ 4. Whether the Rule (9) sub rule (6) (iv) of PMLA Rules for record keeping and maintenance, i.e., to obtain an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf is applicable to ODI subscribers.

Reply. Yes.

FAQ 5. Considering that all ODI subscribers are regulated entities, whether the risk based approach allowed for Cat (I) & (II) FPIs can be allowed to ODI subscribers, i.e., ODI

subscribers may just obtain the list of authorized signatories and ID and address proof of such authorized signatories and ID & address proof of such authorized signatories / managers, officers or employees holding an attorney to transact on its behalf may be exempted.

Reply. The KYC of ODI subscribers shall be as per Annexure (I) of SEBI circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016.

FAQ 6. Whether the documents prescribed in Annexure (I) will be required to be collected for all new ODI subscribers on boarded on or after July 1, 2016 and that there will be a requirement to conduct KYC review within three years for low risk clients and one year for all others. Further, the BO information/senior managing official(s) information for existing clients would require to be collected/updated in accordance with the abovementioned KYC review requirement, but not later than June 30, 2019 and reported to SEBI accordingly.

Reply. As clarified in the SEBI Circular dated June 10, 2016, KYC for new ODI subscribers should be done at the time of onboarding. KYC review for every low risk client should be within three years and for other clients within one year from the date of SEBI circular CIR/IMD/FPI&C/59/2016. Consequently the existing ODI subscribers may be classified based on level of risk and their KYC should be reviewed as indicated in the said circular.

FAQ 7. Whether attestation by directors, lawyer, company secretary, accountant, authorized signatories, bankers etc. for the compliance with the attestation requirement for relevant KYC documents will be considered valid?

Reply. Attestation should be as prescribed in the Annexure (I) of SEBI circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016. Further, relevant legal documents may be attested by "Apostille" (in respect of countries which are signatories to the Hague Apostille Convention of 1961) or by Indian embassy or High Commission or Consulate in the country where the ODI subscriber is located or authorised officials of overseas branches of Scheduled Banks registered in India.

FAQ 8. The practice of passing board resolutions for authorizing an entity to invest in the securities market is not followed globally, hence whether collecting prospectus/ information memorandum/ offer document / investment management agreement/ regulatory filings of the relevant ODI subscriber would suffice?

Reply. Yes it will suffice the requirement.

FAQ 9. Whether the proof of the registered address or business address of ODI subscriber can be obtained as an address proof of the ODI subscriber itself.

Reply. Yes.

FAQ 10. Whether the address proof of the entity employing the senior managing official would suffice the requirement of address proof of the senior managing official.

Reply. Yes.

FAQ 11. For address proof of ODI subscriber or identity and address proof of BO/senior managing officials, whether duly attested relevant documents / information available from reliable public sources, such as website of regulators, exchanges, registrars, constitution documents or official letters issued by the entity will be acceptable for complying with this requirement.

Reply. Yes.

FAQ 12. As per Paragraph 2.6 of the SEBI Circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016 requires certification by the CEO or equivalent of the ODI issuer with regard to implementation and periodical review of controls, systems and procedures with respect to the ODIs. Whether first such certification will be due in Jan 2018. Further, whether such certification can be provided by the CEO (of the FPI issuing ODI) or his/her duly appointed delegate.

Reply. No first such certification will become due in Jan. 2017. Such certification may be provided by the CEO (of the FPI issuing ODI) or his/her duly appointed delegate.

FAQ 13. In the Monthly ODI report and FPI gives an undertaking - "We undertake that we/ our associates have not issued/ subscribed/ purchased/sold any of the offshore derivative instruments directly to/ from Non Resident Indians/ Indian Residents." Whether the Non-resident Indian (NRI) include PIO (Person of Indian Origin)?

Reply. The definition of Non Resident Indian (NRI) will be same as given in Section 115C (e) of Income Tax Act, 1961 and it includes PIO. It is further clarified that the beneficial owners of an ODI subscriber cannot be NRI/PIO/ Indian Residents. Here definition of beneficial owner shall be as mentioned in sub-rule 3 of Rule 9, PMLA.

FAQ 14. Will there be any change in the reporting format prescribed in SEBI circular CIR/IMD/FPI&C/59/2016 dated June 10, 2016.

Reply. Pursuant to the clarifications given in the above FAQs, some minor modifications has been made to the ODI reporting format prescribed under the said circular. To access the modified ODI reporting format [click here](#).