



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

CIR/IMD/FPIC/CIR/P/2018/131

September 21, 2018

To,

1. All Foreign Portfolio Investors ("FPIs") through their Designated Depository Participants ("DDPs")/ Custodian of Securities.
2. Designated Depository Participants ("DDPs")/ Custodian of Securities.
3. All Recognized Stock Exchanges
4. The Depositories (NSDL and CDSL)
5. Stock Brokers through Recognized Stock Exchanges
6. Depository Participants through Depositories
7. Mutual Funds
8. Association of Mutual Funds in India
9. Portfolio Managers
10. KYC Registrations Agencies (KRAs)
11. Alternative Investment Funds (AIFs)

Sir/ Madam,

Subject: Know Your Client requirements for Foreign Portfolio Investors (FPIs)

SEBI Board in its meeting held on September 18, 2018, has after considering the interim recommendations of SEBI Working Group under the chairmanship of Shri H R Khan (hereinafter referred as HR Khan group) in relation to the circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and comments received from public decided that Beneficial ownership criteria in Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules) should be made applicable for purpose of KYC and not for determining eligibility of FPIs. The clubbing of investment limit for FPIs should not be done on the basis of beneficial owner (BO) as per PMLA Rules. Accordingly, there will be a separate set of norms for determining conditions where Non Resident Indians (NRIs) and Overseas Citizens of India (OCIs) and Resident Indians (RIs) are constituents and also the basis for clubbing of investment limits. The Amendments in SEBI (FPI) Regulations, 2014, wherever necessary, will be notified separately.

In supersession of the directions contained in SEBI circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 and in partial modification of SEBI circular No. CIR/ MIRSD/11/2012 dated September 05, 2012 and subsequent SEBI circular No. CIR/MIRSD/07/2013 dated September 12, 2013, FPIs shall comply with the following Know Your Client (KYC) requirements:-



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1. Identification and verification of Beneficial Owners – For Category II & III FPIs

- i. Beneficial Owners (BOs) are the natural persons who ultimately own or control 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). FPIs are required to maintain a list of BOs and should provide such list of their BOs as per **Annexure A**. BOs of FPIs having General Partner/Limited Partnership structure shall be identified on ownership or entitlement basis and control basis.
- ii. In respect of FPIs coming from “high risk jurisdictions” as referred in SEBI Master circular No. SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 104 dated July 04, 2018 the intermediaries may apply lower materiality threshold of 10% for identification of BO and also ensure KYC documentation as applicable for category III FPIs.
- iii. 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.
- iv. 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.
- v. No foreign company shall be entitled to exemption under Rule 9(3)(f) of PMLA Rules.
- vi. 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.
- vii. Offshore Derivative Instrument (ODI) issuing FPIs shall also identify and verify the BOs in the subscriber entities, as per these guidelines.

2. 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. FPIs shall be subject to KYC review as and when there is any change in material information / disclosure. The KYC review (including change in BOs / their holdings) should be done based on risk categorization of FPIs. In case of Category III and Category II FPIs from high risk jurisdictions KYC review should be done on yearly basis. In case of all other clients, the KYC review should be conducted at the time of continuance of FPI registration. In the event of non-submission of KYC documents, if any, no further purchase transactions shall be permitted to such clients.



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3. KYC documentation for Category III FPI

SEBI has prescribed “Financial Data” as mandatory for Category III FPIs only. In this regard, it is clarified that audited Annual financial statement or a certificate from auditor certifying net worth may be obtained from Category III FPIs. In case of new funds/ companies/ family offices, the audited financial statement of promoter person may be obtained. Further, prospectus and information memorandum are acceptable in lieu of an official constitutive document.

4. Exempted documents to be provided during investigations/ enquiry

- (i) SEBI vide circular dated September 12, 2013 has exempted FPIs from furnishing certain supporting KYC documents depending on risk involved. In respect of exempted documents, FPIs concerned should submit an undertaking to DDP/ Custodians that upon demand by Regulators/ Law Enforcement Agencies, the relevant documents would be provided.
- (ii) Further, SEBI vide circular dated September 12, 2013 has exempted Category III FPIs from submission of proof of address of BOs, Senior Management and Authorised Signatories. Since Category III FPIs are high risk investors, “declaration on letter head” shall be provided by them.

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.

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. Timelines for compliance

Category II and III FPIs registered prior to this circular (existing FPIs) should provide the list of BOs (as per **Annexure A**) and applicable KYC documentation within six months from the date of this circular. If an existing FPI fails to comply with the applicable KYC requirements by the given deadline, the concerned Custodian shall not allow such FPI to make fresh purchases till the time KYC documentary requirements, as applicable, are complied with. However, such FPI shall be allowed to continue to sell the securities



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already purchased by it. Such FPI shall be allowed to disinvest its holdings within a period of 180 days from the expiry of the timeline. In case the FPI remains non-compliant with this requirement even after 180 days from the said deadline, its FPI registration will no longer be valid and it would need to disinvest its holdings immediately.

8. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Sub-rule 14(i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
9. A copy of this circular is available at the links “Legal Framework→Circulars” and “Info for →F.P.I” on SEBI 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
Deputy General Manager
Tel No.: 022-26449619
Email: achals@sebi.gov.in



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Annex A - BO Format:

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 percentage Shareholding / Capital / Profit ownership in the FPIs	Tax Residency Number/ Social Security Number/ Passport Number of BO/ any other Government 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.



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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
XYZ Ltd.	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
PQR fund	Management Share in XYZ Ltd.		Non-Individual
Mr. ST	Holds 35% shares of PQR Fund		Individual

BO disclosure (Annex A)

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 percentage Shareholding / Capital / Profit ownership in the FPIs	Tax Residency Number/ Social Security Number/ Passport Number of BO/ any other Government issued identity document number (example driving license) (Please provide any)
1.	Mr. ST	XX	XX	XX	XX	26.25%	XX

Note: No need to declare Mr. UV as his effective holding in ABC would be 11.25% i.e. below the threshold.