



KNOW YOUR CLIENT REQUIREMENTS FOR FOREIGN PORTFOLIO INVESTORS (FPIS)¹

1. This has reference to SEBI circular No CIR/MIRSD/11/2012 dated September 05, 2012 and subsequent SEBI circular No. CIR/MIRSD/07/2013 dated September 12, 2013 where by risk based documentation requirements were prescribed for Know Your Client (KYC) requirements of eligible foreign investors classified as category I, II and III investing under Portfolio Investment Scheme (PIS) route. KYC of FPIS is accordingly being done.
2. Upon a review, it has been decided to make the following changes:-

(a) Identification and verification of Beneficial Owners

- (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.
- (iii) 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.
- (iv) 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. All the intermediaries are again directed to ensure compliance with the requirements contained in the Master circular dated December 31, 2010.
- (v) The materiality threshold (referred at (iii) & (iv) above) to identify the beneficial owner should be first applied at the level of FPI and next look through principle shall be applied to identify the beneficial owner of the material shareholder/ owner entity. Only beneficial owner with holdings equal & above the materiality thresholds in the FPI need to be identified through the aforesaid look through principle.
- (vi) Where no material shareholder/owner entity is identified in the FPI using the materiality threshold ((referred at (iii) & (iv) above) for controlling ownership interest basis and also on control basis (for companies and trusts), BO shall be the senior managing official of the FPI.
- (vii) 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.

¹ Available at: <https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-38618.html>

- (viii) 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.
- (ix) BO should not be a person mentioned in United Nations Security Council's Sanctions List notified from time to time;
- (x) 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.

(b) Format for reporting of BOs

Category II & III FPIs are required to maintain a list of BOs. In order to bring consistency, it has been decided that Category II & III FPIs should provide list of their BOs in following 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 (Please provide any)
1							
2							

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

The existing FPIs should provide the list of BOs (in aforementioned format) within six months from the date of this circular.

(c) Indians as BO of FPIs

In reply to FAQ 91, it has been clarified that "NRI/PIO is not eligible to make investments as an FPI. Accordingly, a company which is majority owned by one or more NRI/PIOs shall not be allowed to make investments as an FPI. However, if such company is appropriately regulated it may be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. This position is the same as in FII regime where companies promoted by NRIs were registered as non-investing FIIs."

In order to bring further clarity, it is informed that Non Resident Indians (NRIs) / Overseas Citizen of India (OCI) cannot be BO of FPIs. However, if an FPI is Category II Investment manager of other FPIs & is non-investing entity, it may be promoted by NRIs/ OCIs. It is also clarified that Resident Indian cannot be a BO of FPI.

Existing FPI structures not in conformity with the above requirements henceforth should not create fresh position at the end of expiry of derivative contract of April 2018. Further, these FPIs are given time of six months from the date of this circular to change their structure or close their existing position in Indian securities market.

(d) Bearer Share Structure

- (i) It should be ensured that FPIs or the investors identified on basis of threshold for identification of BO in accordance with PMLA Rules in the FPIs have not issued any bearer shares, or
- (ii) If the legal constitution of FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules and/or applicable home jurisdiction regulations permit issue of bearer shares, then FPIs should certify that they have not issued and do not maintain any outstanding bearer shares. Also, FPIs should certify that they will not issue bearer shares.

In case existing FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules do not conform to the above requirements, they shall ensure compliance within six months of the date of this circular.

(e) KYC review

As per SEBI circular dated September 12, 2013, eligible foreign investors shall be subject to KYC review as and when there is any change in material information / disclosure.

It is however decided that there should be comprehensive KYC review of FPIs on a periodical basis. The KYC review (including change in BOs / their holdings) should be done based on risk categorization of FPIs. In case of high risk clients (including those coming from high risk jurisdictions) it should be done on yearly basis. In case of all other clients, the KYC review should be conducted every 3 years preferably at the time of continuance of FPI registration.

(f) KYC documentation for Category III FPI

The stakeholders have requested for clarifications on KYC documentations for category III FPIs.

Sl. No.	Query	Present Status	Reply
1	There is uncertainty around the specific financials required for Category III FPIs. Kindly clarify the specific documents that are acceptable for the financial data and whether there is need for these to be audited.	SEBI has prescribed "Financial Data" as mandatory for Category III FPIs only. During discussions with DDPs it is gathered that there is no clarity on nature of financial data needed.	Audited Annual financial statement or a certificate from auditor certifying networth 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.
2.	Whether prospectus and information memorandum are acceptable in lieu of an official constitutional document.	SEBI circular prescribes the requirement of "Constitutional document" for all category of FPIs.	Yes

(g) 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. It has been decided that 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 Authorized Signatories. Since Category III FPIs are high risk investors, it is decided that "declaration on letter head" be provided by them.

In respect of (i) and (ii) above, the existing FPIs should provide these documents within six months from the date of this circular.

3. In view of manner of identifying Beneficial Ownership of FPIs having been specified in this circular, it is decided that clubbing of investment limit for FPIs shall also be on said basis.
All existing FPIs whose clubbed investment in equity shares of a company is in breach of the provisions of Regulation 21(7) in view of this circular are hereby given time of six months from the date of this circular to ensure compliance. In respect of any future breach of clubbing limit, there shall be two options:-
 - (a) The said investments shall be treated as Foreign Direct Investment from the date of breach, or,
 - (b) FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company.
4. 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.
5. 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

Team ICSI

Disclaimer : The information in the Info Capsules is developed according to the information available in public domain and for academic purposes only. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.