

Info Capsule

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THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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1. MARGIN OBLIGATIONS TO BE GIVEN BY WAY OF PLEDGE/ RE-PLEDGE IN THE DEPOSITORY SYSTEM - Circular no. SEBISEBI/HO/MIRSD/DOP/CIR/P/2020/28 (Dated 25th February, 2020)

SEBI had extensive consultations with Stock Exchanges, Clearing Corporation and Depositories and industry representatives of Trading Members (the “TM”) / Clearing Members (the “CM”) / Depository Participants (the “DP”), to devise a framework that mitigates the risk of misappropriation or misuse of client’s securities available with the TM / CM / DP. The misappropriation or misuse would include use of one client’s securities to meet the exposure, margin or settlement obligations of another client or of the TM / CM. The matter was also discussed in the Secondary Market Advisory Committee meeting.

With effect from June 01, 2020, TM / CM shall, inter alia, accept collateral from clients in the form of securities, only by way of ‘margin pledge’, created in the Depository system in accordance with Section 12 of the Depositories Act, 1996 read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 and the relevant Bye Laws of the Depositories.

Section 12 of the Depositories Act, 1996 read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 and the relevant Bye Laws of the Depositories clearly enumerate the manner of creating pledge of the dematerialised securities. Any procedure followed other than as specified under the aforesaid provisions of law for creating pledge of the dematerialised securities is prohibited. It is clarified that an off-market transfer of securities leads to change in ownership and shall not be treated as pledge.

The operational mechanism for margin pledge is provided in Annexure A. The framework for utilisation of pledged clients’ securities for exposure and margin is provided in Annexure B.

This circular is applicable for all securities in dematerialised form and which are given as collateral / margin by the client to TM / CM / CC by way of pledge and repledge.

The circular is available at: https://www.sebi.gov.in/legal/circulars/feb-2020/margin-obligations-to-be-given-by-way-of-pledge-re-pledge-in-the-depository-system_46082.html

2. INCLUSION OF MAURITIUS IN THE FATF LIST OF “ JURISDICTIONS UNDER INCREASED MONITORING- PR No.: 10/2020 (Dated 25th February, 2020)

The Financial Action Task Force on February 21, 2020, has placed Mauritius in the list of “jurisdictions under increased monitoring”, commonly referred to as the “grey list” and has stated the following:

“In February 2020, Mauritius made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime. Since the completion of its MER in 2018, Mauritius has made progress on a number of its MER recommended actions to improve technical compliance and effectiveness, including amending the legal framework to require legal persons and legal arrangements to disclose of beneficial ownership information and improving the processes of identifying and confiscating proceeds of crimes. Mauritius will work to implement its action plan, including by:

- (1) demonstrating that the supervisors of its global business sector and DNFBPs implement risk-based supervision;*
- (2) ensuring the access to accurate basic and beneficial ownership information by competent authorities in a timely manner;*
- (3) demonstrating that LEAs have capacity to conduct money laundering investigations, including parallel financial investigations and complex cases;*
- (4) implementing a risk based approach for supervision of its NPO sector to prevent abuse for TF purposes, and*
- (5) demonstrating the adequate implementation of targeted financial sanctions through outreach and supervision.”*

There have been apprehensions among market participants that whether inclusion of Mauritius in the ‘grey list’ would have an effect on the registration of FPIs from Mauritius.

SEBI (Foreign Portfolio Investors) Regulations, 2019 inter-alia states that an applicant is eligible to become a FPI if it is not resident in the country identified in the public statement of FATF as- i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or ii) 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. This condition was also in SEBI (Foreign Portfolio Investors) Regulations, 2014.

It is noted from FATF website that when a jurisdiction is placed under increased monitoring, it construes that the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. The FATF does not call for the application of enhanced due diligence to be applied to these jurisdictions, but encourages its members to take into account this information in their risk analysis. The intermediaries should take note of the same.

Additionally, FATF identifies jurisdictions that have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all such countries, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system. This list is often referred to as the “black list”. It is mentioned in FATF website that this was previously called "Public Statement"

Therefore, FPIs from Mauritius continue to be eligible for FPI Registration with increased monitoring as per FATF norms.

The press release is available at: <https://www.sebi.gov.in/media/press-releases/feb-2020/inclusion-of-mauritius-in-the-fatf-list-of-jurisdictions-under-increased-monitoring-46073.html>