



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

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January 08, 2014

To,

1. All Custodians of Securities
2. All Foreign Institutional Investors through their designated Custodians of Securities
3. Depository Participants through Depositories
4. All Depositories
5. All Recognized Stock Exchanges

Dear Sir/ Madam,

Sub: Operational Guidelines for Designated Depository Participants

The SEBI (Foreign Portfolio Investors) Regulations, 2014 ("the Regulations") have been notified on January 07, 2014.

Pursuant to the implementation of Foreign Portfolio Investor ("FPI") regime, 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 other guidelines, circulars, issued thereunder.

It has been decided in consultation with various market participants to issue the operational guidelines to facilitate registration of FPIs by DDPs on behalf of SEBI. The same is annexed herewith.

This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework" and "information for - FII".

Yours faithfully,

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SEBI (Foreign Portfolio Investors) Regulations, 2014 Operational Guidelines for Designated Depository Participants

These operational guidelines for Designated Depository Participants (“DDPs”) are issued to facilitate implementation of SEBI (Foreign Portfolio Investors) Regulations, 2014 (“the Regulations”).

1.0 Engagement of DDP

Each FPI shall engage a DDP before making investment in Indian securities market. At all times the DDP and the Custodian of Securities (“Custodian”) of the FPI shall be the same entity.

2.0 Registration of FPI by DDP

2.1 Scrutiny of applications

The application received for grant of registration as FPI in the format prescribed under the Regulations (Form A) shall be scrutinized by the DDP on the parameters as described below:

2.2 Check List for Grant of Registration as FPI*

The following checklist may be used by DDP for scrutiny of documents relating to registration of FPI.

Part A: Documents / information submitted by the applicant:

S No.	Particulars of Document	Whether Submitted
1	Application Form-A, duly filled and signed	Yes/ No
2	PCC/ MCV Declarations and Undertakings	Yes/ No
3	Applicable conversion/registration fees	Yes/ No
4	Additional undertakings or information (please provide details thereof)	Yes/ No

(All the above 4 points have to be replied in the affirmative.)

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Part B: Consideration of application:

S No.	Regulatory requirements as specified in SEBI (FPI) Regulations, 2014	Remarks of the DDP
1	Name of the Applicant	
2	Category of the applicant: (please specify the name of the Sub-Category) Category I Category II Category III	
3	If the applicant or its investment manager/investment advisor/trustee of trust belong to Category II, its registration status with overseas regulatory authority, indicating the following details: i. Name of the Regulator ii. Registration No. & Validity iii. Adverse Remark, if any.	
4	Date & Place of Incorporation (Wherever applicable)	
5	Principal place of business i. Name of the Country ii. Whether the securities market regulator is signatory to IOSCO MMOU (Appendix-A) or a signatory to bilateral MoU with SEBI. iii. If applicant is a Bank, whether the central bank is a member of BIS iv. Whether the country is listed in FATF public statements conveying jurisdictions with deficiencies.	(Please fill in the name of <u>country</u>) (Yes) / (No) (Yes) / (No) (Yes) / (No)
6	Is it legally permissible for the applicant to invest in securities outside the country of its incorporation or establishment?	(Yes) / (No)

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7	Whether the applicant is authorized by its Articles of the Memorandum and/or Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients?	(Yes) / (No)
8	Whether the applicant has good track-record, professional competence, financial soundness, sufficient experience, good reputation of fairness and integrity, in general?	(Yes) / (No)
9	Brief details of the activities carried out by the applicant.	
10	Whether the applicant is fit and proper?	(Yes) / (No)
11	PCC/MCV status of the applicant	
12	Whether the applicant is a part of any investor group?	(Yes) / (No)
13	Whether the name of the applicant figures in the list of defaulters (for default in payment of fees) available on SEBI website.	(Yes) / (No)
14	Whether the name of the applicant has been checked in the publicly available sources for ascertaining any regulatory action against the applicant?	(Yes) / (No)
15	Whether the applicant complies with the eligibility criteria as specified under SEBI (FPI) Regulations, 2014.	(Yes) / (No)

** This checklist is only illustrative and therefore does not prohibit DDP to obtain any other suitable information/ document from the applicant.*

2.3 In case of an applicant being a bank or its subsidiary, the respective DDP shall forward the relevant details of the applicant such as its name & address 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.

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2.4 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.

2.5 Conditional Registration

If the applicant is newly incorporated/ established 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:

2.5.1 The applicant is an India dedicated fund or undertakes to make investment of atleast 5% corpus of the fund in India;

2.5.2 The applicant undertakes to comply with the broad based criteria before the validity of its conditional registration i.e. within 180 days;

2.5.3 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.

2.5.4 In case the DDP issues acknowledgement regarding fulfilment of broad based criteria, the conditional registration shall be treated as registration, henceforth.

2.5.5 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.

2.5.6 If an existing broad based fund registered as Category II FPI, ceases to remain broad based on account of redemption etc., the procedure specified at clause 2.5.1 to clause 2.5.5 shall be followed.

3.0 Surrender Of Registration

3.1 Where an FPI desires to surrender its certificate of registration, it may make an application to the DDP. The DDP shall accept the surrender of registration after ensuring the following:

3.1.1 There are no dues by the applicant outstanding to SEBI.

3.1.2 The holdings of the concerned applicant in security account and bank account is nil.

3.1.3 SEBI has given its No Objection Certificate (NOC).

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4.0 Clubbing Of Investment Limits

- 4.1** Where multiple FPIs belong to the same investor group, the investment limits of all such FPIs shall be clubbed at the investment limit as applicable to a single FPI. This shall be the responsibility of the depositories.
- 4.2** For the purpose of ascertaining investor group, the concerned DDPs shall consider all such entities having direct or indirect common shareholding/ beneficial ownership/ beneficial interest of more than 50%, as belonging to same investor group. The DDP shall report the details of investor group(s) to the depositories.
- 4.3** Information regarding investor group(s) may be obtained by the DDPs from the respective applicants in the format as prescribed in Form A of the Regulations.
- 4.4** Where different FPIs belonging to the same investor group are serviced by different custodians, the custodians shall report the holdings to both the depositories. The depositories shall club the investment limits and ensure that combined holdings of all these FPIs does not exceed 10% of the issued capital of the investee company at any time.

Information regarding FPI groups:

S No.	Name of the reporting entity	Registration no. of reporting entity	Name of FPI with whom the applicant shares common end beneficial owners	Registration no. of FPI	Demat Account No. of FPI mentioned at col. C
A	B	C	D	E	F

Instructions for providing investor group information:

- *FPIs shall provide details of all entities having direct or indirect common shareholding / beneficial ownership / beneficial interest, of more than 50%, as a part of their group, for submitting this data.*
- *The common beneficiary owner(s) shall be identified on the basis of (1) shareholding, (2) voting rights (3) any other forms of control, in excess of 50%, across FPIs, if any.*

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- *In case of FPI groups, any one FPI may file the declaration, listing all other FPIs covered, and furnish the agreement / acknowledgement of other FPIs in that group on the cover letter i.e. a single certification can be provided for an FPI group.*
- *For individual investors, the individual and his/her relatives would constitute a group. The definition of "relative" shall be as per Section 2 Sub section 77 of the Companies Act, 2013.*

4.5 The DDP shall take necessary declarations & undertakings from the FPI.

4.6 The Depositories shall ensure that the investment limit of 10% is not breached by the FPI investor group.

4.7 The depositories shall put in place appropriate systems, procedures and mechanisms to capture and maintain the details of FPIs belonging to the same investor group, based on the information provided by the DDPs, from time to time.

4.8 The depositories shall put in place appropriate systems, procedures and mechanisms to capture and maintain the details of holdings of FPIs belonging to the same investor group, based on the information provided by DDPs/Custodians from time to time.

4.9 The depositories shall put in place appropriate systems, procedures and mechanisms to monitor the investment limit/ holdings of FPIs belonging to the same investor group.

4.10 The depositories shall ensure that the aggregate holdings of all FPIs belonging to the same investor group should remain below 10% of the paid up capital of the investee company.

4.11 In case the aggregate holdings of FPIs belonging to the same investor group exceeds the stipulated limit for any reason whatsoever, the depositories shall put in place appropriate procedures and mechanism to bring back the holdings within the stipulated investment limit, in a reasonable period of time not exceeding 7 days.

4.12 The depositories shall report the details of those FPIs who are responsible for such breach of investment limit to SEBI, forthwith.

5.0 Miscellaneous Approvals

5.1 Change in Material Information

- 5.1.1 Under the Regulations, *“if there is any material change in the information previously furnished by it to the Designated Depository Participant and/or Board, which has a bearing on the certificate granted by the Designated Depository Participant on behalf of the Board, it shall forthwith inform the Designated Depository Participant and/or the Board;*
- 5.1.2 Such material change may include: direct or indirect change in control, change in regulatory status, merger, demerger or restructuring, change in category, change in structure etc.
- 5.1.3 The DDP shall examine all such material changes and re-assess the eligibility of the FPI.
- 5.1.4 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.

5.2 Permission for Disinvestment

- 5.2.1 FPIs which are not desirous of continuing with the registration but are holding certain securities, may hold such securities after expiry of registration. Such FPIs shall be permitted to hold the residual securities for subsequent disposal, after the expiry of FPI registration, subject to receipt of specific permission from DDP in this regard.
- 5.2.2 The procedure for seeking permission for disinvestment by FPIs after expiry of registration is given below:
 - 5.2.2.1 At the time of expiry of registration, the FPI desiring permission for disinvestment shall make a request to DDP along with details of its holdings.
 - 5.2.2.2 The DDP may grant such permission for disinvestment with an initial validity period of 6 months.
- 5.2.3 The required sale trades shall be carried out by the FPI only after receipt of permission from DDP.
- 5.2.4 The permission shall be granted only for sale of the securities held by the FPI as on date of expiry of registration. No purchase transactions shall be permitted after the expiry of registration.

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However, credit of corporate benefits and application for rights issue in respect of existing securities would be permitted.

- 5.2.5 If the FPI is unable to sell the securities within 6 months, it can approach the DDP for extension of permission. The request shall mention the reason for seeking extension and also accompanied by a statement of current holdings in the required format. These requests may be considered based on the merits of the case.

5.3 Name Change

- 5.3.1 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:

- i. Original FPI registration certificate granted in the old name;
- ii. Certified copy of document(s) from home regulator evidencing the name change;
- iii. Certified copy of document(s) from Registrar of Company (or equivalent authority) (wherever applicable) issued, thereby evidencing the name change.
- iv. An undertaking by the FPI stating that it is a mere name change and does not involve change in beneficial ownership.

- 5.3.2 Upon receipt of the request for name change along with above-mentioned documents, the DDP shall effect the change in name in the Registration Certificate and in its database.

- 5.3.3 If there is a delay of more than six months in intimation of name change by the FPI to the DDP, then it shall lead to violation of Regulation 23(1)(c) and liable for penal action, as deemed fit, by SEBI.

- 5.3.4 The DDP shall, forthwith, forward all such cases of delayed reporting to SEBI for appropriate penal action, if any.

5.4 Change in DDP/Custodian

In case the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian. On receipt of no objection from the existing /transferor DDP/Custodian and

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acceptance from the proposed / transferee DDP/Custodian, then approval from SEBI shall be sought by concerned FPI.

5.5 Change in Status of a Compliant Jurisdiction

- 5.5.1 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.
- 5.5.2 The concerned DDP shall inform to SEBI a list of such jurisdiction along with the details of FPIs belonging to the jurisdiction.

5.6 Other Changes relating to FPI

- 5.6.1 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.
- 5.6.2 If change in address results in change in home jurisdiction of FPI, the DDP shall reassess the eligibility of FPI as per the Regulations.

6.0 Obligation of DDP with regard to taxation

The DDP shall set up a mechanism for tax deduction and payment in compliance with the directions issued by the Income Tax Department/CBDT/RBI from time to time.

7.0 Grandfathering provision for Qualified Depository Participants with existing clientele

Qualified Depository Participants ("QDPs") which are deemed to have been granted approval as DDPs under the Regulation 11(1) of the Regulations would be permitted to service the clients, which have opened qualified foreign investor accounts, as on date of notification of the regulations.

However, such QDPs will be allowed to register new FPIs after obtaining registration as a Custodian from SEBI.

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8.0 Eligibility of Insurance and Reinsurance companies

It is clarified that insurance and reinsurance companies 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.

9.0 Clarification on Regulation 5(b)(iii)

For the purpose of Regulation 5(b)(iii) investment manager shall mean an entity performing the role of investment management, investment advisory, trustee or any equivalent role and is responsible for investment related compliance of the foreign portfolio investor.
