

Due diligence instructions for foreign investors in India

May 12, 2018



The Securities and Exchange Board of India (SEBI) issued instructions in relation to carrying out necessary due diligence and reporting for foreign portfolio investors (FPIs) through a circular dated 21 March. The circular was released as a continuation of two earlier SEBI circulars released in 2015.

The guidelines prescribed in the circular are as follows: (1) all FPIs should obtain valid self-certification/Foreign Account Tax Compliance Act (FATCA) or common reporting standards (CRS) declaration forms with documentary evidence as part of the account opening documentation in relation to FATCA/CRS; (2) the custodians are required to carry out due diligence on the accounts held by global custodian end-clients; and (3) the designated depository participants should grant registration to FPIs only after they comply with the stipulation under (1) above.

Under rule 114G (11) of the Income Tax Rules, 1962 (ITR), in order to ensure compliance with FATCA/CRS, regulators (SEBI, the Reserve Bank of India, etc.) are required to issue necessary guidelines and instructions from time to time for incorporating the requirements of due diligence, providing the procedure and manner of maintaining information by a reporting financial institution as defined in rule 114F(7) of the ITR.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.