

Access norms clarified for FPIs

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The Securities and Exchange Board of India (SEBI) issued clarifications in respect to investments by certain category II foreign portfolio investors (FPIs), through a circular on 13 March.

The clarifications relate to amendments made on 15 February to the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, in order to ease access norms for FPIs in Indian markets.

Private and merchant banks. Collective investment vehicles of private banks or merchant banks investing on behalf of their clients must now ensure that the investor has fulfilled the applicable know your customer norms. The beneficial owners of the investor are identified in accordance with applicable anti-money laundering laws. The investor or their beneficial owners should not be an Indian resident, a non-resident Indian or an overseas citizen of India.

The investor also must not be resident in a country identified in the public statement of the Financial Action Task Force as: (1) a jurisdiction having strategic anti-money deficiencies to which countermeasures apply; or (2) a jurisdiction that has not made sufficient progress in addressing deficiencies, or has not committed to an action plan developed with the Financial Action Task Force to address deficiencies.

The investor should not have an opaque structure (as defined in the FPI regulations) or a bearer share structure.

The collective investment vehicle of the bank in this context should be broad-based, i.e. have more than 20 investors with no investor having more than a 49% stake, and there should be a common portfolio for all investors.

Insurance or reinsurance companies. In the context of properly regulated broad-based insurance/reinsurance companies investing in India through proprietary funds, and for unit-linked/investment products, it was clarified that investment in India by such companies must be maintained as an undivided common portfolio. Segregated portfolio or an investor/policyholder level investment structure is not permitted.

Other regulated persons. In respect to other appropriately regulated persons permitted as category II FPIs, such as asset management companies, investment managers/advisers, portfolio managers, broker-dealers and swap-dealers, it was clarified that such FPIs are permitted to invest their proprietary funds. They may also invest with client funds as an offshore derivative investment issuing FPI, or after fulfilling the condition of being broad-based and having a common portfolio. However, asset management companies having thematic portfolios may also have a segregated structure if each such theme is broad-based.

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