

Regulatory Hotline

March 29, 2023

SEBI MODIFIES FPI MASTER CIRCULAR: ONBOARDING PROCESS STREAMLINED

INTRODUCTION :

The Securities and Exchange Board of India (“SEBI”) released a circular on March 27, 2023 streamlining the onboarding process of Foreign Portfolio Investors (“FPIs”) (the “Circular”)¹. The Circular has modified the provisions of the Master Circular for FPIs, Designated Depository Participants and Eligible Foreign Investors (“Master Circular”)².

While the Circular puts final stamp on the changes that were approved by SEBI in its board meeting of December, 2022³, it also includes few other changes that have been made to align the provisions of the Master Circular with the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023⁴ (“Amendment Regulations”), which were notified earlier this month.

MODIFICATIONS TO THE MASTER CIRCULAR :

FPI registration based on scanned copies of application forms and supporting documents

Designated Depository Participants (“DDPs”) have been permitted to grant registration to FPI applicants on the basis of scanned copies of the executed application form (known as “Common Application Form” or “CAF”) and certified supporting documents, post the payment of the applicable fees. The DDP has been assigned the responsibility to (a) update the CAF module, post the FPI registration, for the issuance of the Permanent Account Number (“PAN”) for the FPI, in cases where the applicant doesn’t already have a PAN; and (b) upload the scanned copies of the certified know your client (“KYC”) documents on the KYC Registration Agencies (“KRA”), from where these may be accessed by other intermediaries to complete their KYC requirements.

It is pertinent to note here that although FPIs may be granted registration on the basis of scanned copies of documents, permission to such FPIs to transact in the Indian securities markets may be provided only upon receipt and verification of the physical documents by the DDP, and an application to the clearing corporation for the allotment of a Custodial Participant (“CP”) Code may also be made by the custodian post the verification of the original documents.

FPIs permitted to use digital signatures

Up until now, FPIs had to mandatorily execute the CAF and other registration documents in wet ink and provide the originals of the same to the DDP, for registration. In a welcome move, SEBI has now permitted FPIs to digitally sign the CAF and other registration documents.

Certification of copies of original documents using SWIFT mechanism

As an alternate to physical attestation of documents submitted by FPI applicants, and to expedite the document verification process, SEBI has permitted authorized bank officials to send the copies of original documents to the DDP digitally and certify the authenticity of these documents through the SWIFT mechanism⁵.

Verification of PAN by DDPs

It is mandatory for FPIs to have a PAN considering they have to file tax returns in India. CAF acts as a single application for FPI registration as well as PAN allotment in cases where an FPI applicant does not already hold a PAN.

Upon the registration of an FPI, the CAF module is updated by the DDP and an application for allotment of PAN is forwarded to the Income-tax Department. Upon issuance, the PAN will now be reflected on the website of the depositories, from where it can be verified by the DDP. Previously, DDPs had to verify the PAN of FPIs either from the website of the Income-tax Department or had to request the FPIs to produce the e-PAN issued to them.

Investor group ID:

For operational ease at the time of application, FPI applicants have been permitted to now submit their unique investor group ID in the CAF, instead of providing complete details of all FPIs with whom it shares ownership of more than 50% or common control. Further, the applicant may also provide the details of additional FPIs, if any, along with the investor group ID, in case they wish to club such FPIs in the unique group ID.

Changes to timelines

In addition to the above modifications, certain timelines provided under the Master Circular have also been modified

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Erstwhile timeline Modified timelines

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| 1 | Application for change in name in the PAN records | Forthwith | As soon as possible but not later than seven working days |
| 2 | Intimation to DDP for deletion of sub-fund/share classes/equivalent structure that invests in India | Forthwith | As soon as possible but not later than seven working days |
| 3 | Written update to SEBI and DDP in case of any change in material information previously furnished by the FPI | Forthwith | As soon as possible but not later than seven working days |
| 4 | Changes in information or particulars pertaining to FPI registration | Forthwith | As soon as possible but not later than seven working days |
| 5 | Intimation of material change by DDP to SEBI, upon failure of FPI to intimate such material change to the DDP for more than six months. | Forthwith | As soon as possible but not later than two working days |
| 6 | Notification by the custodian to SEBI in case the FPI, or its underlying investors come under the Sanctions List notified by the United Nations Security Council | Forthwith | As soon as possible but not later than two working days |
| 7 | Intimation by the depository to SEBI in case of any breach of investor limits by the FPI. | Forthwith | As soon as possible but not later than two working days |

OUR VIEWS:

The modifications introduced by the Circular were awaited by the industry since SEBI's press release in December and the notification of the Amendment Regulations earlier this month. (Please find our detailed analysis of the press release and the Amendment Regulations [here](#) and [here](#), respectively).

While we expect the industry to welcome these changes, there are still some areas where SEBI's inputs / clarifications would be extremely helpful to bring an end to contradicting views. As discussed in our [previous hotline](#), the air around the definition of the term 'material change' has still not been cleared, and it remains to be an inclusive term, which continues to create confusion among the market participants on what changes are material and what are not.

Further, while the modification of paragraph 14 (i) of Part A of the Master Circular makes it clear that FPIs have to mandatorily inform the DDP and SEBI of any change in material information, in writing, within seven working days, the modification to paragraph 14 (iii) seems to be unclear. The paragraph requires DDPs to inform SEBI, within 2 working days, of cases where there is a delay of more than six months in intimation of material change by the FPI to the DDP. This timeline of six months seems to be an outdated provision for when the timeline provided to FPIs was six months. With the change in paragraph 14 (i), we expect this timeline to be reduced to "seven working days", since there are no provisions for intimation of change in material information made after seven working days and before the expiry of six months, either in the FPI Regulations or the Master Circular.

– **Ritul Sarraf, Prakhar Dua & Kishore Joshi**

You can direct your queries or comments to the authors

¹Available at: https://www.sebi.gov.in/legal/circulars/mar-2023/streamlining-the-onboarding-process-of-fpis_69390.html

²https://www.sebi.gov.in/legal/master-circulars/dec-2022/master-circular-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors_66356.html

³https://www.sebi.gov.in/media/press-releases/dec-2022/sebi-board-meeting_66407.html

⁴<https://egazette.nic.in/WriteReadData/2023/244410.pdf>

⁵SWIFT is the messaging network used by financial institutions such as banks to securely send and receive information, such as money transfer instructions to and from clients. The DDPs may use this mechanism to receive secure instructions of certification of copies of original documents from the applicants.

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