

Regulatory Hotline

September 06, 2018

REGULATORY ALERT: COMMON APPLICATION FORM FOR FPIs

- Central Government notifies the Common Application Form for FPIs.
- Common Application Form consolidates the registration, opening of bank and demat accounts, and application for PAN by FPIs in India, into one single master form.

In continuation of its endeavour to liberalize the existing foreign portfolio investment regime in India, the Central Government has released a common application form which provides for a single window clearance procedure for the applicants seeking to register themselves as FPIs with SEBI in order to make portfolio investments in India.

INTRODUCTION OF COMMON APPLICATION FORM FOR FOREIGN PORTFOLIO INVESTORS

Pursuant to the announcement made by Hon'ble Finance Minister Shri Arun Jaitley in his Union Budget (2017 - 2018) speech and furthering its idea of improving ease of doing business in India, the Department of Economic Affairs, Ministry of Finance ("DEA"), has issued a long pending Common Application Form ("Form")¹ for registration of Foreign Portfolio Investors ("FPI") with Securities and Exchange Board of India ("SEBI"), allotment of Permanent Account Number ("PAN") and conducting Know Your Customer ("KYC") diligence for opening of bank and demat accounts.

Currently, for an applicant seeking registration as an FPI, an application is required to be made to the concerned Designated Depository Participant ("DDP") in Form A of the First Schedule along with the fee specified in Part A of the Second Schedule, under SEBI (Foreign Portfolio Investors) Regulations, 2014 ("FPI Regulations"). The applicant is also required to make a separate application to the Income Tax Department for obtaining a PAN (for the purposes of filing its return of income in India). The DDP, after satisfactorily reviewing the application and conducting KYC diligence on the applicant, grants the certificate of registration as prescribed in Form B of First Schedule of the FPI Regulations to the applicant registering it as an FPI. Once the registration is granted, the FPI is required to appoint a bank authorized by the Reserve Bank of India ("RBI") for opening of a foreign currency denominated account and a special non-resident rupee account before making any investments in India. However, before trades can finally be executed on behalf of the applicant FPI, the DDP is required to open a demat account for the FPI after ensuring (as a part of KYC diligence) that the FPI complies with Prevention of Money Laundering Act, 2002 ("PMLA") along with rules and regulations prescribed thereunder, Financial Action Task Force ("FATF") standards as well as the circulars issued by SEBI in this regard, from time to time.

In order to effectively dilute the requirement of filing numerous applications before different authorities, the DEA, has issued the Form, which has been jointly prepared by SEBI, RBI and Central Board of Direct Taxes ("CBDT"). The Form is divided into five parts, viz., KYC Information (Part A), FPI Registration (Part B), Additional Information for obtaining PAN (Part C), Additional Information Applicable Only for Individuals (Part D) and Declaration & Undertaking (Part E) and thus consolidates the application for FPI registration, PAN and KYC obligations required for opening of the bank account and the demat account by an FPI, into one single form.

Additionally, the Form allows DDPs to seek additional information / documentation from the FPI applicants based on their independent evaluation and risk classification conducted by them on such FPIs on the basis of parameters, such as home jurisdiction, type of entity, nature of business etc. Furthermore, the Form also requires an FPI applicant to provide information regarding the ultimate beneficial owner ("UBO") of such FPI. This requirement seems to stem from SEBI Circular, dated April 10, 2018² ("April 10 Circular") wherein the FPIs are required to identify the beneficial owner(s) in accordance with Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ("PMLA Rules"). It is important to note that pursuant to the representations received from market participants seeking review of the Circular, SEBI, vide a Press Release³ dated August 21, 2018, has decided to refer the issues raised in the representations for deliberations to the working group constituted under the Chairmanship of Shri H.R. Khan. Furthermore, SEBI has also, vide a Circular⁴ dated August 21, 2018, extended the deadline for compliance with April 10 Circular up to December 31, 2018.

ANALYSIS

Presently, registering as an FPI can become an extensive and a time-consuming procedure with it being required to file separate forms with respective regulators, thereby increasing the time, money and resources. The introduction of this single window clearance program should now result in operational ease and flexibility for FPIs thereby increasing foreign exchange inflow in India.

While the above said changes have been issued by the Central Government, we shall have to wait for an official

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communication from SEBI in the form of a circular / notification / amendment (to FPI Regulations) / directions to the DDPs. SEBI should also release detailed instructions and clarifications on the new responsibilities imposed upon the DDPs in relation to them facilitating issuance of PAN and opening of bank account through concerned authorities, considering that DDPs shall now be required to undertake and implement a more robust due diligence mechanism.

Although, the intentions are laudable, appropriate and clear directives are awaited in order to facilitate proper implementation by the DDPs.

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You can direct your queries or comments to the authors

¹ DEA Notification F.No. 4/15/2016-ECB, dated August 21, 2018.

² SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64, dated April 10, 2018.

³ SEBI PR No. 36/2018.

⁴ SEBI Circular No. IMD/FPIC/CIR/P/2018/124.

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