
FREQUENTLY ASKED QUESTIONS (FAQs)

SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014

Disclaimer: These FAQs are prepared with a view to guide market participants on SEBI (Foreign Portfolio Investors) Regulations, 2014 ("the Regulations"). For full particulars of laws governing the Foreign Portfolio Investors (FPI), please refer to the Acts/Regulations/Guidelines/Circulars etc. appearing under the Legal Framework Section of SEBI website i.e. www.sebi.gov.in. Any queries about the FPI Regime can be addressed to the Investment Management Department, SEBI.

I. Transition from FII to FPI Regime

Q 1. Can the existing Foreign Institutional Investors (FIIs)/Sub Accounts (SA) continue to buy, sell or deal in securities till the expiry of their current registration without payment of conversion fees during the validity of their registration?

Ans. Yes. The existing FIIs/SAs may continue to buy, sell or deal in securities till the expiry of their current registration. Such FII/SAs shall be required to pay conversion fees on or before the expiry of their current registration. At the time of conversion, the FII must return the certificate of registration in original to the DDP. [Ref. Regulation 3(1)].

Q 2. Whether the original validity of registration as FII/SA will remain the same upon conversion as FPI?

Ans. Yes. The original validity of registration as FII/SA will remain the same upon conversion as FPI. [Ref. Regulation 3(1)].

Q 3. Whether it is mandatory for a SA to convert as FPI, if its FII chooses to convert as FPI?

Ans. If an FII or any of its proprietary SAs chooses to convert as FPI, then all of its SAs shall be required to convert as FPI. However, if any SA other than proprietary SA chooses to convert as FPI, then the respective FII and its other SAs whether proprietary or broad based need not convert as FPI till the validity of their registrations. [Ref. Regulation 3(1)].

Q 4. Whether the existing FIIs and SAs that do not meet the eligibility requirements as stipulated under these regulations, can continue to deal in Indian securities e.g. where a fund (currently registered as a SA) is resident in a jurisdiction whose security market regulator doesn't fulfil the conditions prescribed under the Regulation 4(b) can continue to deal in Indian securities as FPI?

Ans. Yes. All existing FIIs and SAs are deemed FPIs. They can continue to deal in Indian securities till the validity period of FII/SA registration for which fee has

been paid. After the validity period, they can continue to deal as FPIs subject to payment conversion and registration fees. [Ref. Regulation 2(h)].

Q 5. How will the proprietary SAs of FIIs be categorized in the FPI regime?

Ans. Proprietary SAs of FIIs shall be converted as FPIs in one of three categories based on its establishment/structure/constitution. [Ref. Regulation 5].

Q 6. Can an entity obtain more than one FPI registration (similar to the one allowed for MIM structures in the FII regime)?

Ans. Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.

Q 7. Whether the requirement of registering a broad based fund by non fund FIIs as stipulated under Regulation 6 (1) (d) (ii) and (iii) of SEBI (FII) Regulations, 1995 continue in FPI regime?

Ans. No, pursuant to the implementation of FPI regime, the requirement of registering a broad based fund by non fund entities shall no longer be applicable.

Q 8. FII and its SA are considered as Person Acting in Concert (PAC) for SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations). With respect to SAST Regulation, what is the requirement for FPIs?

Ans. The deeming clause on PAC mentioned in SAST Regulations has been omitted vide gazette notification dated January 07, 2014. However, if the facts and circumstances show that a set of FPIs are acting in concert then the provisions of SAST Regulations shall apply.[Ref. Regulation 46]

Q 9. Whether the existing FII/Sub-Account has to submit Form A as per FPI Regulations at the time of conversion as FPI?

Ans. Yes. At the time of conversion as FPI, the erstwhile FII/SA shall make an application to DDP in Form A along with supporting documents as provided in the FPI Regulations. Conversion fee of USD 1000 shall be paid at the time of conversion. [Ref. Regulations 3(1) and 7(3)]

Q 10. Whether existing FIIs/SAs be required to open new custody account, depository account, and bank account upon conversion to FPI or can they retain their existing accounts?

Ans. All existing FIIs and SAs can continue to retain their existing accounts. [Ref. Regulation 3(1)].

Q 11. The FII Regulations provide that investments by each FII/ SA shall not exceed ten percent of the total issued capital of an Indian company, while in the FPI regulations the applicable investment limit for each FPI is below ten percent. Whether the FIIs and SAs who hold 10% be required to disinvest the excess holdings?

Ans. Where a Foreign Portfolio Investor already holds 10% of equity shares in an Indian company, no fresh purchases by such FPI shall be allowed in that company till its holdings fall below 10%. However there will be no need to divest its existing holdings. [Ref. Regulation 21(7)]

Q 12. Can existing investments made as FIIs/SAs/Qualified Foreign Investors (QFIs) be retained under the FPI regime?

Ans. Yes, all existing investments made by the FIIs/SAs/QFIs are grandfathered. However, in respect of those securities, where FPIs are not allowed to invest (e.g. unlisted securities) no fresh purchase shall be allowed as FPI. They can only sell their existing investments in such securities.

II. Transition from QFI to FPI Regime

Q 13. Can the existing QFIs continue to buy, sell or deal in securities without payment of conversion fees?

Ans. Yes. The existing QFIs may continue to buy, sell or deal in securities for a period of one year from the date of commencement of FPI Regulations i.e. till January 06, 2015 or until it obtains a certificate of registration as FPI, whichever is earlier. [Ref. Regulation 3(1)].

Q 14. How will the QFIs be categorized in the FPI regime?

Ans. The existing QFIs, which are in the nature of corporate bodies/individuals, will fall under the Category III of the FPI regime. However, if a QFI fulfils the eligibility requirements applicable to Category I or Category II then it can be categorised accordingly. [Ref. Regulation 5].

Q 15. Whether an NRI, who has opened depository account as QFI, shall be deemed FPI in the FPI regime?

Ans. As per the Regulations, all QFIs are allowed to continue to buy, sell or otherwise deal in securities subject to the provisions of these regulations, for a period of one year from the date of commencement of the regulations, or until he obtains a certificate of registration as FPI, whichever is earlier. An NRI cannot seek registration as FPI. [Ref. Regulation 3 (1)].

III. Eligibility of FPIs

Q 16. Whether entities which are not regulated eligible to register as FPIs?

Ans. Entities which are not appropriately regulated can register as Category III FPIs. *[Ref. Regulation 5(c)]*

Q 17. What is a Foreign Government Agency?

Ans. Foreign Government Agency is an arm/department/body corporate of government or is set up by a statute or is majority (i.e. 50% or more) owned by the government of a foreign country. *[Ref. Regulation 5(a)]*.

Q 18. What is meant by “regulated or supervised in same capacity in which it proposes to make investments in India”?

Ans. To ascertain whether an entity is regulated in the same capacity, the DDP may verify whether the FPI applicant is permitted to carry out such activity under its license/registration granted by its regulator. *[Ref. Regulation 5(b) Explanation 1]*

Q 19. Whether it is necessary for the FPI applicant to be regulated in its home jurisdiction?

Ans. In certain cases while an entity may be incorporated in one jurisdiction it may be regulated by a regulator in another jurisdiction since it may be providing services in that jurisdiction. Accordingly, as long as the FPI applicant is regulated by an “Appropriate Regulator” they would be considered to be regulated for the purpose of FPI Regulations. *[Ref. Regulation 5(b) Explanation 1]*

Q 20. How would the Private Banks and Merchant Banks be classified? Should they be considered as appropriately regulated if they are regulated or supervised by the banking regulator of the concerned foreign jurisdiction and thus qualify to be Category II FPI?

Ans. Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, such entities shall be allowed to undertake only proprietary investments. *[Ref. Regulation 5(b)]*

Q 21. Can a Private Bank/Merchant Bank invest on behalf of its clients?

Ans. No. Private Bank/Merchant Bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.

Q 22. Certain Jurisdictions e.g. Singapore treats certain intermediaries such as Merchant Banker/Broker Dealer as Exempt Financial Advisor. Whether such Exempt Financial Advisor can be registered as FPI in the category of Investment Advisor?

Ans. In the FII regime, Exempt Financial Advisor, which is appropriately regulated, can be registered as FII in the category of Investment Advisor. The same position shall continue in the FPI regime and will be eligible to be registered as category II FPI. *[Ref. Regulation 5(b)]*

Q 23. Whether an FPI applicant having bank as an investor be considered to fulfil the broad based criteria?

Ans. In case an FPI applicant has a bank as an investor, then such FPI shall be deemed to be broad based for the purpose of Regulation 5(b) of the Regulations. This position is the same as in the FII regime. *[Ref. Regulation 5(b)]*

Q 24. What is the recourse available to an FPI applicant if its registration application has been rejected by the DDP?

Ans. An FPI applicant who is aggrieved by the decision of the DDP may, within a period of 30 days from the date of receipt of communication of rejection, apply to SEBI for reconsideration of the decision of the DDP. However, such application to SEBI for reconsideration shall not be made where the rejection was made for technical reasons such as submission of incomplete information or non-submission of documents which are required to be submitted under FPI Regulation or for commercial reasons such as quantum of charges levied. *[Ref. Regulation 9(3)]*

Q 25. Whether a fund having NRIs as its investors, eligible for grant of registration as FPI?

Ans. Presently, a fund having NRIs as its investors is not prohibited from obtaining registration as FII/SA. The same practice shall continue in the FPI regime.

Q 26. Whether opaque structures are eligible to register as FPIs?

Ans. No. Opaque structures are not be eligible to register as FPIs. In this regard, SEBI Circular No. CIR/IMD/FIIC/1/2010 dated April 15, 2010 requires FII/SA applicants to submit declaration and undertakings. This shall continue under the FPI regime. However, an FPI applicant will not be considered as opaque structure and will be considered for grant of registration if it is required by its regulator or under any law to ring fence its assets and liabilities from other funds/ sub funds. Such applicants shall be eligible to be register as FPIs only upon meeting the following criteria:

- a) the applicant is regulated in its home jurisdiction;
- b) each fund/ sub fund in the applicant satisfies broad based criteria, and
- c) the applicant gives an undertaking to provide information regarding its beneficial owners as and when SEBI seeks this information.

The above is in line with SEBI circular ref. no. CIR/IMD/FIIC/21/2013 dated December 19, 2013.

[Ref. Regulation 32(1)(f)]

Q 27. What is the maximum time period within which the securities have to be transferred to the new custodian in case of change in DDP/Custodian?

Ans. Once the change of DDP/Custodian is approved by SEBI, the FPI will need to transfer accounts and assets to the new DDP/Custodian within a period of 30 days. In case the transition does not take place within the stipulated time, the FPI shall provide reasons for the same and seek extension from SEBI. *[Ref. Clause 5.4 of SEBI circular ref. no. CIR/IMD/FIIC/02/2014 dated January 08, 2014]*

Q 28. Who would consider application for free of cost transfer of assets?

Ans. The request for free of cost transfer of assets by the FPI should be forwarded to SEBI for its consideration through the concerned DDP

Q 29. In those cases where a broad based fund which is categorized as Category-II FPI has a multiclass structure with a segregated portfolio, if one or more of the share classes loses its broad based nature, how should this overall fund be treated?

Ans. In such cases, the procedure mentioned at Q. No. 49 shall be followed.

Q 30. Where an FPI ceases to fulfil the applicable eligibility requirements for a particular category, can such FPI continue to trade?

Ans. If an FPI registered under a particular category fails to comply with applicable eligibility requirements, it shall be reclassified under appropriate category. For this purpose, FPI shall be required to provide the DDP with additional KYC documents as applicable.

In this regard, the concerned Custodian shall not allow such FPI to make fresh purchases till the time KYC documentary requirements, as applicable, are complied with. However, such FPI shall be allowed to continue to sell the securities already purchased by it. *[Ref. SEBI circular ref. no. CIR/IMD/FIIC/02/2014 dated January 08, 2014]*

IV. Role and Responsibilities of Designated Depository Participant (DDP)

Q 31. How can the DDP determine if the applicant is regulated or supervised by: (a) the securities market regulator or (b) the banking regulator of the concerned foreign jurisdiction?

Ans. The DDP may verify if the applicant is regulated or supervised, by the securities market regulator or banking regulator through any one of the following:

- a) Obtain a copy of certificate issued by such regulator or;
- b) verify the registration details directly from the registry or the website of such regulator.

[Ref. Regulation 4(b)].

Q 32. How can the DDP determine if the FPI applicant is resident of a country whose securities market regulator is a signatory to (a) IOSCO's MMOU (Appendix A Signatories) or a signatory to bilateral MOU with SEBI; (b) whose central bank is a member of Bank for International Settlements (BIS); (c) not listed in the public statements issued by FATF?

Ans. The residency status of the FPI applicant may be ascertained from the tax residency status or from the place of incorporation/establishment through appropriate document such as ID issued by the Income Tax authority or appropriate incorporation document.

List of countries where the securities market regulator is a signatory to IOSCO MMOU shall be verified by the DDP from the website of IOSCO. The current weblink is given below:

http://www.iosco.org/library/index.cfm?section=mou_siglist

List of countries that have bilateral MOU with SEBI shall be verified by the DDP from the website of SEBI. The current weblink is given below:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/MoUSebi.pdf

The list of countries whose Central Bank is a member of the BIS shall be verified by the DDP from the website of BIS. The current weblink is given below:

<http://www.bis.org/about/orggov.htm>

List of countries that are listed in the public statements issued by FATF shall be verified by the DDP from the website of FATF. The current weblink is given below:

<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions>

[Ref. Regulation 4(b), 4(c) and 4(d)].

Q 33. How can the DDP verify the eligibility of Category I FPI?

Ans. In this regard, the DDP may obtain a declaration from the applicant that it fulfils the eligibility criteria of category I FPI. Additionally, the DDP may verify the relevant details under which the entity has been established – e.g. Govt Charter, Act, Legislation, the shareholding pattern provided by the FPI applicant, etc.

For existing FIIs/ SAs, the DDP may continue to use the categories such as Sovereign Wealth Fund, Foreign Government Agency, Foreign Central Bank, International / Multilateral organization / agency under which the investor is already registered with SEBI.
[Ref. Regulation 5(a)].

Q 34. Whether a DDP is required to check validity of the document which shows the regulated status of the FPI applicant?

Ans. Yes. The DDP is required to check that the registration/license granted by its regulator has not been cancelled and is still valid.

Q 35. Whether any past action against the FPI applicant by its regulator render the applicant ineligible for FPI registration?

Ans. Any past action taken by an applicant's regulator may not necessarily render such an applicant ineligible as long as such action did not result in cancellation of its registration.

Q 36. For the purpose of determining whether an applicant meets the Broad Based Fund criteria, what information should be obtained by the DDPs?

Ans. DDPs may obtain investor information from the FPI applicant in the below format which is in line with the format prescribed in erstwhile FII Regulations.

S. No.	Generic Type of Investors	No. of Investors	Percentage of Holding
Total			

Generic types of investors include Mutual Funds, Investment Trusts, Pension Funds, Insurance, Collective Investment Schemes, Endowments, Charitable Trusts, Corporates, Individuals, etc.

In this regard, the DDP may satisfy itself that the applicant meets the broad based fund criteria i.e. at least twenty investors with no investor holding more than forty-nine per cent of the shares or units of the fund as laid down in the Regulations. For this purpose, the DDP may take all the requisite steps including obtaining necessary declaration/s from the applicant.
[Ref. Regulation 5(b)]

Q 37. How can the DDP determine whether an entity has been set up for the sole purpose of pooling funds and making investments?

Ans. The DDP may obtain suitable declaration from the FPI applicant. Further, the DDP may also obtain the prospectus or placement memorandum or an equivalent document containing necessary details such as objectives of the applicant, purpose of setting up the applicant etc.

However, for the purpose of considering entities for pooling of funds, the DDP may also consider banks, pension funds, mutual funds, insurance and re-insurance companies to be investment pooling vehicles. *[Ref. Regulation 5(b) Explanation 2]*

Q 38. How can the DDP verify whether applicant is legally permitted to invest in securities outside the country of its incorporation or establishment?

Ans. For this purpose, the DDP may take all requisite documents such as memorandum or articles including obtaining a declaration from the FPI applicant. For Category III non individual FPI applicant, supporting documents may be obtained in addition to the declaration. *[Ref. Regulation 4(f)]*

Q 39. How can the DDP verify whether the applicant is authorized by its Memorandum of Association and Articles of Association or equivalent document(s) to invest?

Ans. For this purpose, the DDP may take all requisite steps including obtaining a declaration from the FPI applicant. *[Ref. Regulation 4(g)]*

Q 40. What are the indicative parameters based on which the applicant shall be considered as having sufficient experience, good track record, professionally competent, financially sound and having a generally good reputation of fairness and integrity?

Ans. The DDP shall be required to satisfy itself that applicant has sufficient experience, good track record, is professionally competent, is financially sound and has a generally good reputation of fairness and integrity. For this purpose, the DDP may take all requisite steps including obtaining a declaration from the applicant. Further, for Category III applicants, DDP may also advise them to furnish a certificate from its bank certifying that the applicant is having satisfactory banking relationship for more than a year. *[Ref. Regulation 4(h)]*

Q 41. How can the DDP verify if the grant of certificate as FPI to the applicant is in the interest of the development of the securities market?

Ans. The DDP shall be required to satisfy itself that the grant of certificate as FPI to the applicant is in the interest of the development of the securities market. For this purpose, the DDP may take all requisite steps including obtaining a declaration from the FPI applicant confirming that it has not been restricted or constrained by local regulators / court order / etc. from investing in its home country and or overseas. The DDP may also perform a check for any such orders as may be available on public websites. Additionally, the applicant shall not be convicted for money laundering related offences and shall not belong to a country which is listed in public statement issued by FATF. *[Ref. Regulation 4(i)]*

Q 42. What procedures should the DDP adhere to, to determine if the FPI is a 'fit and proper person' ?

Ans. The DDP shall be required to satisfy itself that the FPI is a 'fit and proper person' as per Schedule II of the SEBI (Intermediaries) Regulations, 2008. For this purpose, the DDP may take all requisite steps including obtaining a declaration from the FPI applicant. *[Ref. Regulation 4(j)]*

Q 43. Is it necessary for the DDP to complete KYC process before grant of registration to the new FPI applicant?

Ans. Yes.

Q 44. What is the manner of computing the thirty day period available to DDP for disposing of an application?

Ans. The time period of thirty days will be calculated from the date of receipt of complete / last set of information/documents. *[Ref. Regulation 7(2)]*

Q 45. Can a DDP consider an FPI application which has been previously rejected by another DDP?

Ans. Before considering such an application, the DDP shall ascertain the reasons for which the application was rejected. In case the application was rejected on technical grounds, the DDP shall ensure that such deficiencies have been rectified by the applicant, before assessing the application afresh on its own merits.

If the application has been rejected for any other reason, then the DDP shall assess the application on its own merit as per FPI Regulations.

Q 46. How will a DDP know whether the applicant's registration application was rejected by some other DDP and what were the reasons for such rejection?

Ans. The depositories (NSDL and CDSL) will maintain a database of FPI applicants. Every DDP shall input the details of FPI applicants in the database as soon as received. Where an FPI application is rejected by a DDP, the DDP shall mention the reason for such rejection in the database, which would be accessible to all DDPs. *[Ref. Regulation 8 and 9]*

Q 47. How will a DDP ensure that equity shares held by FPIs are free from all encumbrances?

Ans. The DDP shall be required to satisfy itself that the equity shares held by an FPI are free from all encumbrances. For this purpose, the DDP may take all requisite steps including obtaining a declaration from the FPI applicant. *[Ref. Regulation 32(2)(d)]*

Q 48. How can the DDP ascertain that the FPI applicant does not have opaque structure(s)?

Ans. In this regard, the DDP may be guided by SEBI circular ref. no. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010 as well as SEBI Circular No.CIR/IMD/FIIC/21/ 2013 dated December 19, 2013. *[Ref. Regulation 32(1)(f)]*

Q 49. Does every fund / sub fund / share class need to separately fulfil broad based criteria? Is prior approval required for launch of new share class from DDP?

Ans. Yes, every fund / sub fund / share class needs to separately fulfil broad based criteria, where segregated portfolio is maintained.

In case of addition of classes of shares, the FPI shall be required to obtain prior approval from DDP. For granting of such prior approval, DDPs shall obtain following documents from the FPI applicant:

a) A declaration and undertaking with respect to PCC, MCV status as specified in SEBI circular ref. no. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010;

b) In cases where segregated portfolios are maintained,

- i. Where the newly added share class is already broad based, the FPI will continue to be considered as being broad based.
- ii. Where the newly added share class is not broad based, then an undertaking is to be obtained by the DDP that the newly added share class will become broad based within 90 days from the date of DDP approval letter.
- iii. In case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter.

Q 50. The FPI regulations state that the DDP shall preserve the books of accounts, records and documents specified in this regulation at all times. Is the DDP required to maintain all registration related documentation, all transaction details, etc. permanently?

Ans. All records relating to registration of FPIs are to be maintained at all times by a DDP. For other records relating to transaction, KYC etc., the DDP shall be guided by PMLA/circulars issued by SEBI from time to time. *[Ref. Regulation 33(1)]*

Q 51. Is a DDP required to collect Form A from an FPI at the time of payment of registration fee for continuance of its registration as FPI?

Ans. In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA is not required to submit Form A. However, it is required to provide certain documents namely Declaration and Undertaking as specified in SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010 and Information regarding FII groups along with a confirmation to the effect that there is no change in structure of the FII and SA as compared to that furnished to SEBI earlier. The same practice shall continue in the FPI regime.

V. Generation of FPI registration certificate

Q 52. Who will generate the FPI Registration number?

Ans. With a view to have a centralized number generation system, SEBI has authorized NSDL to generate the FPI registration number. *[Ref. Regulation 7 (1)]*

Q 53. How will a CDSL DP which is acting as a DDP request for FPI registration number?

Ans. A CDSL DP which is acting as a DDP shall enter the registration data in the CDSL portal. Then, CDSL shall forward this request to NSDL. After obtaining registration number and certificate from NSDL, CDSL shall transmit the same to its DDP, who will in turn issue it to the FPI applicant. *[Ref. Regulation 7 (1)]*

Q 54. How will a NSDL DP which is acting as a DDP request for FPI registration number?

Ans. A NSDL DP which is acting as a DDP shall enter the registration data in the NSDL portal. After generation of registration number and certificate, NSDL shall transmit the same to its DDP, who will in turn issue it to the FPI applicant. *[Ref. Regulation 7 (1)].*

Q 55. Who will issue the FPI registration certificate to the FPI applicant?

Ans. The depository with which the FPI applicant proposes to open a demat account shall forward the registration certificate to the concerned DDP, who will issue the electronic registration certificate to the FPI applicant.

Q 56. Can a DDP apply for registration of an FPI applicant simultaneously with NSDL and CDSL?

Ans. No, the DDP can apply for FPI registration of an FPI applicant with only one depository.

VI. Payment of Fees by FPI

Q 57. What is the manner of remittance of fees to SEBI by DDPs?

Ans. Fees collected by DDPs from the FPI applicants during the immediate preceding month shall be remitted to SEBI electronically, by 5th working day of every month, along with the details in the format, as may be prescribed by SEBI from time to time. *[Ref. Regulation 3 and Regulation 7(3)]*

VII. Clubbing of Investment Limits

Q 58. What is the basis of clubbing of investment limit of FPIs? How will DDPs identify the entities forming part of an investor group? Also, what will be the procedure for monitoring of investment limits?

Ans. The clubbing of investment limit of FPIs is based on common Ultimate Beneficial Ownership (UBO). In case, same investor/ same set of end investors are constituents of two or more FPIs and such investor(s) have a beneficial ownership of more than 50% in those FPIs, the investment limit of such FPIs shall be clubbed at the threshold prescribed for a single FPI. All such FPIs will be treated as forming part of an investor group. *[Ref. Regulation 23 (3)].*

For the purpose of identifying the FPI group, the DDP may obtain the details provided by the FPI under clause 2.2 of the FPI Application form (Form A). The monitoring of investment limits at the level of investor group will be performed by the depositories based on the information provided by DDPs. For this purpose, necessary information shall be shared between the depositories.

VIII. FPI Investments in Debt Securities

Q 59. What are the debt instruments in which the FPIs are permitted to invest in?

Ans. FPIs are permitted to invest in only the following debt securities:

- a. Dated Government Securities
- b. Commercial papers issued by an Indian company
- c. Rupee denominated credit enhanced bonds
- d. Security receipts issued by asset reconstruction companies
- e. Perpetual debt instruments and debt capital instruments, as specified by the Reserve Bank of India from time to time
- f. Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant External Commercial Borrowings (ECB) guidelines;
- g. Non-convertible debentures or bonds issued by Non-Banking Financial Companies categorized as 'Infrastructure Finance Companies'(IFCs) by the Reserve Bank of India;
- h. Rupee denominated bonds or units issued by infrastructure debt funds;
- i. Such other instruments specified by the Board from time to time.

Q 60. What are the debt investment limits available to the FPIs?

Ans. The details are as under:

S. No.	Type of Instrument	Cap (USD bn)	Cap (INR Crore)	Remarks
1	Government Debt	20	99,546	Available on demand. Eligible investors may invest only in dated securities of residual maturity of one year and above, and existing investment in Treasury Bills will be allowed to taper off on maturity/sale (Ref. SEBI circular Ref. No. CIR/IMD/FIIC/8/2014 dated April 07, 2014)
2	Government Debt	10	54,023	Available on demand for FIIs registered with SEBI as Sovereign Wealth Funds, Multilateral Agencies, Endowment funds, Insurance Funds, Pension Funds and Foreign Central Banks. Eligible investors may invest only in dated securities of residual maturity of one year and above (Ref. SEBI circular CIR/IMD/FIIC/3/2014 dated January 29, 2014)
3	Corporate Debt	51	244,323	Available on demand. Eligible investors may invest in Commercial Papers only up to US\$ 2 billion within the limit of US\$ 51 billion (Ref. SEBI circular CIR/IMD/FIIC/4/2014 Dated February 14, 2014)
	Total	81	397,892	

Q 61. Are FPIs permitted to invest in unlisted debt securities?

Ans. FPIs are permitted to invest in unlisted non-convertible debentures/bonds issued by corporates in the infrastructure sector, where 'infrastructure' is defined in terms of the extant External Commercial Borrowings (ECB) guidelines. (Ref. RBI/2010-11/492 A.P. (DIR Series) Circular No. 55 dated April 29, 2011). FPI can invest in privately placed bonds if it is listed within 15 days.

Q 62. Is there any change in debt limit allocation mechanism for FPIs as compared to FIIs/QFIs?

Ans. No. The same debt allocation mechanism that is in place for FIIs/QFIs will be followed for FPIs.

Q 63. Are FPIs permitted to invest in Treasury Bills (T-Bills)?

Ans. No. Vide SEBI circular Ref. No. CIR/IMD/FIIC/8/2014 dated April 07, 2014, FPIs have been prohibited from purchasing T-Bills.

Q 64. There was earlier a sub-limit of US\$ 5.5 billion for FII/FPI investments in T-Bills. What happens to the FII/FPI investments in T-Bills that were made before the aforesaid SEBI circular dated April 07, 2014?

Ans. Investments in T-Bills made before the aforesaid SEBI circular shall be allowed to taper off on maturity or sale. These investment limits which get vacated at the shorter end will be available at longer maturities.

Q 65. Is there any restriction on FPI investments in G-Secs?

Ans. Yes. FPIs are permitted to invest only in G-Secs having a minimum residual maturity of one year.

Q 66. Who will monitor the FPI debt investment limits?

Ans. The depositories namely NSDL and CDSL shall jointly monitor the FPI debt investment limits. (Ref. SEBI circular CIR/IMD/FIIC/6/2013 dated April 1, 2013)

Q 67. Where can the data on debt limit utilization by FPIs be found?

Ans. The data on FPI debt utilization status is disseminated on a daily basis on the websites of NSDL (<https://nsdl.co.in/index.php>) and CDSL (<http://www.cdslindia.com/>).

Q 68. Can FPIs offer Indian debt securities held by them as collateral?

Ans. Yes. FPIs may offer cash or foreign sovereign securities with AAA rating or corporate bonds or domestic Government Securities, as collateral to the recognized Stock Exchanges for their transactions in the cash as well as derivative segment of the market, subject to norms specified by RBI, SEBI and Clearing Corporations. (Ref. SEBI circular CIR/MRD/DRMNP/9/2013 dated March 20, 2013)

IX. Offshore Derivative Instruments (ODIs)

Q 69. Can category I FPIs issue, subscribe to or otherwise deal in offshore Derivatives instruments?

Ans. Yes, Category I FPIs can issue, subscribe to or otherwise deal in ODIs in the same manner as it is being presently done under the FII regime.

Q 70. ODIs have been issued to unregulated funds under the FII Regulations. Whether these ODI positions can continue under the FPI regime? Whether the existing ODI subscribers can continue to subscribe to ODIs?

Ans. ODIs issued before commencement of the Regulations as on January 07, 2014 as well as the existing ODI subscribers as on that date are grandfathered.

Accordingly, the ODI positions under FII Regulations can continue under the FPI regime. Also the subscribers who have subscribed to ODIs under FII Regulations can continue to subscribe to ODIs under the FPI regime.

Q 71. Whether an ODI issuer can issue ODIs to existing entities, which were registered as clients but did not have positions as on January 07, 2014?

Ans. Yes.

Q 72. Can an ODI issuer issue ODIs to those existing ODI clients (as on January 07, 2014) whose Investment manager undergoes a change?

Ans. ODI issuers may continue to issue ODIs to those subscribers even if there is a change in their investment manager, provided the incoming investment manager is a regulated entity.

Q 73. Can an ODI issuer continue to issue ODIs to those subscribers if there is a change in the category of such ODI subscriber, e.g. the ODI subscriber gets re-categorized by the DDP from Category II to Category III?

Ans. In case there is change in the category of ODI subscriber, the subscriber may continue to hold their existing positions till the expiry of the ODI contract. No renewal/rollover of existing positions by such ODI subscribers shall be permitted. Fresh issuance of ODIs shall be made only to eligible subscribers.

Q 74. Can Category III foreign portfolio investor issue, subscribe to or otherwise deal in offshore derivatives instruments?

Ans. No, other than those investors who have been grandfathered.

Q 75. Can Insurance and Reinsurance companies subscribe to or otherwise deal in ODIs, directly or indirectly?

Ans. SEBI vide circular CIR/IMD/FIIC/02/2014 dated January 08, 2014 clarified that insurance and reinsurance companies shall be deemed to be appropriately regulated for the purpose of the SEBI (FPI) 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. Thus insurance and reinsurance companies can subscribe to or otherwise deal in ODIs.

Q 76. Can university funds, pension funds and university related endowments already registered with SEBI as FIIs or SAs subscribe to or otherwise deal in ODIs, directly or indirectly?

Ans. If university funds, pension funds and university related endowments already registered with SEBI as on May 31, 2014 as FIIs or SAs are regulated or supervised by the relevant regulator in their concerned foreign jurisdiction, they shall be deemed to be appropriately regulated and therefore subscribe to or otherwise deal in ODIs.

Q 77. Whether the FPIs are required to report the ODIs to SEBI?

Ans. Yes. All the FPIs which issue ODIs in terms of the Regulations are required to report the details of the ODIs in the same manner as it is being presently reported to SEBI under the FII regime.

Q 78. Whether the FPIs can issue ODIs to Sovereign Wealth Funds/Foreign Government Bodies?

Ans. Yes. During March 2010, SEBI had clarified that ODIs can be issued to Sovereign Wealth Funds/Foreign Government Bodies. It is further clarified that this position would continue under the FPI Regime. Accordingly, ODIs can be issued to Foreign Central Banks, Foreign Governmental Agencies, Sovereign Wealth Funds and International or Multilateral Organisations of agencies.

Q 79. Whether the ODIs can be transferred to any person?

Ans. No, the ODI issuer shall ensure that ODIs issued by it are transferred only to persons who are regulated by an appropriate foreign regulatory authority.

Q 80. Whether the phrase "appropriate foreign regulatory authority" as mentioned in Regulation 22 of the regulations has the same meaning as referred under Explanation 1 of Regulation 5 (b) of the regulations?

Ans. Yes.

X. Replies to Additional Queries received from DDPs

Q 81. In case of conversion of existing FII having MIM structure and its proprietary SAs, whether such FII needs to surrender its registration if all of its proprietary SAs are getting converted as FPI?

Ans. The erstwhile FII, if it so desires, can continue as FPI subject to payment of applicable fees, even after all its proprietary SAs have got converted as FPIs.

Q 82. What is the criterion to be followed for determining the appropriate category of FPI in case of conversion of a Proprietary SA of an FII, where the FII is regulated but the SA is not?

Proprietary SAs of the FII shall be categorized based on the beneficial ownership and may be placed in the same category as its FII.

Q 83. In case of MIM structures in the FPI regime, should the parent fund first seek FPI registration and subsequently seek FPI registrations for various pools of funds ("pools") managed by different Investment Managers? Or alternatively, can pools directly seek FPI registrations?

Ans. In the FPI regime, a parent fund and its pools would be treated as independent FPIs. Therefore, a pool can be registered as an FPI without first registering the parent fund as an FPI.

Q 84. There are FII/SAs which are registered under the MIM structure. Some of these FII/SAs are due for renewal in another year's time and in the interim they intend to seek fresh FPI registration for pools. Whether such FII/SAs in the MIM structure would have to mandatorily convert to FPI prior to registering new pools as FPIs?

Ans. With the commencement of FPI regime, all existing FIIs and SAs are deemed to be FPIs. Accordingly, in case a pool is being registered as FPI under the MIM structure, then the existing FII/SAs within the MIM structure are not required to convert to FPI.

Q 85. Two applicants A (Bank) and B(subsidiary of a bank) wish to convert from FII to FPI. Their respective DDPs have sought SEBI's guidance / requisite approval to process these applications.

Ans.

(i) As per clause 2.3 in the Operational Guidelines issued vide SEBI Circular No. CIR/IMD/FIIC/02/2014 dated January 08, 2014, "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".

(ii) It is clarified that in case of conversion of an existing FII, which is registered under bank category, to FPI also, the respective DDP shall forward the relevant details of such 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.

Q 86. One of the existing SA, which is unregulated, intends to convert as a Category II FPI, on the basis of its regulated investment manager. This SA, has been managed by an FII, which is registered under the bank category. In this regard, the queries are as under:

(i) Can the above FII be considered under the definition of the Investment Manager, allowing the above SA to register as Category II FPI?

(ii) If yes, then whether the above FII is required to be converted as a FPI, before converting the SA as an FPI?

(iii) Whether the above FII registered under the bank category is still required to comply with Regulation 6(1)(d)(ii) of the SEBI (FII) Regulation, 1995?

Ans.

(i) & (ii) Regulation 5 of the Regulations *inter alia* provides that unregulated broad based funds may be registered as Category II FPI if investment manager of such funds is itself registered as Category II FPI. Therefore, an unregulated broad based fund currently registered as SA can convert as Category II FPI provided:

- a) Its investment manager is registered as Category II FPI and
- b) Its investment manager is appropriately regulated and permitted to carry out the activities related to investment manager under its license/registration granted by its regulator.

It is clarified that an FII is not required to convert as Category II FPI prior to the conversion its SA as the FII is deemed to be an FPI, in terms of the Regulations.

(iii) It has already been clarified in reply to **Q.7** that pursuant to the implementation of FPI regime, the requirement of registering a broad based fund by non fund entities shall no longer be applicable.

Q 87. Is the conversion fees applicable to erstwhile QFIs which are deemed to be FPIs in terms of the Regulations?

Ans. In this regard, it is clarified that as per the Regulations only FII or SAs are required to pay the conversion fees of USD 1000 on or before the expiry of their registration. QFIs are not required to pay any conversion fees in terms of the Regulations. They would only be required to register themselves as FPI Category III, wherever applicable.

Q 88. An FPI wishes to open depository account with both NSDL and CDSL due to non availability of certain scrip in demat form in both the depositories. Can such an FPI open more than one demat accounts? If yes, then can it open with the same DP or different DP?

Ans: It is clarified that an FPI is allowed to open only one demat account per depository through the same DP.

Q 89. Kuwait does not appear in the IOSCO list nor does it reflect in the Bilateral MoU list. Please confirm whether applicants from Kuwait are eligible to seek registration as FPI?

Ans. An FPI applicant has to satisfy the country requirement as specified in Regulations 4(b) and 4(c) of the Regulations. As per the latest information available, Kuwait is not one of the eligible jurisdictions for the FPI.

An updated list of securities market regulators with whom SEBI has signed bilateral MoUs can be accessed at the following web link:

http://www.sebi.gov.in/cms/sebi_data/internationalAffr/IA_BilMoU.html

Q 90. In case of an FPI applicant, belonging to bank category, is it required to be regulated by a Central Bank in its jurisdiction which is a BIS member or can it be regulated by another regulator in its jurisdiction, which is not a BIS member?

Ans.

- (i) Regulation 4 of the Regulations stipulates the eligibility criteria of FPI. As per Regulation 4 (c), the applicant, being a bank, is required to be resident in a country, whose Central bank is a Member of BIS.
- (ii) The Regulation 5 of the Regulations deals with the categorization of FPI. As per the Explanation 1 to Regulation 5 of the Regulations, an applicant seeking registration as an FPI shall be considered to be "appropriately regulated" if it is regulated or supervised by the securities market regulator or the banking regulator of the concerned foreign jurisdiction, in the same capacity in which it proposes to make investments in India.
- (iii) While Regulation 4 primarily determines the country from where FPI applicants are eligible, Regulation 5 inter alia deals with the criteria for determining the appropriate regulated status of the applicant.
- (iv) In some jurisdictions, although the Central bank is a member of BIS, it may not regulate Banks. Instead, there is either a unified regulator for financial sector (including securities market and banks) or there is a separate regulator for banking regulator, which may not be member of BIS.
- (v) Accordingly, it is clarified that for the purpose of Regulation 5, an FPI applicant under bank category would be deemed to be appropriately regulated if it is regulated by the unified financial sector regulator in its jurisdiction or by the specific banking sector regulator in its jurisdiction provided such applicant satisfies eligibility conditions specified under Regulation 4. SEBI has followed a similar approach under FII regime also.

Q 91. Can an offshore company, whose beneficial owner is a NRI/PIO register as Category III FPI?

Ans. NRI/PIO is not eligible to make investments as an FPI. Accordingly, a company which is majority owned by one or more NRI/PIOs shall not be allowed to make investments as an FPI. However, if such company is appropriately regulated it may be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. This position is the same as in FII regime where companies promoted by NRIs were registered as non investing FIIs.

Q 92. The query relates to assessing an FPI applicant with a view to ensure that it is not an opaque structure such as PCC/SPC etc in terms of FPI framework. It states that an FPI applicant, which is currently registered as a Segregated Portfolio Company (SPC) does not fulfil broad based criteria. However, it

complies with the other two conditions viz. it is regulated and willing to provide information regarding its beneficial owners as and when SEBI seeks. Is such an applicant eligible to get registered as Category III FPI?

Ans. No. The applicant is required to comply with all the conditions as mentioned in 32 (1) (f) of the Regulations, SEBI Circular No. CIR/IMD/FIIC/21/2013 dated December 19, 2013 and other directions issued by SEBI in this regard from time to time.

Q 93. Can a Sovereign Wealth Fund (SWF) desirous of seeking FPI registration, avail services of an external agency / firm to handle its compliance related matters?

Ans. The Regulations mandates every FPI to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines and instructions issued by the DDP. The compliance officer need not be an employee.

Q 94. The queries deal with the procedure of a name change request in case of an existing FII/SA, who is yet to get converted as FPI.

Ans:

(i) As per SEBI Circular No. CIR/IMD/FIIC/6/2014 dated March 28, 2014, with effect from June 01, 2014, the DDPs shall accept all applications for registration, acknowledgment of fees, and miscellaneous requests.

(ii) In case of change of name of FPI, the DDP shall process such request as per the procedure specified in the Operational Guidelines issued vide SEBI Circular No. CIR/IMD/FIIC/02/2014 dated January 08, 2014.

(iii) Accordingly, DDP has to process such requests received from FPIs/existing FIIs or SAs as per the prescribed procedure.

(iv) In this regard, it is clarified as follows:

a) In case of change of name of an existing FII, the DDP may issue a letter to such applicant acknowledging the change of name without insisting on conversion as FPI. The DDP shall retain with it the original FII registration certificate earlier issued by SEBI to such applicant.

b) In case of change of name of an existing SA, the respective DDP may issue a letter to such applicant acknowledging the change of name without insisting on conversion as FPI.

c) However, in case an applicant desires to receive a fresh certificate as FPI, then such applicant shall be mandatorily required to convert as FPI. Such applicants shall be required to pay the applicable conversion fees in terms of the Regulations and no adjustment shall be permitted against any fee payments made earlier to SEBI. The original validity of registration as FII/SA will remain the same upon conversion as FPI.

Q 95. Whether an entity formed in a qualifying jurisdiction such as USA or UAE but having beneficial owners who are residents (distinct from citizens) of non-qualifying jurisdiction (For eg : Qatar or Pakistan) could qualify as a FPI ?

Ans: The Regulations require the FPI applicants to be resident of eligible jurisdictions as mentioned in Regulation 4. With regard to the eligibility of beneficial owners to invest through the FPI route, the DDP shall ensure compliance with the requirements as per PML Act, rules and regulations, FATF standards and SEBI circulars issued in this regard, from time to time.

Q 96. Whether DDP can register a company as FPI if it happens to be its associate/group company?

Ans. Yes, a DDP may register a company as FPI which is its associate/group company subject to fulfilment of eligibility criteria.

Q 97. With regard to name change, would the concerned Depository portal have a facility where a DDP can enter requests for name change? Also, whether the depository would issue standard acknowledgement upon taking record of name change?

Ans. Requests for name change would have to be entered into the concerned depository portal. A new Registration Certificate bearing the new name shall be generated by the system.

Q 98. Prior to commencement of FPI regime, SEBI (ICDR) Regulations, 2009 considered all the FIIs and SAs as Qualified Institutional Buyers (QIBs) except those which were registered under the category of Foreign Corporate and Foreign Individual. Subsequent to notification of SEBI (FPI) Regulations, 2014, the definition of QIB has been amended in ICDR Regulations by considering only Category I and Category II FPIs as QIBs. It is requested to clarify that whether deemed FPIs who have earlier been granted SA registration under the 'foreign corporate' category but are currently classified as Cat II FPIs should be considered as QIBs (and therefore allowed to enjoy all investment avenues open to QIBs like subscription to IPO, anchor investment, etc)?

Ans. It is clarified that all such erstwhile SAs which are registered in the category of Foreign Corporate and/or Foreign Individuals shall continue to be considered as non QIBs under the FPI regime even though presently they are tentatively categorized as Category II FPIs.

Q 99. As per Q 49 of FAQs, in case of addition of share class, FPIs are required to seek prior approval from the DDP. For this purpose, the DDP is required to seek the prescribed declaration and undertaking (D&U) from the FPI relating to its PCC/ MCV status. It is requested to clarify that whether DDP is required to seek any additional documents from investors such as

prospectus etc. and if so, what would be the nature of due diligence required from the DDP?

Ans. In addition to D&U, the DDP may also seek copy of prospectus or its equivalent document evidencing the addition of the share classes.

Q 100. If the prospectus of a fund (registered as FPI) allows for share classes such as various currencies, can such an FPI request for addition of share class for every single iteration/variant of a share-class at one time irrespective of whether it actually launches the share-class or not?

Ans. It has already been clarified in reply to **Q 49** of FAQs that in case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter. However, where common portfolio is maintained, the approval of launch of share class/variant shall be taken prior to its launch.

Q 101. An existing proprietary SA of an erstwhile FII now wants to start accepting investments from other investors and hence wants to apply for change in its registration category as a non-proprietary fund. Will such a SA need to necessarily convert to FPI for this purpose? In this case, the proprietary SA is a separate legal entity from the FII. Can such a SA convert to FPI under Category II or Category III (in case it doesn't meet broad based requirement) without the need for the FII and all the other SAs to be converted as FPI?

Ans. Where a proprietary SA (now a deemed FPI) wants to accept investments from other investors, it shall inform its DDP. The DDP shall re assess the eligibility of the FPI at the time of receipt of such information from the FPI. The deemed FPI shall be required to apply for conversion for this purpose.

Q 102. It has been clarified by SEBI that proprietary SA of the FII shall be categorized based on the beneficial ownership and may be placed in the same category as its FII. It is requested to clarify on the percentage of beneficial ownership to be considered for Proprietary SA to be placed in the same category as its FII. Would all entities where the FII's ultimate beneficial ownership (UBO) is 50% or more be eligible?

Ans. In the FII regime, a SA was considered as a proprietary fund of the FII only where the FII was 100% beneficial owner in such a fund.

Q 103. Can a DDP register proprietary accounts for the purposes of internal segregation (other than for MIM purposes)? Are there any limitations on how many such proprietary FPIs can be registered?

Ans. It has already been clarified in reply to **Q6** of the FAQs that in the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to

appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.

Q 104. Multilateral organizations may not have documents like the Tax Residency Certificate or Certificate of Incorporation. In such cases, what document can be obtained to evidence proof of residency?

Ans. In such a case, the DDP may obtain the equivalent constitutive document from the applicant evidencing proof of its residency.

Q 105. As per the reply to Q1 of FAQs, an FII is required to return the original certificate of registration to the DDP at the time of conversion. In case an FII has misplaced/ lost the original certificate of registration, can the DDP accept an undertaking from the FPI stating they will return the original certificate immediately if they find it in future?

Ans. In the FII regime, in case the FII was not able to submit the original certificate of registration along with cancellation/surrender request, the FII was advised to undertake to surrender the same as and when it finds the certificate. The same position shall continue in FPI regime also.

Q 106. If a fund fails to satisfy the broad based criteria within the prescribed timeframe (180 days) and get reclassified to Cat III, it is understood that such FPIs would not be eligible for any fee refund (difference between Cat III fees and Cat II fees). If, however, this fund subsequently again becomes eligible under Cat II will the applicant be required to pay the differential fees between Cat III and Cat II again since it has already paid the same upfront?

Ans. In such a case, as the FPI has already remitted the registration fees applicable to Category II at the time of its initial registration, it would not be required to pay any registration fees subsequent to its re-categorization from Category III to Category II FPI during the validity of its registration.

Q 107. There are cases where SEBI has granted conditional registration to SA prior to the commencement of FPI regime with initial period of 90 days and the deadline for the SA / share-class to meet broad based requirement falls due post 01-Jun-14. In such cases, where the client seeks extension for another 90 days whether such requests should be referred to SEBI or can the DDP grant such extension? Further, if the DDP is permitted to grant extension (total period not exceeding 180 days) then does the DDP need to report such extension to SEBI or NSDL, and if so, in what manner?

Ans. In all such cases, where the SA applicant was earlier granted conditional registration of 90 days by SEBI and such SA seeks another extension of 90 days in FPI regime, then it will be required to forward its request for the extension to SEBI through the concerned DDP for consideration.

Q 108. The FII regulations required a non-fund FII to register at least one broad based SA under it. Accordingly, SEBI in its approval letter has included a condition for certain FIIs to register broad based fund within a given timeline that fall due post 01-Jun-14. However, since the requirement of broad based SA no longer exists, request SEBI to provide a clarification that this condition need not be fulfilled by such FIIs now.

Ans. It has already been clarified in reply to Q7 and Q 86 of the FAQs that pursuant to the implementation of FPI regime, the requirement of registering a broad based fund by non fund entities shall no longer be applicable.

Q 109. There may be some jurisdictions that have multiple categories of recognition, and may distinguish between entities that are registered vis-à-vis entities that are regulated by it. Typically both categories of recognition would be considered adequate for the purpose of ascertaining the regulated status of the applicant. It is requested to clarify the above understanding.

Ans. In the FII regime, SEBI has granted registration to certain applicants as FII, which were regulated by their concerned regulator but not registered with them only after submission of satisfactory documents by such applicants evidencing its regulatory status. The same position shall continue in FPI regime also. However, if an FPI applicant is not appropriately regulated then it may seek registration as Category III FPI.

Q 110. European Central Bank (ECB) is one of the Member Central Banks as listed in the BIS website. It is requested to clarify as to which European countries can be included/ form part of the European Central Bank for the purpose of ascertaining whether their central bank is a member of BIS.

Ans. As per the information available on the ECB website, ECB has been responsible for conducting monetary policy for the euro area. The euro area consists of the EU countries that have adopted the euro. The list of eligible countries, which have adopted the euro, is available on the ECB website. Further, the FPI applicant is required to comply with Regulation 4 (d) of the Regulations.

Q 111. In case of a multi-share class fund, whose various share-classes do not have a common portfolio or do not independently (at share class level) meet broad based requirement then such a fund would need to seek registration under Category III even if it meets broad based requirement at an overall level. It is requested to confirm that whether such fund would only be eligible for registration under Category III.

Ans. As per SEBI Circular No. CIR/IMD/FIIC/1/2010 dated April 15, 2010 an MCV structure with segregated portfolio is required to satisfy the broad based criteria in respect of each class of shares. MCV structure which does not comply with the above condition can seek registration under Category III.

Q 112. As per the reply to Q40 of the FAQs, Category III FPI applicants are required to furnish a certificate from their banks certifying that they have satisfactory banking relationship for more than a year. However, in the given case the entity was set-up less than one year back and is already registered as a SA. Accordingly, can this entity be exempted from the requirement of such bank certificate?

Ans. With the commencement of FPI regime, all existing FIIs and SAs are deemed FPIs. Therefore, a Category III FPI is required to demonstrate satisfactory banking relationship of more than a year only at the time of its conversion and/or renewal.

Q 113. Are individual FPIs allowed to obtain FPI registration in joint names (i.e. in the names of spouse, son, daughter, etc)? If yes, are the DDPs required to generate single FPI registration certificate in joint names?

Ans. No, FPI registration of individuals cannot be granted in joint names.

Q 114. In case of a company/AMC registered and regulated in one of the eligible jurisdictions whose ultimate beneficial owner is/are Indian company/PIO/NRI/resident Indian, the following may be clarified:

(i) The company is planning to launch an appropriately regulated broad based fund used solely to pool funds from foreign investors and then invest in India through the FPI route. Whether the fund is allowed to register as Category II FPI? Should the beneficial ownership of the company launching the fund be considered? It is understood that beneficial ownership of the company may not be considered as the fund solely consists of funds pooled from foreign investors.

(ii) Can an entity which is incorporated outside India register as FPI where the beneficial owner of that company is a resident Indian?

Ans.

(i) In the FPI regime, NRI/PIO/resident Indian is not eligible to make investments as an FPI. Further, it has been clarified in reply to Q 91 that a company which is majority owned by one or more NRI/PIOs shall not be allowed to make investments as an FPI. However, if such company is appropriately regulated it may be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. This position is the same as in FII regime where companies promoted by NRIs were registered as non investing FIIs.

(ii) In the FII regime, such entities were granted registration with the condition that they would not be allowed to make investments on behalf of self. This position shall continue in the FPI regime.

Q 115. In Netherlands there are investment structures which under the Dutch law are known as fondon voor gemene rekening (FGR). FGR is a pooled investment vehicle. It is not a legal entity. It is created by agreement between the fund manager, the custodian/depositary and one or more investors. The agreement obliges the fund manager to invest and manage the joint account of the investors. Usually, the legal ownership of the FGR

assets is held by a separate custodian. The FGR is not required to obtain a license from the securities market regulator of the Netherlands. However, the fund manager of the FGR must have a license to operate. An FGR meeting certain requirements can claim exemption with regards to having a licensed fund manager. Whether a FGR can be granted Category III FPI registration under the Regulations? Alternatively, can the custodian of the FGR holding assets on behalf of the FGR be registered as Category III FPI on behalf of the FGR?

Ans. In terms of Regulation 5(c) of the Regulations, all those entities not meeting the eligibility for Category I or Category II FPI can seek registration as Category III FPIs provided they meet all other eligibility conditions.

Q 116. Can SEBI provide a consolidated list of eligible jurisdictions for FPI?

Ans. The eligible jurisdictions which fulfil the conditions laid down in the Regulations are subject to change; therefore, it is recommended that the websites of IOSCO/BIS/FATF be checked to ascertain eligible jurisdictions. The web links to these websites are mentioned in reply to **Q32** in the FAQs.

Q 117. In the erstwhile FII regime, the sub funds/schemes of a Trust/Mutual Fund/Asset Management Company/SICAV used to seek registration as a SA. They were not regulated by the securities market regulator. Whereas, the Trust / Mutual Fund / Asset Management Company/SICAV used to seek registration as FII which were regulated by the securities market regulator.

In the FPI regime, can these sub funds/schemes be considered as regulated entities on the basis of their Trust/Mutual Fund/Asset Management Company/SICAV and get registered as Category II FPI without the need for the Trust / Mutual Fund / Asset Management Company/SICAV to get registered as a FPI?

Ans. Such sub funds/schemes may be considered appropriately regulated and register as Category II FPIs if they are able to provide supporting documents with regard to their regulated status.

Q 118. In case of an unregulated broad based fund namely "X", seeking registration as Category II FPI by virtue of its investment manager namely "Y" registered as Category II FPI, does X need to have investment management agreement with Y to be eligible to get registered as Category II FPI? Can "X" also appoint other investment manager namely "Z", who may not seek registration as Category II FPI?

Ans. Yes, "X" needs to have investment management agreement with "Y". "X" may appoint "Z" as its investment manager also. Further, it has been clarified in clause 9 of Operational Guidelines issued vide SEBI Circular No. CIR/IMD/FII/02/2014 dated January 08, 2014 that 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 FPI.

Q 119. A Mauritius based bank seeking registration as FPI is regulated by “The Bank of Mauritius” (The Banking regulator in Mauritius). However, the regulator is not a member of “BIS”. Hence the applicant is not eligible for registration as Category II in terms of the Regulations. Whether the aforesaid applicant can be considered for registration under Category III FPI (considering them as a financial institution) as the securities market regulator of Mauritius is a signatory to IOSCO MMOU.

Ans. No, such an applicant does not satisfy the requirements laid down in Regulation 4(c) of the Regulations.

Q 120. In reply to Q86 of the FAQs it has been *inter alia* clarified that an FII is not required to convert as Category II FPI prior to the conversion of a SA as the FII is deemed to be an FPI, in terms of the Regulations.

Thus, it is requested to clarify that even in case of an unregulated broad based fund, seeking registration as a Category II FPI, on the basis of its Investment Manager, which is registered as FII, such FII is not required to be converted as Category II FPI, before granting registration to an unregulated broad based fund as Category II FPI.

Ans. Such FII is not required to convert as Category II FPI prior to the registration of an unregulated broad based fund as Category II FPI.

Q 121. Where the applicant is a fund having MCV structure but is not broad based and desires to seek registration as Category III FPI, how will it declare its MCV status?

Ans. Where the applicant is a fund having MCV structure but is not broad based and desires to seek registration as Category III FPI, it can declare that the applicant is an MCV by constitution and has more than one class of share or has an equivalent structure. It need not provide an undertaking regarding broad base nature of the portfolio.

Q 122. In reply to Q26 of the FAQs it has been clarified that an FPI applicant will not be considered as opaque structure and will be considered for grant of registration if it is required by its regulator or under any law to ring fence its assets and liabilities from other funds/ sub funds. Such applicants shall be eligible to be register as FPIs only upon meeting the following criteria:

- a) the applicant is regulated in its home jurisdiction;**
- b) each fund/ sub fund in the applicant satisfies broad based criteria, and**
- c) the applicant gives an undertaking to provide information regarding its beneficial owners as and when SEBI seeks this information.**

Are the above criteria applicable to those funds which neither meet broad based criteria nor want to seek conditional approval but belong to jurisdictions that allow ring fencing?

Ans. Such funds shall meet all the above-mentioned conditions to become eligible for FPI registration. Therefore, an applicant which belongs to jurisdictions that allow ring fencing but is not broad based is not permitted to obtain FPI registration in any of the three categories.

Q 123. Are FPIs allowed to invest in portfolio schemes managed by Portfolio Managers in India? If yes, what is the procedure for the same?

Ans. As per Regulation 16A of SEBI (Portfolio Managers) Regulations, 1993, FPIs may avail the services of a portfolio manager. Further, an FPI is allowed to invest in all the securities specified in terms of Regulation 21 (1) of SEBI (FPI) Regulations, 2014 ("the Regulations").

Q 124. An FPI cannot continue to buy, sell or otherwise deal in securities post expiry of its registration. However, can such an FPI apply for renewal/continuation/conversion post expiry of its registration? If yes, what should be the time frame after the expiry before which the DDP can accept renewal/continuation/conversion application?

Ans. An FPI cannot apply for renewal/continuation/conversion after expiry of its registration. Such an FPI will have to make a fresh application for registration, if it so desires, after surrendering its earlier registration.

Q 125. In case a newly established applicant has less than one year of track record and applies under Category III FPI, whether the track record of its investment manager (or equivalent) or its parent or group company (having beneficial ownership of more than 50%) can be taken into consideration for satisfying conditions mentioned in Regulation 4(h) of the Regulations. If so, whether a certificate from the bank certifying that the investment manager or parent or group company having satisfactory banking relationship for more than a year can be considered instead of that of applicant?

Ans. It is clarified as follows:

- i. In case of an FPI applicant, which is set up as a fund and has been in existence for a period of less than a year, a DDP may consider the track record of its investment manager, who has promoted it.
- ii. In case of an FPI applicant, which is not set up as a fund and has been in existence for a period of less than a year, a DDP may consider the track record of its promoter company/group company.
- iii. Such FPI applicant shall be required to furnish requisite certificate from its bank to its DDP upon completion of one year from the date of its establishment.

Q 126. Can a DDP process application of its existing clients i.e. erstwhile FII/SA/QFI for their conversion/continuance of registration by obtaining only fresh documents which are not available with DDP instead of obtaining all documents. Or can a DDP process the application by obtaining an undertaking stating that there is no change in the documents previously submitted?

Ans. In case of conversion of existing FII/SA/QFI, DDP should obtain from the FPI an application form (Form A) along with supporting documents, requisite registration fees etc. at the time of processing of its application. Further, the procedure to be followed at the time of payment of registration fee for continuance of registration of FPI, has been clarified in reply to Q51 of the FAQs.

Q 127. Can a foreign bank, ultimately owned by an NRI, be eligible to register as an FPI?

Ans. It has been clarified in reply to Q 91 of the FAQs that NRI/PIO is not eligible to make investments as an FPI. Accordingly, a company which is majority owned by one or more NRI/PIOs shall not be allowed to make investments as an FPI. However, if such company is appropriately regulated it may be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. This position is the same as in FII regime where companies promoted by NRIs were registered as non investing FIIs.

Q 128. It is observed that in USA, Collective Investment Funds (CIFs) meeting the conditions specified in the Investment Company Act of 1940 are not required to register with U.S. Securities and Exchange Commission (SEC). CIFs are sponsored/administered by national banks, which are regulated and supervised by Office of the Comptroller of the Currency (OCC). Can such CIFs be eligible to get registered as Category II FPI?

Ans. Based on the information provided above, a DDP may consider CIFs from USA as appropriately regulated subject to their compliance with Regulation 5(b)(i) of the Regulations.

Q 129. An unregulated broad based fund namely "X" was registered as Category II FPI on July 01, 2014 by virtue of its investment manager namely "Y", which was registered as Category II FPI on June 01, 2014. Will the expiry of registration of "X" be co-terminus with "Y" or will it be an independent block of 3 years?

Ans. The Regulations inter-alia stipulate that the registration granted by a DDP to FPI applicant shall be permanent unless suspended or cancelled by SEBI or surrendered by FPI. For this purpose, an FPI is required to pay the applicable registration fees for every block of three years, till the validity of its registration. Thus, the validity of applicable registration fees paid by "X" will be three years from the date of its registration i.e. July 01, 2014.

Q 130. An unregulated fund namely "X", desirous of seeking FPI registration, is having only one fund namely "Y" as its sole investor. "Y" has appointed its investment manager namely "Z" to manage the investments. Can a DDP categorize "X" as category II FPI in terms of Regulation 5 (b) (iii) of the SEBI (FPI) Regulations, 2014 ("the Regulations")?

Ans. No. Regulation 5 of the Regulations inter alia provides that unregulated broad based funds may be registered as Category II FPI if investment manager of such funds is itself registered as Category II FPI. Accordingly, the FPI applicant viz. "X" should have an investment management agreement with "Z" and shall also be broad based in terms of the Regulations.

Q 131. How will the erstwhile FIIs and Sub Accounts (SAs) which do not meet the eligibility requirements as stipulated under the Regulations, be categorized? For instance, an erstwhile Mauritius based FII registered under the Bank category, is regulated by its banking regulator, which is not a member of BIS. The FII now intends to convert as FPI. Under which category, will such an FII be categorized?

Ans. The Regulation 2 (h) and Regulation 3 (1) of the Regulations inter alia provide that all FIIs and SAs shall be deemed FPIs till the expiry of their registration. Further, it has been clarified in reply to Q 4 of the FAQs that all FIIs and SAs, including those which do not meet the eligibility requirements as stipulated under the Regulations, can continue to deal in Indian securities till the validity period of FII/SA registration for which fee has been paid. After the validity period, they can continue to deal as FPIs subject to payment conversion and registration fees.

Accordingly, DDPs shall categorize FIIs/SAs in a suitable category, which does not adversely affect their business continuity subject to their compliance with Regulation 5 of the Regulations.

Q 132. Under the FPI regime, if an erstwhile FII intends to surrender its certificate of registration as FII, does all of its underlying sub accounts (now deemed FPIs) need to mandatorily convert themselves to FPIs at the time of surrender of its FII registration? If not, then what will be the validity of registration of such sub accounts post surrender of registration by the FII?

Ans. Under the FPI regime, all erstwhile FIIs and SAs are deemed to be independent FPIs. Thus, the aforesaid sub accounts need not mandatorily convert as FPI at the time of surrender of license by its FII. These SAs can continue to deal till the original validity period of FII/SA registration.

Q 133. SEBI circular ref. no. CIR/IMD/FIIC/21/2013 dated December 19, 2013 prescribes three specific conditions that need to be satisfied by an FPI applicant, which is required by its regulator or under any law to ring fence its assets and liabilities from other funds/ sub funds. Can such an FPI

applicant can seek conditional registration which allows it to satisfy broad based criteria within 180 days?

Ans. No, such an FPI applicant is mandatorily required to comply with all the conditions including fulfilment of broad based criteria as laid down in the aforesaid SEBI circular at the time of seeking FPI registration.

Q 134. Can a DDP grant approval to post facto requests for addition of share classes?

Ans. In the FII regime, post facto intimation of addition of share classes were accepted upon confirmation by the FPI that it continues to be broad based as per FII Regulations. Further, SEBI also used to take appropriate action against the FPI for failure to take prior approval. The same practice shall continue in the FPI regime. The DDP shall accept the post facto request for addition in share class upon confirmation by the FPI that it meets the broad base criteria as per the SEBI (FPI) Regulations. Such cases shall also be referred to SEBI for taking appropriate action.
