



SEBI tightens the norms for issuance of Offshore Derivative Instruments (ODIs) - Identification of Beneficial Owners / Transferability

In order to bring about uniformity and increase the transparency in systems and procedures adopted by the Offshore Derivative Instruments (ODI) Issuers to comply with conditions for issuance of ODIs, the Securities and Exchange Board of India (SEBI) recently decided that ODI Issuers shall be guided by the following provisions with regard to the norms relating to the issuance and transfer of ODIs. The features contained in the SEBI circular no. CIR/IMD/FPI&C/59/2016 dated 10 June 2016 are as follows:

Applicability of Indian KYC/ Anti-Money Laundering (AML) norms for Client Due Diligence

KYC of ODI subscribers –

- ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold i.e. 25% in case of a company and 15% in case partnership firms/ trusts/ unincorporated bodies.
- ODI issuers shall also be required to identify and verify the person(s) who control the operations, when no BO is identified based on the aforesaid materiality threshold.

It is also clarified that:

- The **KYC documentation** to be obtained by ODI Issuers from each of such ODI subscribers in respect of BO who holds above the threshold limits in such ODI subscriber should be as per Annexure prescribed.
- The **materiality threshold** (referred above) to identify the BO should be first applied at the ODI subscriber level and look through principle shall be applied to identify the BO of the material shareholder/ owner entity. Only BO with holdings equal & above the materiality thresholds in the subscriber need to be identified through the aforesaid look through principle. In such cases, identity and address proof as specified in Annexure (1) should be obtained.
- Where no material shareholder/owner entity is identified in the ODI subscriber using the materiality threshold (referred above), the identity and address proof of the **relevant natural person** who holds the position of senior managing official of the material shareholder/owner entity should be obtained.

- ODI Issuer shall ensure that any transfer of offshore derivative instruments issued by or on its behalf is carried out subject to the following conditions :
 - i. such offshore derivative instruments are transferred only to persons in accordance with Regulation 22(1) of the SEBI (Foreign Portfolio Investors) Regulations, 2014 ; and
 - ii. prior consent of the foreign portfolio investor is obtained for such transfer, unless the person to whom the ODI are to be transferred to are pre-approved by the foreign portfolio investor. Changes are being carried out in Regulation 22(2) of the SEBI (Foreign Portfolio Investors) Regulations, 2014.

KYC Review

Basis the risk criteria determined by ODI Issuer, KYC review shall be done as follows:

- At the time of on-boarding and once every three years for low risk clients; and
- At the time of on-boarding and every year for all other clients.

Particulars	Low Risk Clients	All other Clients
KYC Review	Once every 3 years	Every year

In case of **existing ODI Subscriber**, the KYC review should be done within three years for low risk clients and one year for all other clients from the effective date of the above circular and accordingly reported in revised ODI reporting format.

Suspicious Transactions Report

ODI Issuers shall be required to file suspicious transaction reports, if any, with the Indian Financial Intelligence Unit, in relation to the ODIs issued by it.

Reporting of complete transfer trail of ODIs

Currently, the details of the holder of ODIs have to be mandatorily reported to SEBI on a monthly basis. The ODI issuers are also required to capture the details of all the transfers of the ODIs issued by them and should be made available to SEBI on demand.

The SEBI Board decided that in the monthly reports on ODIs all the **intermediate transfers** during the month would also be required to be reported *and Monthly summary report to be submitted by 10th of every month.*

Reconfirmation of ODI positions

ODI Issuers shall be required to carry out reconfirmation of the ODI positions on a semi-annual basis. In case of any divergence from reported monthly data, the same should be informed to SEBI in format provided.

Particulars	Periodicity	To inform SEBI
Reconfirmation of ODI Position	Semi Annual Basis	On any divergence from monthly reported data

Periodic Operational Evaluation

ODI Issuers shall be required to put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A **certificate** in this regard should be submitted on an **annual basis** to SEBI by the Chief Executive Officer or equivalent of the ODI Issuer. The said certificate should be filed within 1 month from the close of every calendar year.

Revised ODI reporting format

The revised ODI reporting format shall come into effect from 01 July 2016. The reporting of the ODI in new format shall be applicable from the month of July 2016 to be submitted on or before 10 August 2016.

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