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STATUS QUO FOR MAURITIUS BASED FPIS - NO NEED TO PANIC

25 February 2020

On 21 February 2020, the Financial Action Task Force (FATF) issued a list of 'jurisdictions under increased monitoring', popularly known as the 'grey list' and to the dismay of several foreign portfolio investors (FPIs), Mauritius ended up featuring in this list alongside 17 other jurisdictions, for the first time.

This led to panic amongst the FPI investors since the eligibility criteria required to be met by any person to register as a foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019 (FPI Regulations) include that such person should not have 25% or more investors by value or controlling investors from jurisdictions identified by the FATF as:

- a jurisdiction having a *strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies* to which counter measures apply; or
- a jurisdiction that has not made *sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies*.

Further, the Operating Guidelines for FPIs, Designated Depository Participant and Eligible Foreign Investors (Operating Guidelines) states that if a jurisdiction, which was a compliant jurisdiction at the time of grant of registration to a FPI, is, *inter alia*, listed in FATF public statement as 'high risk' and 'non-cooperative' jurisdiction, then the concerned custodian shall not allow such FPIs to make fresh purchases till the time the jurisdiction / FPI is compliant with the FPI Regulations.

Due to ambiguity around the ambit of '*jurisdiction that has not made sufficient progress in addressing the deficiencies sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies'*, and whether as a consequence of being tagged as a 'monitored jurisdiction', Mauritius could be regarded as 'high-risk' and 'non-cooperative' jurisdiction, uncertainty prevailed in the market and several designated depository participants (DDPs) stopped trading by Mauritius-based FPIs.

With custodians and market participants reaching out to SEBI to get clarity on the status of Mauritius-based FPIs, SEBI has issued a statement today, i.e., 25 February 2020, clarifying that Mauritius-based FPIs would maintain their status quo in terms of eligibility under the FPI Regulations and could thus continue to trade. SEBI also highlighted to the intermediaries that inclusion of a jurisdiction in the grey-list does not call for the application of enhanced due diligence to be applied to such jurisdiction, but that FATF encourages its members to take into account this information in their risk analysis.

Comment:

While the inclusion of Mauritius in the FATF grey list sent an initial alarm amongst stakeholders, SEBI's clarification that as per FATF, when a jurisdiction is placed under increased monitoring by FATF, it construes that the country has committed to swiftly resolve its identified strategic deficiencies within agreed timeframes and is subject to increased monitoring, may be seen as a blessing in disguise for Mauritius-based FPIs. Going by SEBI's positive spin on the inclusion of Mauritius in the grey list, if Mauritius continues its endeavour to addressing the deficiencies highlighted by FATF, it may pave the way for it being regarded as an FATF-compliant country and lead to the inclusion of Mauritius in the member list of the FATF.

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