



SEBI ONLINE KYC

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E-mail: info@amicusservices.in
Website: www.amicusservices.in

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Securities and Exchange Board of India (“SEBI”) has always been at the forefront in using technology to streamline various procedural aspects pertaining to investment. Therefore, it comes as no surprise that SEBI has come out with a circular on clarification on know your customer (KYC) process and use of technology for KYC¹(“**Online KYC Circular**”). With a view to allow the ease of doing business in the securities markets it has allowed SEBI registered intermediaries (“RI”) to use e-signing as provided under the Information Technology Act, 2000 (“**IT Act**”) for signing of application forms and also provided the procedure for video in person verification for individuals. The RIs can provide this online KYC facility through their website or application or any other digital platform provided that it is adhering to all the security protocols as well as features like time stamping, geo location tagging of the investor to ensure the physical location of the investor is in India. The RIs will also have to ensure that the quality of the communication is sufficient to identify the investor.

KYC Process

The Investor has been given the flexibility to use Aadhaar or other officially valid documents like passport or driving license (“**OVD**”) for the online KYC (PAN being mandatory). In case the investor uses Aadhaar e-authentication or offline Aadhaar for KYC verification then there is no further requirement of in person verification/video in person verification (“**VIPV**”). The same also applies in case the KYC form is submitted online along with documents that have been provided through digilocker² of the investor or any other source which could be verified online. For other OVDs the circular lays down the provisions for using VIPV for individuals which involves a live video based interaction between the authorized official of the RI and the individual. SEBI has also done away with the requirement of original seen and verified of an OVD if a clear photo or scanned copy of the OVD through electronic signature or digitally signed documents of the OVD issued to the digilocker by issuer authority is provided. On completion of the filing of the form the investor can deposit it with the RI in the following manner:

1. Taking print of the completed KYC form, affixing the wet signature and sending the scanned copy/photograph to RI by e-signing the documents; or
2. Affix online the cropped signature on the filled application form and sent it to RI by e-signing it.

Amicus Insight

On 22nd April, 2020 the Central Government has in terms of sub-section (1) of section 11A of the Prevention of Money-laundering Act, 2002³ allowed certain reporting entities to undertake Aadhaar e-authentication like

¹ Circular dated 24.04.2020 – SEBI/HO/MIRSD/DOP/CIR/P/2020/73

² Digilocker is a facility provided pursuant to Information Technology (Preservation and Retention of Information by Intermediaries Providing Digital Locker facilities) Rules, 2016 which provides customers with the facility of uploading scans photos of OVD on a virtual lockers and also allows storage of electronic OVD issued by authorities and digitally signed by them.

³ 11A. Verification of identity by reporting entity

(1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by--

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) if the reporting entity is a banking company; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016); or

(c) use of passport issued under section 4 of the Passports Act, 1967 (15 of 1967); or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

National Securities Depository Limited, Central Depository Services (India) Limited, Bombay Stock Exchange Limited etc. therefore, paving the way for use of Aadhaar based e-authentication for online KYC process. Based on the 05th November, 2019⁴ Circular of SEBI on aadhaar based e-authentication, the RIs will have to enter into agreements with these reporting entities and get themselves registered as sub KUAs with UIDAI to undertake such e-authentication.

The Online KYC Circular does not make any reference to COVID 19 and therefore the online KYC process is definitely not an interim relief. Also, considering that the provisions for e-signing under the IT Act have been there for some time this was definitely long overdue and hopefully RBI will follow suit to enable regulated entities to undertake KYC in line with modern technologies. One issue in the Online KYC circular is the requirement of taking print of the KYC form and then affixing wet signature which should not be required if the entire documents is being e-signed as per the process laid down under the IT Act. Also, with respect of affixation of the crop signature on the online KYC Form, no guidelines have been provided. IT Act does not provide any special recognition to a cropped signature unlike an electronic signature based on Aadhaar Authentication and more clarity would be required on this aspect. Hopefully, as artificial intelligence and jurisprudence around it as a tool for detection of fraud and identity theft evolves regulators will be able to use it for video based interaction with the investors. The main task for RIs now would be to ensure that privacy of the data being provided by investors are duly maintained and any interaction with the customer is end to end encrypted. It is definitely the need of the hour that the data privacy bill is enacted to ensure that any deviation from requisite security measures is dealt with strictly.

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Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016), and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and the appropriate regulator.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.-- The expressions "Aadhaar number" and "core biometric information" shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016).]

⁴ SEBI/HO/MIRSD/DOP/CIR/P/2019/123