

SEBI issues clarification on clubbing of investment limit of foreign govt/foreign govt-related related entities

Summary

In continuation to the circular issued on 10 April 2018¹ on enhanced Know Your Client (KYC) requirement for Foreign Portfolio Investors (FPIs), the Securities and Exchange Board of India (SEBI) has issued clarifications² on clubbing of investment limits of foreign government / foreign government-related entities. The clarifications have been issued by way of Frequently Asked Questions (FAQs) which address issues such as what constitutes an investor group, how to ascertain if an FPI is part of any investor group, how the Beneficial Ownership (BO) should be determined, etc.

Salient features of the Circular

The clarifications issued by SEBI address the following issues:

Sr. No.	Issue	Response by SEBI
a.	What is the investment limit for foreign government/foreign government-related entities registered as FPI?	The equity shares of each company subscribed by a single FPI or an investor group shall be below 10 per cent of the total paid up capital of the company
b.	What is an investor group?	FPIs will be treated as an investor group if: <ul style="list-style-type: none"> • Same set of beneficial owners are constituents of two or more FPIs; and

¹ SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated 10 April 2018

² SEBI Circular No. SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated 10 April 2018

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		<ul style="list-style-type: none"> Such investor(s) have a common beneficial ownership of more than 50 per cent in those FPIs <p>Investment limit applicable to a single FPI shall apply to all FPIs forming part of an investor group</p>
c.	<p>How to ascertain whether an FPI is forming part of any investor group?</p>	<p>It is the prime responsibility and obligation of the FPI to disclose information with regard to its investor group. The applicant is required to furnish information regarding its investor group at the time of seeking registration as an FPI.</p> <p>The Designated Depository Participant (DDP) is required to ascertain if an applicant forms part of any investor group at the time of granting registration and whenever applicable.</p>
d.	<p>How is the beneficial ownership of foreign government entities/its related entities determined for the purpose of clubbing of investment limit?</p>	<p>The BO should be determined in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.</p> <p>Thus, in respect of entities having company or trust structure, the BO shall be determined on the basis of two methodologies i.e.</p> <p>(a) controlling ownership interest (also termed as ownership or entitlement); and</p> <p>(b) control in respect of entities having company or trust structure.</p> <p>In respect of partnership firms and unincorporated associations, ownership or entitlement is basis for identification of BO</p>
e.	<p>Whether two or more foreign government-</p>	<p>It has been clarified that combined holding of all foreign Government/ its related entities</p>

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	<p>related entities from the same jurisdiction will individually be permitted to acquire equity shares in an Indian company up to the prescribed limit of 10%?</p>	<p>from the same jurisdiction shall be below 10 per cent of the total paid up capital of the company. Same set of BO investing through multiple entities will be considered as one investor group.</p> <p>However, in cases where Government of India enters into agreements or treaties with other sovereign Governments thereby recognising certain entities to be distinct and separate, SEBI may recognise them as such.</p>
f.	<p>How will the investment by a Foreign Government Agency be treated?</p>	<p>The investment by foreign government agencies shall be clubbed with the investment by the foreign government/ its related entities for the purpose of calculation of 10 per cent limit for FPI investments in a single company, if they form part of the same investor group.</p>
g.	<p>Whether any investment by World bank group entity viz. IBRD, IDA, MIGA and IFC should be clubbed with the investment from a foreign government having ownership in such World bank group entity?</p>	<p>Government of India has exempted World Bank Group viz. IBRD, IDA, MIGA and IFC from clubbing of the investment limits for the purpose of application of 10 per cent limit for FPI investments in a single company.</p>
h.	<p>Where provinces/states of some countries with federal structure have set up their separate investment funds with distinct beneficial</p>	<p>The investment by foreign government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if those foreign entities have different BO identified in accordance with PMLA Rules.</p>

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	<p>ownership constituted with objectives suitable for their respective provinces, such funds not only have separate source of financing but also have no management, administrative or statutory commonality. Kindly inform whether investments by these foreign government entities shall be clubbed?</p>	
i.	<p>How will the foreign government/its related entities know the available limit for investment, to avoid breach of the limit?</p>	<p>The DDP reports holdings of FPIs/ investor groups to depositories who monitor the investment limits. As such, NSDL is in ready possession of aggregate holdings of FPIs/ investor groups in any particular scrip.</p> <p>SEBI has already advised DDPs to approach NSDL to get information regarding aggregate percentage holdings of the group entities before making investment decisions.</p>
j.	<p>What if the investment by foreign government/ its related entities cause breach of the permissible limit?</p>	<p>In case of breach of the prescribed limit, the FPI shall divest their holdings within 5 trading days from the date of settlement of the trades causing the breach.</p> <p>Alternatively, the investment by such FPIs shall be considered as investment under Foreign Direct Investment (FDI) at the FPI's option. However, the FPIs need to</p>

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		immediately inform of such option to SEBI & RBI, since they cannot hold equity investments in a particular company under FPI and FDI route, simultaneously.

Our comments

The circular is a welcome move as it provides much-needed clarity on clubbing of investment limit. Although the circular is issued in relation to foreign government entities and its related entities, one may rely on this circular for identifying investor group and clubbing of investment for all other FPIs.



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