

Consultation paper on proposal to improve ease of doing business with respect to the additional disclosure framework for large FPIs

1. OBJECTIVE

1.1. Under the additional disclosure framework for FPIs specified vide SEBI's August 24, 2023 Circular ("August Circular"), certain FPIs/investor groups with assets under management ("AUM") exceeding INR 25,000 crores are required to provide granular details of all their investors/stakeholders on a look-through basis, to ascertain whether the FPI is effectively domiciled in a Land Bordering Country (LBC) or not. To improve ease of doing business, rather than requiring disclosure of all investors/stakeholders, it is proposed to require disclosures of an appropriate majority of set thresholds for disclosure for identification and categorization of an FPI as an LBC or non-LBC entity.

2. BACKGROUND AND EXTANT FRAMEWORK

2.1. To guard against possible circumvention of Minimum Public Shareholding ("MPS") norms, requirements under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations"), and Press Note 3, SEBI (Foreign Portfolio Investors) Regulations, 2019 ("FPI Regulations, 2019") were amended in August 2023, and Regulations 22(6) and 22(7) were inserted in FPI Regulations, 2019. Further, August Circular mandated disclosure of granular details of all entities holding any ownership, economic interest, or control in an FPI, on a full look through basis, without any threshold, by FPIs fulfilling any of the following criteria:

- a. holding more than 50% of their Indian equity AUM in a single Indian corporate group ("concentration criteria"); or
- b. individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations, 2019), hold more than INR 25,000 crore of equity AUM in the Indian markets ("size criteria");

2.2. Such additional disclosures by FPIs breaching the size criteria were prescribed with a view to identify and categorise these FPIs as LBC or Non-LBC entities, for suitable further monitoring by the concerned authorities.

2.3. Certain FPIs, including those having a broad based, pooled structure with widespread investor base or those having ownership interest by Government or Government related investors were exempted from such enhanced disclosure requirements, subject to certain conditions.

2.4. Further, the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions, was spelt out in the Standard Operating Procedure (SOP) framed by the pilot Custodians and DDPs Standard Setting Forum (CDSSF), in consultation with SEBI. The SOP was accordingly adopted by the DDPs/Custodians on October 27, 2023 and was uploaded on their respective websites. The said SOP has also undergone various revisions based on the feedback and learnings during the implementation of the additional disclosure framework.

3. CHALLENGES IDENTIFIED IN IMPLEMENTATION OF THE ADDITIONAL DISCLOSURE FRAMEWORK

3.1. During the implementation of the additional disclosure framework, SEBI interacted with industry participants and received several suggestions and requests for clarifications. Accordingly, clarifications were provided to the DDPs/ Custodians and the SOP was modified.

3.2. Further, during interactions with industry participants, challenges have been identified with respect to the disclosure requirements. It has been observed that very large non-exempt funds have breached the size criteria and are, therefore, subject to additional disclosures requirement. Given their sheer size and diversified investor base, such funds face challenges in providing granular details of every person holding any ownership, economic interest or control.

4. PROPOSAL

4.1. The regulatory objective of mandating granular disclosure for FPIs breaching the size criteria was to identify whether or not the FPIs originated from / were controlled by investors from Land Bordering Countries (LBC). Such objective can also be

achieved by prescribing a suitable risk-based threshold of disclosure of investors and stakeholders, to categorise an FPI as LBC or non-LBC entity, rather than mandating disclosure of each and every interest owner in the fund. Further, this risk based approach is in line with the ease of doing business perspective for FPIs to attract foreign capital towards fueling domestic capital formation.

4.2. In view of the above, it is proposed to modify the disclosure requirements and link the same to an appropriate minimum threshold of disclosure for identification and categorization of an FPI as an LBC or non-LBC entity. Categorization of FPI as LBC or non-LBC may be made on the basis of country/ nationality of entities owning/ controlling/ holding economic interest in a suitable majority of AUM of the FPI, on a look through basis. Accordingly, FPIs holding more than INR 25,000 crore of equity AUM in the Indian markets, and making additional disclosures to the extent that the identification and categorization as LBC or non-LBC can be done, shall not be required to make further disclosures in terms of the August Circular.

4.3. Keeping in mind the need to meet the regulatory objective while ensuring ease of doing business, a suitable risk-based threshold for identification and categorization of an FPI as an LBC or non-LBC entity may be prescribed as follows:

- a. If the entities owning/ controlling/ holding economic interest in more than 50% of the AUM of the FPI are from LBC, the FPI shall be categorised as LBC and further granular disclosures shall not be required.
- b. If the entities owning/ controlling/ holding economic interest in more than 67% of the AUM of the FPI are from non-LBC, the FPI shall be categorised as non-LBC and further granular disclosures shall not be required. This higher requirement to specifically identify non-LBC beyond 50% is to ensure that any LBC holding or influence in the FPI, if at all, would be below 33%, and hence have lesser significance.
- c. If the above mentioned thresholds are not met, the FPI shall be required to disclose granular details of all entities owning/ controlling/ holding economic interest in the FPI. However, categorization of the FPI shall be made on the

basis of disclosures made by the FPI considering the country/nationality of entities owning/ controlling/ holding economic interest in majority (i.e. more than 50%) of AUM of the FPI.

4.4. It may also be noted that as per the extant provisions of the August Circular, in case of entities meeting any exemption criteria specified under the August Circular, further granular level details are not required to be disclosed. Therefore, for the purpose of identification and categorization as LBC or non-LBC, as mentioned in para 4.3 above, the holdings of the exempted intermediate entities shall be taken as per the country/nationality of the intermediate entity.

4.5. Further, in line with the 'trust, but verify' principle which is at the core of the August Circular, the identification of FPI as LBC or non-LBC entity shall be on the basis of verification of actual disclosures by the DDPs and not based on mere declarations. It is reiterated that the aforesaid threshold is proposed only for dealing with breach of the size criteria. No change is being proposed in the extant framework for dealing with breach of the concentration criteria.

Questions for public comments

1. Do you agree with the proposal to modify the disclosure requirements and link the same to an appropriate minimum threshold of disclosure for identification and categorization of an FPI as an LBC or non-LBC entity?
2. Do you agree with the proposal to keep the threshold for classification of an FPI as LBC at more than 50% of the AUM of the FPI?
3. Do you agree with the proposal to keep the threshold for classification of an FPI as non-LBC at more than 67% of the AUM of the FPI?
4. Do you agree with the proposal that in case aforesaid LBC or non-LBC thresholds are not met, categorization of the FPI shall be made on the basis of disclosures made by the FPI, considering the country/nationality of entities owning/ controlling/ holding economic interest in majority (i.e. more than 50%) of AUM of the FPI?



5. PUBLIC COMMENTS

5.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposals. The comments/ suggestions should be submitted latest by August 20, 2024, through the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

5.2. Any technical issue in submitting your comment through web based public comments form, may be communicated through email to afdconsultation@sebi.gov.in with a subject: *"Issue in submitting comments on consultation paper on proposal to improve ease of doing business with respect to the additional disclosure framework for FPIs"*

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