

SEBI issues circular providing clarification on clubbing of investment limits of foreign Government/foreign Government related entities

The Foreign Exchange Management Act, 1999 prescribes various foreign investment limits in listed companies. The Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 provide rules for clubbing of investments where the same set of ultimate beneficial owners invest through multiple entities having a common beneficial ownership of more than 50%. Securities and Exchange Board of India (SEBI) has released a circular today providing clarifications in the context of clubbing of investments in listed companies for foreign Governments/foreign Government related entities.

The key takeaways from the SEBI circular are:

- The beneficial owner (BO) of foreign Government entities/ its related entities shall be determined in accordance with Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as PMLA Rules). The said PMLA Rules provide for identification of BO on the basis of two methodologies namely (a) controlling ownership interest (also termed as ownership or entitlement) and (b) control in respect of entities having company or trust structure. In respect of partnership firms and unincorporated associations, ownership or entitlement is basis for identification of BO
- All foreign Government/its related entities from the same jurisdiction shall be treated as part of same investor group and the investment limits of all such entities shall be clubbed as applicable to a single Foreign Portfolio Investor (FPI) i.e. below ten percent of the total paid up capital of the company.

However, in cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.

- Foreign Government agency is an arm/ department/ body corporate of Government or is set up by a statute or is majority (i.e. 50% or more) owned by the Government of a foreign country and has been included under Category I FPIs;

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% limit for FPI investments in a single company, if they form part of an investor group.

- Government of India, vide letter No. 10/06/2010-ECB dated January 06, 2016 has exempted World Bank Group viz. IBRD, IDA, MIGA and IFC from clubbing of the investment limits for the purpose of application of 10% limit for FPI investments in a single company.
- The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure and with distinct beneficial ownership constituted with objectives suitable for their respective provinces, shall not be clubbed if the said foreign entities have different BO identified in accordance with PMLA Rules.
- Designated Depository Participants (DDPs)/custodians of securities can approach National Securities Depository Limited (NSDL) to get information regarding aggregate percentage holdings of group entities.
- The FPIs investing in breach of the prescribed limit shall divest their holdings within five trading days from the date of settlement of the trades causing the breach. 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 immediately inform of such option to SEBI & Reserve Bank of India (RBI), since they cannot hold equity investments in a particular company under FPI and FDI route, simultaneously.

Click [here](#) to access the copy of the SEBI Circular for your ready reference.

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