

look-through basis for fresh registrations, a move that could hit such registrations in the country.

The regulator is keen on knowing the SMOs of the parent entity of the investor and not just the FPI. Till now, the look-through principle was applied for the identification of beneficial ownership on the basis of ownership and control and not the SMO.

An SMO is an individual/s designated by the FPI who holds a senior management position and makes key decisions related to the FPI.

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Given the probable reluctance of investors worldwide to give the SMO information on a look-through basis, this move could have a dampening impact on FPI registrations that have been gaining traction in the past couple of years. The registration process usually takes around two-three months.

“The regulator is already asking for so much information. While we continue to say that India is attractive from an investment standpoint, steps like these could hurt the ease of doing business. It should not be that an FPI spends a disproportionate amount of time furnishing information to the authorities. You will probably see the number of new FPI registrations slowing down in the coming months,” said a person who deals with FPIs.

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Several FPIs have intricate legal structures consisting of numerous layers in various jurisdictions. For instance, an FPI from Mauritius registered in India may in turn be owned by another fund vehicle in, say, Cayman Islands, which is owned by a US investment firm. So, in this case, the SMO will be an official of the US investment firm who may not be involved with the management or investment decisions of the Mauritius FPI registered in India. Besides, a lot of the SMO information sought — such as home address, email and other contact details — could be intrusive in nature and FPIs may not be comfortable divulging this information.

“Identification of SMO of the ultimate entity as the UBO (ultimate beneficial owner) of the FPI seems logically flawed. The Master Circular defines SMO as one who makes key decisions for the FPI. To declare a managing director or chief executive of the parent entity, who may not be involved in the day-to-day affairs of the FPI, as the UBO does not serve this description. In fact, this may give rise to unwarranted liability issues for such officials. It would not be surprising if Sebi asks for such details from existing FPIs as well,” said Prakhar Dua, leader, financial services and regulatory practice at Nishith Desai Associates.

The identification and verification of beneficial ownership of FPIs is determined on the basis of ownership/entitlement interest and control, or the test of designated ‘senior managing official’ whenever no owner entity can be identified.

Typically, custodians first try to identify UBO under ownership and then on the basis of control. If these two methods fail, the SMO of the FPI is identified.

“Many funds may be reluctant to share the details of SMO and instead opt to invest via subscribing to an already existing FPI rather than setting up their own fund vehicle. This means the existing fund that is subscribed to shall be directly liable for any regulatory scrutiny and not its constituents or investors,” said Neha Malviya Kulkarni, chief growth officer, SuperNAV, a fund accounting company.

Foreign investors wishing to make portfolio investments in India must obtain an FPI licence, which is granted by a local custodian on behalf of the market regulator.

According to experts, Sebi's guidelines for identification and disclosure of the ultimate beneficial owners have not been effectively implemented in the past, resulting in minimal follow-through. Consequently, FPIs have been able to limit their disclosures to certain layers, thereby avoiding disclosures in the spirit of the law.

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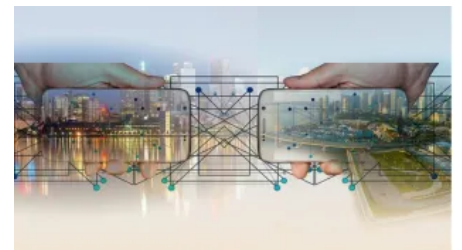
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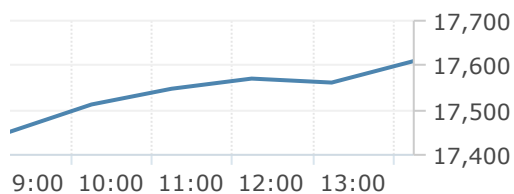


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