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Lower beneficial ownership threshold may trip FPIs

Sebi recently reached out to custodians for BO details of FPIs in the backdrop of the Adani issue.

Written by [Ashley Coutinho](#)

March 11, 2023 00:30 IST



The new PMLA norms seek to enhance structural transparency, an objective which the FPI advisory committee set up by the market regulator last year has also been tasked to do. (IE)

The new norms for prevention of money laundering have lowered the threshold for identifying beneficial owners (BOs) in foreign portfolio investors (FPIs) to 10%

for companies and trusts, a move that could increase compliance and know your customer (KYC) requirements and make India access a little more difficult for many such investors.

This threshold was earlier 25% and 15% for companies and trusts, respectively, and only entities from high-risk jurisdictions were subject to a 10% threshold.

The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLA) defines the broad framework for Sebi to prescribe regulations and rules for KYC and transaction monitoring. BOs are the natural persons who ultimately own or control an FPI and are identified in accordance with Rule 9 of the [PMLA Rules](#).

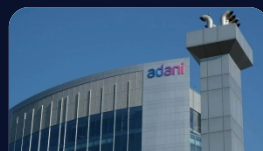
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Sebi recently reached out to custodians for BO details of FPIs in the backdrop of the Adani issue.

“With the market regulator increasing its efforts to track FPIs, the recent amendment to the PMLA rules increases the coverage of the term ‘beneficial owners’ by changing the ownership threshold for companies and trusts. Further, clients will be subject to higher due diligence and will have to report the details of relevant persons holding senior management positions, registered offices and the principal place of business, which was optional earlier,” said Suresh Swamy, partner, Price Waterhouse & Co.

According to Swamy, these amendments will have a harsher impact on investors having complicated ownership structures, where the beneficial owners are not comfortable disclosing their names to the Indian regulators. With increased due diligence, FPI registrations are likely to take longer and to that extent, flows will be impacted, he said.

“This would lead to a cumbersome activity of KYC information gathering from each FPI entity. Frequent changes in regulations may undoubtedly irk foreign investors. Further, these changes shall negatively impact the time taken by DDP/custodians in granting FPI licence to foreign investors due to enhance KYC requirement at the UBO level,” said Neha Malviya Kulkarni, chief growth officer, SuperNAV, a fund accounting company.

The new PMLA norms seek to enhance structural transparency, an objective which the FPI advisory committee set up by the market regulator last year has also been tasked to do.

“While it is clear that the rules should be applicable prospectively, how it affects the existing FPIs needs to be seen. Further, the rules also mandate disclosure of the senior management persons of an FPI and the requirement to intimate the DDP within 30 days of any update in the already-furnished data. It would be interesting to see how the Indian regulators balance out the need to pierce the corporate veil with the ease of doing business by FPIs in India,” said Prakhar Dua, leader, financial services and regulatory practice, Nishith Desai Associates.

Dua believes that while flows might get impacted, investors who have nothing to hide and have proper transparent structures should not get worried. “Yes, more people may get disclosed as UBOs which might be an issue for those persons who are just economic, and not strategic investors and hence, not be happy to be identified as beneficial owners,” he said.

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P-notes as a route for investment into India may gain traction. The notes are issued by registered FPIs to overseas investors who want to invest into Indian

equities without registering themselves directly. P-notes have fallen out of favour in the past few years with only about 2% of FPI investment into India made through this route in recent months.

“This could pave the way for more traction in the P-note market as well as export of some foreign exchange out of India for during the short term,” said Yashesh Ashar, a chartered accountant.

The government has given a timeline of 30 days to the custodians and other reporting entities to gather updated information from their clients in view of the new PMLA changes.

The Sebi FPI Regulations, 2019 has put the onus of complying with PMLA Act and Rules on the custodians/DDPs and FPIs individually for the purpose of PMLA Act, unless a specific carve out is provided to them by the relevant regulator.

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Nifty

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Company	Value	%Change
Tech Mahindra Ltd.	1149.7	8.33
Adani Enterprises Ltd.	1932.8	1.93
APOLLO HSPT	4375.5	1.35
ICICI Bank Ltd.	853.6	1.3

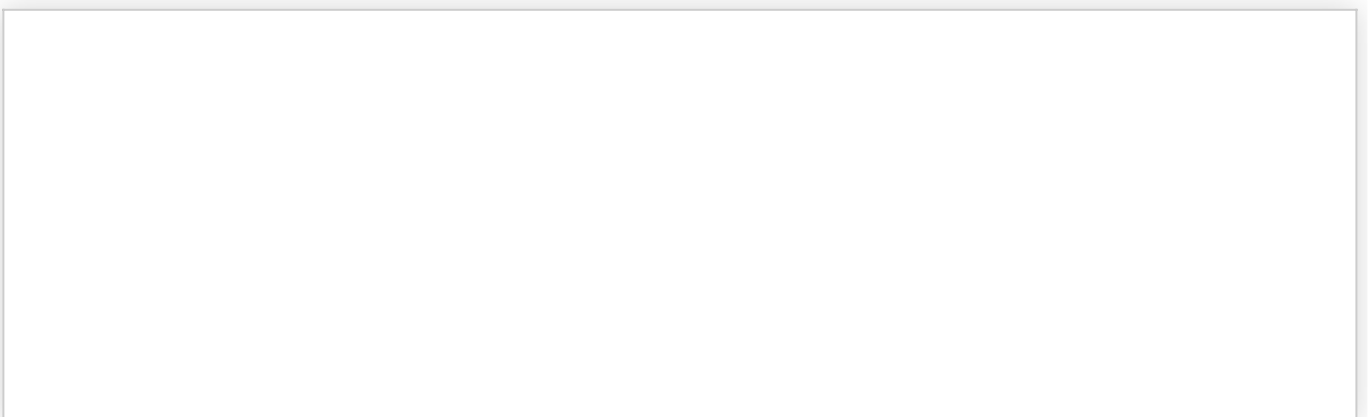
TOP LOSER

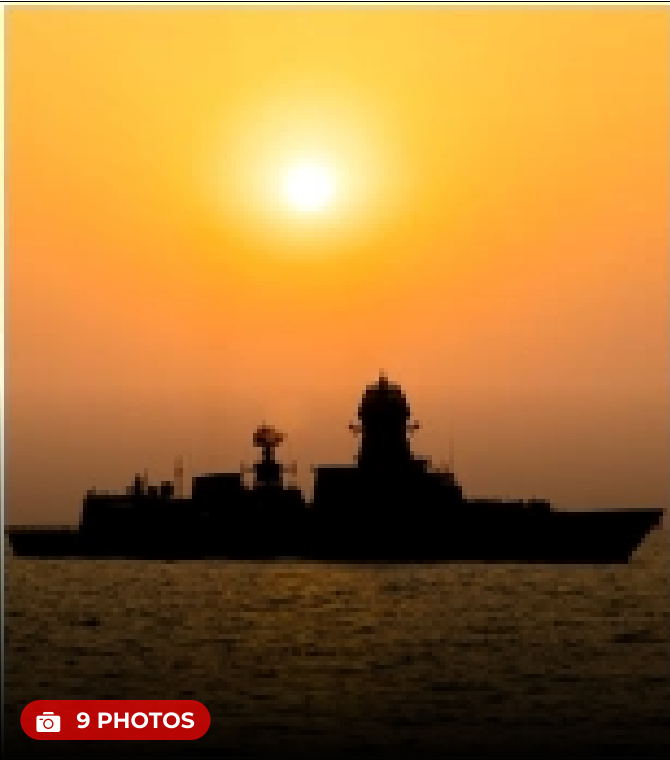
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Company	Value	%Change
IndusInd Bank Ltd.	1073	-6.27
Infosys Ltd.	1455.1	-1.12
MAH&MAH	1215.4	-0.92
Tata Motors Ltd.	432.15	-0.85

Photos



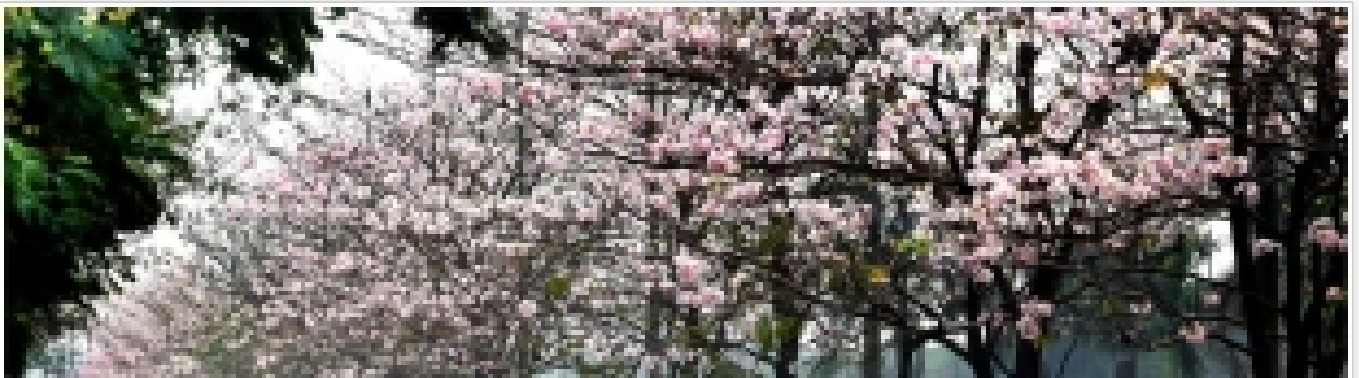


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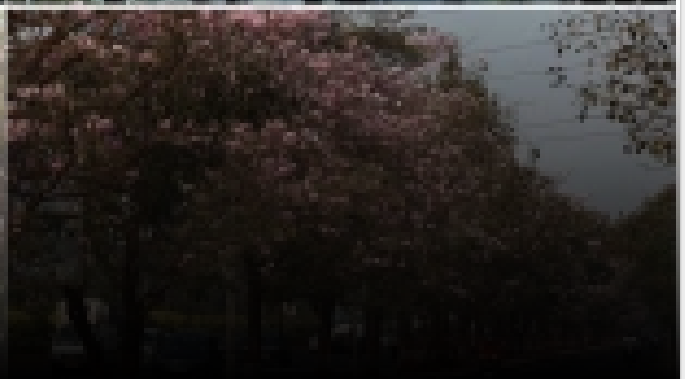
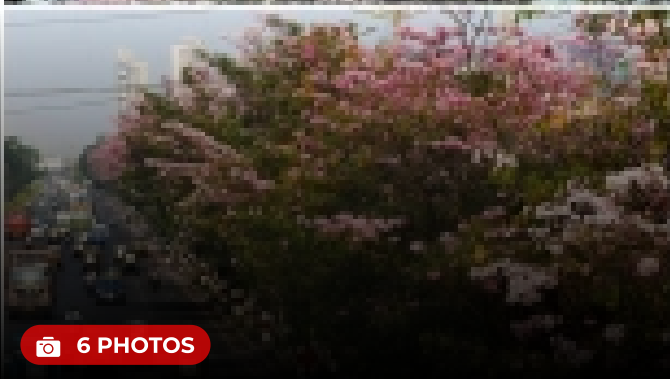


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