

EY Regulatory Alert

Additional disclosure framework for Foreign Portfolio Investors - SEBI Consultation Paper on proposal to improve ease of doing business and issuance of Circular granting exemption from additional disclosure requirements to University Funds and University related Endowments.

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This alert summarizes a recent consultation paper (CP) released for public comments by the Securities and Exchange Board of India (SEBI) on 30 July 2024. The CP is in furtherance to the Circular issued by SEBI dated 24 August 2023¹ (August Circular), which outlines a framework for mandating additional granular disclosures by Foreign Portfolio Investors (FPIs) fulfilling certain criteria.

With the objective of improving the ease of doing business in India for FPIs, the CP seeks comments from public for a proposal to eliminate the requirement of providing additional granular disclosure by certain FPIs that individually or along with their investor group, hold more than INR 250 billion of equity Assets Under Management in the Indian markets. The last date to provide comments is 20 August 2024.

Further, this alert also summarizes a recent Circular² issued by the SEBI on 1 August 2024 granting exemption to University Funds and University related Endowments from providing additional disclosures, subject to compliance with certain conditions. The said exemption is pursuant to a consultation paper released by SEBI for public comments on 27 February 2024³.

¹ Please refer to EY Alert dated 29 August 2023, summarising the circular issued by SEBI.

² 2CIRCULARSEBI/HO/AFD/AFD-POD-2/P/CIR/2024/104

³ Please refer to EY Alert dated 4 March 2024, summarising the key aspects of the consultation paper released by SEBI.



The better the question.
The better the answer.
The better the world works.



**Shape the future
with confidence**

Background

- ▶ FPIs are regulated by the SEBI and are permitted to invest in, *inter-alia*, shares of listed Indian companies.
- ▶ To ensure that FPIs do not (a) concentrate a substantial portion of their equity portfolio in a single investee company/ company group thereby circumventing regulatory requirements under Substantial Acquisition of Shares and Takeovers Regulations, 2011 (SAST Regulations) or circumventing the requirement of maintaining Minimum Public Shareholding (MPS)⁴; or (b) circumvent the restrictions imposed by Press Note 3⁵, the August Circular was issued by SEBI.
- ▶ The August Circular, which became effective from 1 November 2023, mandated FPIs to disclose granular details of all entities holding any ownership, economic interest, or exercising control⁶ in an FPI, on a full look through basis up to the level of natural persons, in the following cases:
 - ▶ FPIs holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group (concentration criteria); or
 - ▶ FPIs that individually, or, along with their investor group⁷, hold more than INR 250 billion of equity AUM in the Indian markets (size criteria).

Additionally, the August Circular also provided that FPIs meeting certain prescribed conditions shall be exempted from the increased disclosure requirements.

- ▶ Further, a Standard Operating Procedure (SOP) was also framed by the Custodians and DDPs Standard Setting Forum (CDSSF), in consultation with SEBI to outline the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions as provided in the August Circular.

⁴ The Securities Contracts (Regulation) Rules, 1957 read with Regulation 38 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 make it mandatory for entities who have listed their equity shares on a stock exchange to maintain MPS of 25%. This ensures balance of promoter and public shareholding and reduces volatility in the market.

⁵ Press Note 3 dated 17 April 2020 provides that investment by an entity from a country which shares land border with India or where the beneficial owner of an investment into India is situated in/ citizen of any such country, shall only be under the Government route. Press Note 3 currently does not apply to FPI investments.

- ▶ The August Circular and the SOP have been subsequently amended from time to time based on suggestions from industry and the feedback and learnings obtained during the course of implementation of the granular disclosure framework.
- ▶ During interactions with various industry participants, feedback has been received by SEBI and it was observed that due to their size and diversified investor base, very large non-exempt funds breaching the size criteria face challenges in providing granular details of every person holding any ownership, economic interest, or control in such funds.
- ▶ Given that the intention of obtaining granular information from FPIs who breach the size criteria is to ascertain whether the FPI is effectively domiciled in a Land Bordering Country (LBC), SEBI has released a CP proposing 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 FPI.
- ▶ The proposal outlined by SEBI in the CP aims to facilitate ease of doing business for FPIs and attract foreign capital towards fueling domestic capital formation.
- ▶ Further, SEBI has also issued a Circular on 1 August 2024, exempting FPIs being university funds and university related endowments which meet prescribed conditions from additional disclosure requirements.
- ▶ This alert summarizes the key aspects of the CP dated 31 July 2024 and the Circular dated 1 August 2024 issued by SEBI.

Proposal as per the Consultation paper

⁶ Ownership interest means ownership of shares or capital of the entity or entitlement to derive profits from the activity of the entity.

Economic interest means returns from the investments made by the FPI.

Control has been defined to mean right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

⁷ Investor Group is defined in the SEBI (FPI) Regulations, 2019 to mean multiple FPIs, directly or indirectly, having common ownership of more than 50% or common control.

- ▶ To balance the regulatory objective of ascertaining whether the FPI is domiciled in a LBC with ease of doing business, SEBI has proposed to modify the granular disclosure requirements and link the same to an appropriate minimum threshold of disclosure for identification and categorization of a FPI as LBC or non-LBC entity.
- ▶ Thus, FPIs breaching the size criteria i.e. holding more than INR 250 billion of equity AUM in the Indian markets, shall not be required to make further disclosures under the August Circular provided that it makes disclosures to the extent that identification and categorization as an LBC or non-LBC can be done as per the below mentioned thresholds:
 - ▶ If entities owning/ controlling/ holding economic interest in more than 50% of the AUM of the FPI are from LBC, the FPI shall be categorized as domiciled in an LBC without needing further granular disclosures.
 - ▶ If entities owning/ controlling/ holding economic interest in more than 67% of the AUM of the FPI are from non-LBC, the FPI shall be categorized as domiciled in a non-LBC without needing further granular disclosures.
- ▶ Where the above specified thresholds are not met, the FPI shall need to disclose granular details of all entities owning/ controlling/ holding economic interest in the FPI. However, the categorization of the FPI shall be based on the country/ nationality of entities owning/ controlling/ holding economic interest in a significant majority of the FPI's AUM (i.e. more than 50%).
- ▶ For the purpose of identifying and categorizing an FPI as an LBC or non-LBC, the holdings of intermediate entities specifically exempted from making increased disclosure requirements by the August Circular/ SOP and subsequent amendments thereto, will be considered based on the country or nationality of the intermediate entity.
- ▶ Further, the identification and categorization of an FPI as an LBC or non-LBC entity shall be based on the verification of actual disclosures by the DDP and not on the basis of declarations.
- ▶ The requirement for FPIs to make additional granular disclosures on breaching the 'concentration criteria' continues to apply and no changes are being proposed to the existing framework.

Circular dated 1 August 2024

- ▶ As indicated above, FPIs meeting certain prescribed conditions are exempted from the increased disclosure requirements as provided in the August Circular.
- ▶ With the objective of enhancing the ease of doing business in India for FPIs, SEBI had on 27 February 2024 released, for public comments, a consultation paper expanding the category of exemptions provided in the August Circular to cover university funds and university related endowments subject to them meeting certain specified conditions.
- ▶ Based on feedback received, SEBI has now issued a Circular dated 1 August 2024 exempting university funds and university related endowments, registered/ eligible to be registered as Category I FPIs, from additional disclosure requirements prescribed under the August Circular, subject to the following additional conditions:
 - ▶ Indian equity AUM of the funds should be less than 25% of global AUM.
 - ▶ Global AUM should be more than INR 100 billion.
 - ▶ The funds should make appropriate returns/ filings with the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.
- ▶ To avail of the above exemption, the university funds and university endowments should be domiciled in eligible jurisdictions which shall be as specified by SEBI from time to time, in consultation with the CDSSF.
- ▶ The Circular shall come into force immediately i.e. w.e.f. 1 August 2024.

Comments

SEBI had released the August Circular with an intention to ensure that FPIs neither circumvent the restrictions imposed by Press Note 3 nor concentrate a substantial portion of their equity portfolio in a single investee company/ company group. Since its introduction in August 2023, based on suggestions and feedback from the industry, the August Circular and SOP have been amended from time to time.

While the August Circular has exempted different categories of FPIs from the granular disclosure requirements, large FPIs (who own more than INR 250 billion in equity AUM in the Indian markets) having a widespread investor base face challenges in providing granular details of every person holding ownership, economic interest, or control in the FPI.

This CP seeks to address the above issue by introducing the following risk-based thresholds to identify and categorize FPIs for the purpose of seeking granular details, rather than mandating disclosure of each and every interest owner in the FPI:

- (i) land bordering country (LBC) entity (if entities owning/ controlling/ holding economic interest in more than 50% of the AUM of the FPI are from LBC): or
- (ii) non-LBC entity (if entities owning/ controlling/ holding economic interest in more than 67% of the AUM of the FPI are from non-LBC),

No change is being proposed in the extant framework for dealing with breach of the concentration criteria.

The proposal outlined in the CP alongwith various other exemptions already provided, aims to ease the burden of a vast group of FPIs from being subject to additional disclosure requirements. However, the manner in which the DDPs shall classify an FPI from an LBC or non-LBC and ensure compliance with the thresholds proposed by SEBI shall need to be examined given that DDPs cannot rely on declarations provided by FPIs.

For additional information with respect to this Alert, please contact the following:

Keyur Shah

Financial Services - Tax and Regulatory services
Partner & Leader - India Region
Email: keyur.shah@in.ey.com

Tejas Desai

Partner & Leader, Wealth & Asset Management -
Tax, India Region
Email: tejas.desai@in.ey.com

Anahita Kodia

Financial Services - Tax & Regulatory services
Partner - India Region
Email: anahita.kodia@in.ey.com

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon Temple
Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

8th Floor, Building No. 14A
Block 14, Zone 1
Brigade International Financial Centre
GIFT City SEZ
Gandhinagar - 382355, Gujarat
Tel +91 79 6608 3800

Bengaluru

12th & 13th Floor
"UB City", Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground & 1st Floor
11, 'A' wing
Divyasree Chambers
Langford Town
Bengaluru - 560 025
Tel: + 91 80 6727 5000

3rd & 4th Floor
MARKSQUARE
#61, St. Mark's Road
Shantala Nagar
Bengaluru - 560 001
Tel: + 91 80 6727 5000

1st & 8th Floor, Tower A
Prestige Shantiniketan
Mahadevapura Post
Whitefield,
Bengaluru - 560 048
Tel: + 91 80 6727 5000

Bhubaneswar

8th Floor, O-Hub, Tower A
Chandaka SEZ, Bhubaneswar
Odisha - 751024
Tel: + 91 674 274 4490

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

6th & 7th Floor, A Block,
Tidel Park, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Aikyam
Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jaipur

9th floor, Jewel of India
Horizon Tower, JLN Marg
Opp Jaipur Stock Exchange
Jaipur, Rajasthan - 302018

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

3rd Floor, Unit No 301
Building No. 1
Mindspace Airoli West (Gigaplex)
Located at Plot No. IT-5
MIDC Knowledge Corridor
Airoli (West)
Navi Mumbai - 400708
Tel: + 91 22 6192 0003

Altimus, 18th Floor
Pandurang Budhkar Marg
Worli, Mumbai - 400 018
Tel: +91 22 6192 0503

Pune

C-401, 4th Floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

10th Floor, Smartworks
M-Agile, Pan Card Club Road
Baner, Taluka Haveli
Pune - 411 045
Tel: + 91 20 4912 6800

Ernst & Young LLP

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at Ground Floor, Plot No. 67, Institutional Area, Sector - 44, Gurugram - 122 003, Haryana, India.

© 2025 Ernst & Young LLP. Published in India.
All Rights Reserved.

ED None.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

ey.com/en_in

[@EY_India](https://twitter.com/EY_India) [in](https://www.linkedin.com/company/ey) EY [YouTube](https://www.youtube.com/channel/UCvR8T8U8U8U8U8U8U8U8U8U) EY India [f](https://www.facebook.com/EY_Careers_India) EY Careers India [@ey_indiacareers](https://www.instagram.com/ey_indiacareers)



Download the EY India Tax Insights App