

# Parents of FPIs to be considered as 'legal entity'

By Sugata Ghosh, ET Bureau    Last Updated: May 18, 2023, 06:06 AM IST

### Synopsis

FPIs registered with the Securities & Exchange Board of India (Sebi) are often arms of offshore mother institutions. In such cases, the registration is typically in the name of the sub-fund or the branch of a bank. Thus, the parent organisation of an FPI is not readily identifiable.



Even in cases where BOs are obvious, the parent entity has to give a declaration that it is the legal entity of the funds.

Mumbai: Foreign umbrella funds or parent organisations, incorporated in jurisdictions like Luxembourg and Singapore, will have to declare themselves as the "legal entities" of foreign portfolio investors (FPIs) trading on Indian [stock exchanges](#).

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This is about to change. By declaring itself as a 'legal entity', the parent organisation of a bunch of FPIs (or sub-funds), will now be the 'client' of the fund custodian. In fund circles, this amounts to a significant change in the current compliance framework.

Custodians are [MNC banks](#) and local non-bank institutions keeping custody of the securities and acting as bookkeepers of FPIs. At present, only the FPIs (or the sub-funds) are the 'clients' of the custodian - and not the parent of the FPI.

**Changing Landscape**

<b>FPIs ARE</b> often sub-funds of an umbrella entity		<b>SEBI WANTS</b> to KYC of the parent institutions
<b>A FUND</b> can be an FPI without any mention of the parent		<b>THIS IS</b> over and above identifying an FPI's beneficial owners



The new system will require the custodians - also known as designated

depository participants ([DDPs](#)) - carry out the KYC process of the parent (as the main legal entity) over and above that of the sub-funds (registered as FPIs).

The custodians, following instructions from Sebi, have recently reached out to their FPI clients seeking declaration from the fund parents, a person familiar with the matter told ET.

"Sebi's objective behind identification of the legal entity is to ensure that an (overseas) entity appropriately regulated by its securities market regulator becomes the client of the DDP, and that it undergoes the KYC requirements, even though only its sub-funds are registered as FPIs," said Kishore Joshi, who heads the financial services & regulatory practice at law firm Nishith Desai Associates.

The move, understandably, is a learning from the Adani-Hindenburg fiasco, leading the regulator to think of ways to spot the main institution behind an FPI.

Under the declaration format given by Sebi to custodians, a parent entity has to spell out whether it is registered as an FPI or has sub-funds which function as FPIs. In either case, the parent will be considered as the 'legal entity'. "This would increase the workload of custodians," said another person.

The change in compliance rule could also require a sub-fund (operating as an FPI or applying for a license) to tag the parent's name for registration.

"If existing funds need to get their names changed with the custodian at the time of renewal, it could potentially create an issue in getting their PAN changed since funds may not have any legal document to support a name which has both the umbrella and sub-fund name. Ideally, tax authorities should issue directions to allow name change in PAN based on the revised FPI licence. Further, this may also result in denial of treaty benefits by tax authorities to certain FPIs because the tax residency certificate may not have the umbrella and sub account name," said Rajesh Gandhi, partner, Deloitte India.

Sebi had recently asked every FPI to disclose its 'beneficial owners' (BOs) - or the last natural person - in the fund. The threshold for identifying BOs was tightened to include investors with 10% or more share in the fund corpus. Earlier the cut-off was 25%. In case of funds where no investor holds 10% or more, the person actually controlling the fund has to be identified or the senior management officers (SMOs) of the ultimate entity are named as the BOs.

Even in cases where BOs are obvious, the parent entity has to give a declaration that it is the legal entity of the funds.

"While it is helpful to get clarity that even the existing FPIs would be required to disclose the beneficial owners as per the revised thresholds by September

30, Sebi's mandate of disclosure of SMO(s) of the legal entity at the end of the chain of the legal arrangement seems unreasonable as the FPIs may now be forced to disclose information of the SMO of the ultimate parent, who is not involved in the affairs of the FPI," said Joshi.

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