

Business Standard

Centre likely to keep PIOs out of beneficial ownership restrictions

The threshold for identification of BOs of FPIs on controlling ownership interest is 25% in case of companies and 15% in case of partnership firms

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The government is likely to exclude persons of Indian origin (PIOs) and overseas citizens of India (OCIs) from beneficial ownership (BO) restrictions, which will come into effect for foreign portfolio investors (FPIs) in October.

According to the guidelines put out by the Securities and Exchange Board of India (Sebi) in April, non-resident Indians (or NRIs), along with PIOs/OCIs, cannot be beneficial owners of FPIs.

The threshold for identification of BOs of FPIs on controlling ownership interest is 25 per cent in case of companies and 15 per cent in case of partnership firms. For high-risk jurisdictions, the

threshold is lower at 10 per cent.

“The government is doing a rethink,” said a person familiar with the matter. “Sebi might look to differentiate between the NRIs and PIOs/OCIs, and the latter might not be subjected to the restrictions of the April circular. This will not be easy, however, because of the all-encompassing definition of NRIs.”

PIOs are foreign citizens, who at one point of time held an Indian passport, or whose parents, grandparents or great grandparents were born and were permanent residents in India, or who is a spouse of a citizen of India or a PIO.

An OCI is a foreign national who was a citizen of India on or after January 26, 1950. NRIs are Indian citizens who stay abroad for employment or for business purposes or any other purpose, indicating an indefinite period of stay abroad.

“I’m not sure how PIOs, who are not Indian citizens or residents, raise round-tripping concerns? By the definition, any foreign investor could raise such concerns,” said Pratibha Jain, partner, Nishith Desai Associates. “Just because I have Indian parents, should not deem me to be a class more prone to round-tripping. Similarly, a category of OCIs are PIOs that have applied for the OCI status. But, again, they are neither Indian citizens nor residents. So why should they be considered to be more likely to be involved in round tripping?”

The April circular had clarified that NRIs, PIOs, and OCIs are not eligible to make investments as FPIs. “A company majority owned by one or more NRIs/PIOs shall not be allowed to make investments as an FPI. However, if such a company is appropriately regulated, it may be given registration as Category II FPI for the purpose of acting as investment manager for other FPIs. In order to bring further clarity, it is informed that NRIs/ OCIs cannot be BO of FPIs,” the Sebi circular had stated.

According to some experts, it is the PIOs, and not OCIs, that are more likely to be excluded from the BO restrictions. “OCIs are treated in the same way as NRIs — be it the way they invest or the restrictions placed on them. Even the definition of NRIs includes OCIs. So, my sense is that someone who is a PIO but not an OCI card holder will not face restrictions,” said another person, on condition of anonymity.

While the intent of the April circular is to prevent money laundering and round-tripping of funds, persons of Indian origin or OCI card holders who are investors or asset managers with significant interest in Indian equities, and coming in as FPIs, or through offshore funds, may get affected after October.

Some financial services groups, with significant NRI holding, are reportedly rejigging their operations to eliminate ownership of offshore fund structures.