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In a U-turn, SEBI panel to allow NRIs, PIOs to hold non-controlling stakes in FPIs

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Backlash from foreign fund lobby group has forced SEBI to change its course on banning Non-Resident Indians (NRIs) and Person of Indian Origins (PIOs) from owning foreign portfolio investment (FPI) vehicle or structure. SEBI may allow NRIs and PIOs to hold 25 per cent as a single beneficiary and up to 50 per cent as a group in an FPI. In April, SEBI had banned NRIs and PIOs from being beneficial owners (BOs) of an FPI.

On Saturday, a SEBI panel recommended the changes after the Mumbai-based law firm Nishith Desai Associates and Asset Managers Roundtable of India (AMRI) on September 3 claimed that $75 billion of foreign funds would move out of India if the panel went ahead with its earlier order. After terming the claims as 'preposterous,' the expert committee met to review its April order. Within three days, the panel, headed by HR Khan, former Deputy Governor of the Reserve Bank of India, proposed the changes.

The panel's interim report, which has been put out for public comments till September 17, has suggested that NRIs, overseas citizens of India (OCIs) and resident Indians should be allowed to hold non-controlling stakes in FPIs and no restriction should be imposed on them to manage non-investing FPIs or SEBI-registered offshore funds.

The committee also suggested that erstwhile PIOs should not be subjected to any restrictions and also recommended allowing clubbing of investment limits for well-regulated and publicly held FPIs having common control. It is also in favour of complete removal of additional Know Your Client (KYC) documentation for BOs in case of government-related FPIs.

Changes have also been suggested in identification of senior managing officials of FPIs and for beneficial owners of listed entities, as well as disclosure of personal information. But the same new rules may apply 'equally' to those using offshore derivative instruments or participatory notes, which have been blamed for flow of hot money into India.

The panel also recommended giving six months to FPIs for complying with the new rules after they are finalised, while non-compliant investors would be given additional 180 days to close their existing positions. The SEBI's April circular had set stricture rules mostly as a safeguard against round-tripping of funds.

Mohit Kapoor, Partner, Universal Legal, said: "SEBI's restrictions on certain category of FPI investors like NRIs and such others is based on unwarranted concerns that they indulge in money laundering. Instead of imposing stringent conditions on FPIs and harming sentiment, it would be prudent if SEBI can strengthen its enforcement mechanism and take action against those who have contravened rules."

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