

Business Standard

FPIs seek six more months from FinMin to comply with PMLA tweaks

To make a representation to FinMin for relief

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Foreign portfolio investors (FPIs) are likely to seek from the finance ministry a six-month extension of the date for

Illustration: Ajay Mohanty

complying with the amendments to the Prevention of Money-Laundering Act (PMLA), citing implementation challenges.

Sources said FPIs, through their custodians, were planning to approach the ministry, highlighting key concerns and seeking more clarification.

The ministry, through a notification on March 7, lowered the threshold for reporting ultimate beneficial ownership (UBO) for non-profit organisations and politically exposed persons to 10 per cent from 25 per cent. Earlier, the 10 per cent threshold was applicable only to entities in high-risk jurisdictions.

Further, FPIs have to disclose the names of senior management officials (SMOs) within 30 days. The government has asked the entities to also reveal the names of the partners and addresses of the registered offices and the principal places of their businesses (if they are different).

The move has stumped overseas funds, which are hesitant to furnish such information.

“Custodians may seek clarity on the timeline they should comply with and whether it (not doing so) will be seen as violation in the interim. As the change has already been brought by a notification, the custodians are required to do a lot of work, including rework on the recently on-boarded clients too,” said Suresh Swamy, partner, Price Waterhouse & Co.

According to an industry official, FPIs do not have the manpower or logistical wherewithal to update the details in such a short time and may require some relaxation to do the profiling.

Another official said: “They are hoping the documentation requirement is not made stringent.”

Sources said the Asia Securities Industry & Financial Markets Association (Asifma), an FPI industry lobby, would also take up the issue with the government and the Securities and Exchange Board of India (Sebi).

Queries sent to Asifma on the matter remained unanswered.

Sources said FPIs would seek clarity on the changes, which will be applied prospectively and retrospectively. The change in rules could force FPIs to tweak their structures to evade stricter thresholds, said legal experts.

“An FPI applicant set up in the form of a company or a trust will have to apply the new threshold of 10 per cent for the identification of its ultimate BO. Interestingly, this change will not affect FPI applicants in the form of partnership firms, unincorporated associations or (bodies) of individuals, as the threshold for identifying BOs of such entities remains unchanged at 15 per cent of the property or capital or profits of the partnership, unincorporated association or body of individuals, as the case may be,” said Prakhar Dua and Kishore Joshi of Nishith Desai Associates in a note.

Prakhar Dua, leader, financial services and regulatory practice, Nishith Desai Associates, said: “Identifying UBOs of around 11,000 FPIs on the basis of changed parameters would be hectic for the designated depository participants. With such a change in the threshold, many FPI investors may not be comfortable in calling themselves UBOs because they may not identify themselves as strategic investors.”

Some say the fresh amendments are expected to impact the inflows into India and hit registrations.

“A lot of restructuring will have to be done. Global funds have complex structures and it is difficult to ascertain an SMO or a place of business. These determining points need a lot of clarification from the regulatory authorities. Custodians may not be in a position even to ascertain that the data given to them is correct,” said Neha Malviya Kulkarni, chief growth officer, SuperNAV.

The government and regulators are moving towards transparency when it comes to foreign money entering the country.

Over the past few years, Sebi and the government have brought in several changes in regulations related to FPIs, like identifying SMOs on a look-through basis, the T+1 settlement cycle, and the removal of the concessional tax.

The industry is of the view that the pace of regulatory changes is making it difficult for overseas funds holding FPI licence.

The FPI Advisory Committee, set up by Sebi, is likely to make suggestions on the timeline and documents required under the amended PMLA regulations, said industry players.

The fine print

Effective changes

- Threshold for identifying beneficial owners lowered to 10% from 25% under PMLA
- Due diligence requirements widened, specifically for senior management officials

Seeking clarity

- FPIs seeking relief and clarity on timeline for compliance
- Details on violations during the interim period also sought

Greater scrutiny

- Earlier, Sebi directed custodians to share data of UBOs of over 11,000 FPIs
- It also asked for identification of SMOs on look-through basis, seeking more data