



## Recent amendments to Indian KYC rules

Impact on new and  
existing Foreign Portfolio  
Investors



# Indian KYC Rules

## Background

- In India, the Know Your Client (KYC) requirements are primarily governed by the Prevention of Money Laundering Act, 2002 (PMLA) and the Prevention of Money Laundering Rules, 2005 (PML Rules).
- These regulations provide a broad framework for identification of beneficial owners of clients of a reporting entity, information/documents to be obtained, monitoring of transactions and reporting thereof.

Guided by the PMLA requirements, the regulators in India, for example, Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), etc. have prescribed detailed provisions to be followed by entities registered with the respective regulators. PML Rules also allow Indian regulators to prescribe enhanced measures to identify client's identity.

In respect of Foreign Portfolio Investors (FPIs), SEBI has prescribed simplified KYC norms depending upon the category of FPIs and has also issued various clarifications concerning KYC requirements in response to questions raised by FPIs as well as market participants. SEBI had first introduced KYC norms for FPIs in 2012 and has amended the same in 2013, 2018 and 2019.

- In accordance with the changes in PMLA rules dated March 7, 2023, beneficial ownership thresholds for FPIs which are set up in the form of a company or trust has been lowered to 10%.
- In an email sent in early 2023, SEBI has asked FPIs to review the existing beneficial owner details provided to DDPs and where required, provide correct details to the reporting entity by September 30, 2023. This includes identifying beneficial owners of the legal entity which is at the end of the chain of the legal arrangement by which FPI is owned / controlled. Where no natural person is identified as beneficial owner on the basis of ownership or control, Senior Managing official(s) of the legal entity at the end of the chain should be identified as the beneficial owner(s).
- On May 31, 2023, SEBI has issued a consultation paper to introduce more granular disclosure requirements for FPIs identified as high risk in accordance with the criteria prescribed in the consultation paper.



# Indian KYC Rules

## Definitions

**Beneficial owner** - As per Section 2 of the PMLA a 'beneficial owner' means:

- An individual who ultimately owns or controls a client of a reporting entity or
- The person on whose behalf a transaction is being conducted and,
- Includes a person who exercises ultimate effective control over a juridical person

Further, Rule 9 of the PMLA (Maintenance of Records) Rules, 2005 ('PMLA Rules') provides the manner for the determination of a beneficial owner as under:

Client / Entity Type	Beneficial Owner
Company	Natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
Partnership Firm / Unincorporated association / Body of Individuals	Natural person(s) who, whether acting alone or together, or through one or more juridical person, has a specified % of ownership of entitlement to the capital or profits of the entity
Trust	Author of the trust, the trustee, the beneficiaries with a specified % of interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership
All entities	Where no natural person is identified as a beneficial owner on ownership or control basis of an entity, the senior managing official(s) of the entity is to be identified as beneficial owner(s)

**Controlling ownership interest** - Ownership of or entitlement to more than a specified % of shares or capital or profits of the company

**Control** - Includes the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements

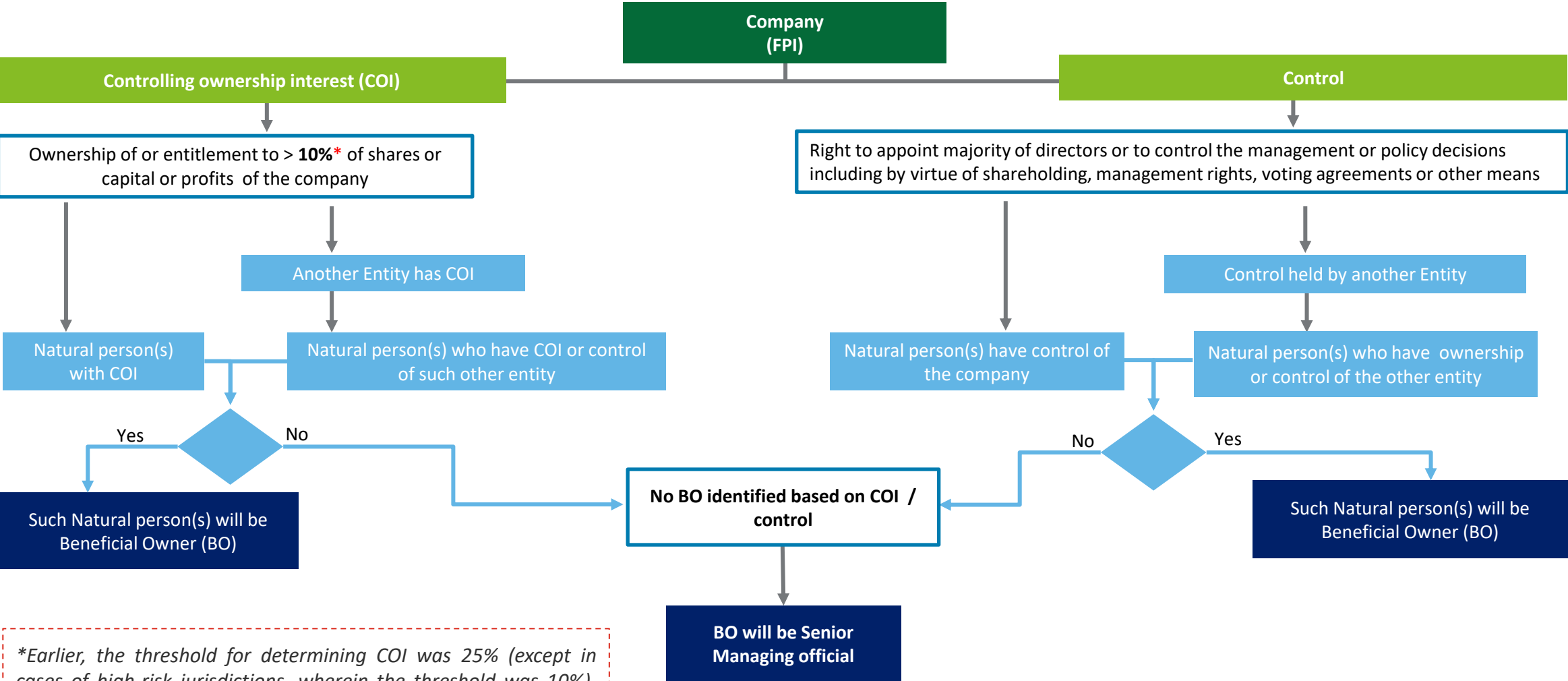
**Reporting entity** - A banking company, financial institution, intermediary or a person carrying on a designated business or profession

**Senior managing official** - For identification as a beneficial owner, a senior managing official means individual(s) as designated by the FPI who holds a senior management position and makes key decisions relating to the FPI.



# Identification of Beneficial Owners

FPI set up as company

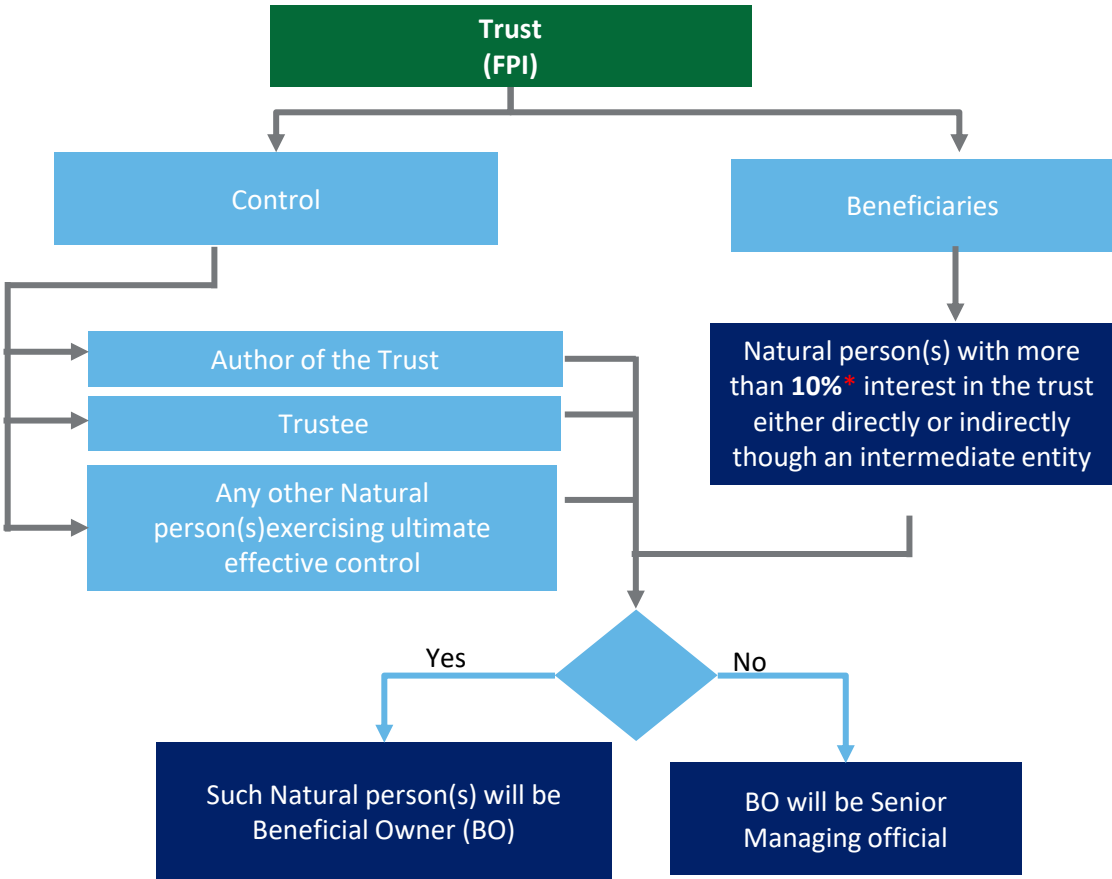


*\*Earlier, the threshold for determining COI was 25% (except in cases of high-risk jurisdictions, wherein the threshold was 10%). This threshold has now been lowered to 10% for all companies vide an amendment in the PMLA Rules dated March 7, 2023.*

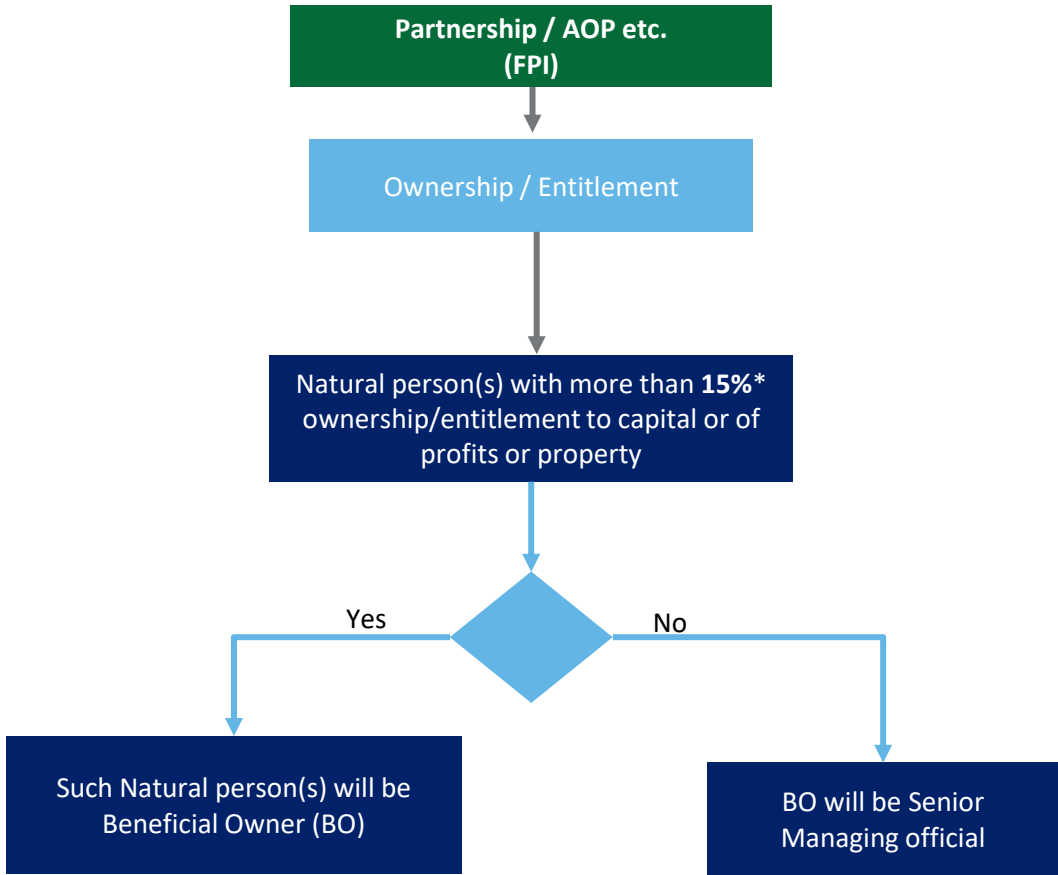


# Identification of Beneficial Owners

FPI set up as a trust or any other form



*\*Earlier, the threshold for determining interest in a trust was 25% (except in cases of high-risk jurisdictions, wherein the threshold was 10%). This threshold has now been lowered to 10% for all trusts vide an amendment in the PMLA Rules dated March 7, 2023.*



*Note: No change has been prescribed in the threshold for a partnership / unincorporated association or body of individuals. Further, in respect of FPIs set up as a Limited partnership or having a general partner, beneficial owners shall also be identified on basis of control in addition to ownership or entitlement.*



## Polling question 1



How do you find the Indian regulations in respect of setting up of an FPI and KYC requirements vis-à-vis the other countries?

- Complex
- Moderate
- Flexible
- Difficult to comment





# Indian KYC Rules

## SEBI advisory issued to DDPs

SEBI (vide an email in February 2023) has instructed all Designated Depository Participants (DDPs) to capture and update the details of beneficial owners of FPIs in accordance with the PMLA regulations, latest by 30 September 2023 failing which FPIs will become ineligible to continue with their registration and will have to liquidate their holdings by 31 March 2024.

It has been provided that every reporting entity is required to identify the beneficial owner of its clients. The PMLA Rules specify a beneficial owner as a natural person who ultimately owns or control the client and in case no natural person is identified, the beneficial owner will be the relevant natural person who holds the position of the Senior Managing Official.

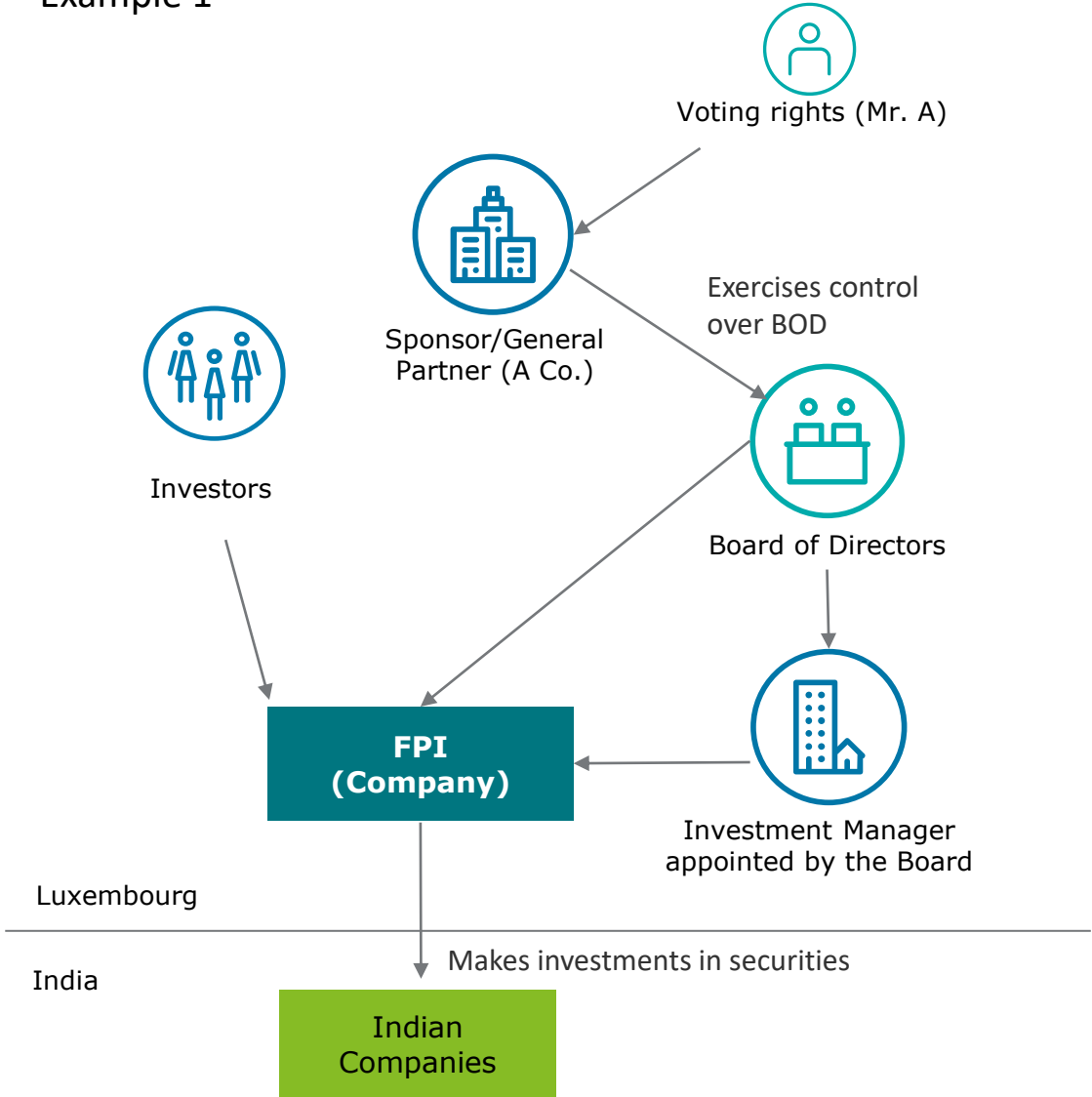
In the aforesaid email, SEBI, while clarifying the requirement (i.e., clients should either be natural persons or legal entities), has provided an example of FPI registration granted to branches of bank. For instance, if the branch of a Bank is registered as a FPI then the Bank should be identified as the Client. The Bank can obtain multiple registrations mentioning the name of each Branch for each FPI registration. Hence, DDPs are required to ensure that only a natural person who owns or controls the FPI should be identified as the beneficial owner.

SEBI has also clarified that in case ownership/ control is through a legal arrangement i.e., through legal entities, then the natural person who owns or controls the legal entity at the end of this chain of legal arrangement needs to be identified as the beneficial owner of the FPI. In case no natural person is identified as beneficial owner basis ownership or control, the Senior Managing Official of the legal entity at the end of the chain of the legal arrangement needs to be identified as the beneficial owner of the FPI.



# Identification of Beneficial Owners

## Example 1

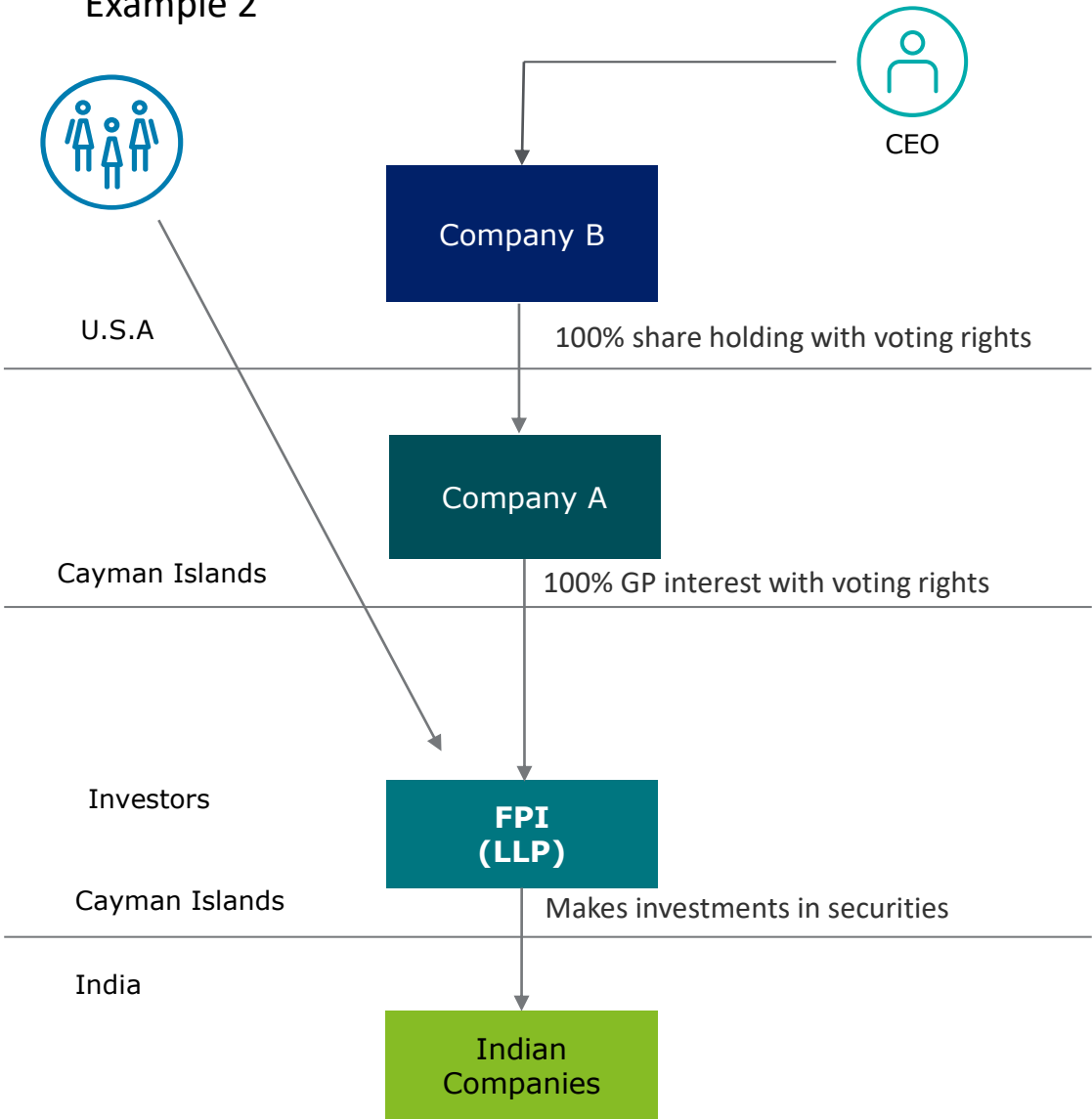


- In order to identify the beneficial owner of the FPI, we need to determine a natural person having
  - (i) Entitlement or ownership of at least 10% of the shares or capital or profits of the FPI or
  - (ii) exercising control over the FPI.
- Assuming that no investor is entitled to 10% or more the shares or capital or profits of the FPI, no investor should be considered as the beneficial owners in this example.
- Since Mr. A has the voting right in Sponsor entity which controls the Board of Directors of the Fund, Mr. A shall be considered as the beneficial owner of the FP in this example.



# Identification of Beneficial Owners

## Example 2



- In the given case, the FPI investing in India is set up in Cayman Islands. It is assumed that no investor is entitled to 10% or more the shares or capital or profits of the FPI and do not exercise control over the FPI, hence the investors should not be regarded as the beneficial owners of the FPI
- Accordingly, one would need to look through the legal arrangement of the FPI and the natural person who controls the legal entity at the end of this chain needs to be identified as the beneficial owner. In case no natural person is identified, the Senior Managing Official of the last legal entity needs to be identified as the beneficial owner of the FPI.
- In the given case, it is assumed that 100% GP interest of the FPI is with Company A which is held by Company B. It is also assumed that no natural person(s) exercise control over Company B.
- Accordingly, the senior managing official(s) of Company B, e.g. the CEO could be regarded the beneficial owner of the FPI.



# Additional information to be submitted by clients

## Information provided to Indian service providers

The amendment in the PMLA Rules also requires clients (residents as well as non-residents) to provide certain additional information along with the existing information and documents being submitted currently to Indian service providers:

Company	Partnership Firm	Trust
<ul style="list-style-type: none"><li>Names of the relevant persons holding senior management position</li><li>Details of the registered office of the company and its principal place of business</li></ul>	<ul style="list-style-type: none"><li>Names of the partners</li><li>Details of the registered office of the firm and its principal place of business</li></ul>	<ul style="list-style-type: none"><li>Names of the beneficiaries, trustees, settlor and authors</li><li>Address of the registered office</li><li>A list of trustees and certain documents for those discharging role as trustee and authorized to transact on behalf of the Trust</li></ul>

**Note:** Though the above amendment has been made in the PMLA rules, no corresponding amendment is made in the SEBI Master Circular for FPIs, DDPs and eligible foreign investors. Therefore, as of now, the Indian DDPs / custodians may not insist on furnishing such additional information.



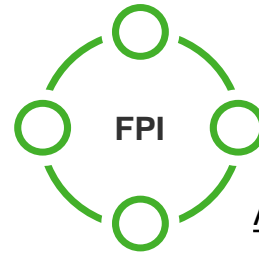
# Reporting changes / rectifications to SEBI and DDP

## Compression of timelines

Information submitted previously found to be false or misleading in any material respect

Material changes in the information submitted previously, including any direct or indirect change in the structure or ownership or control of the FPI

Penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against the FPI



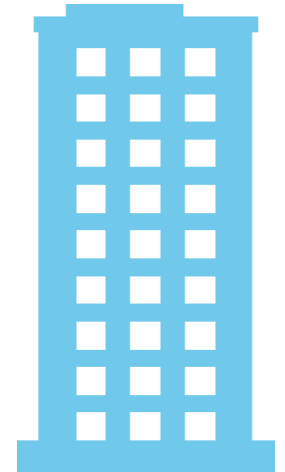
### Current FPI Regulations:

- An FPI is required to “**forthwith**” inform the following to Securities and Exchange Board of India (SEBI) and the concerned DDP
- Currently, the changes are reported within 6 months since regulation permits the same

### Amended FPI Regulations:

- An FPI would be required to intimate SEBI and the concerned DDP (as applicable) **as soon as possible but not later than 7 working days** of the occurrence of any of the aforementioned events.
- The concerned DDP is required to inform SEBI within 2 working days of it becoming aware of the event

SEBI and  
concerned DDP





## Polling question 2



How long would it practically take to report changes to SEBI/DDP?

- 7 working days
- 2 weeks
- 1 month
- Difficult to estimate, it depends upon the type of change





# SEBI Consultation paper

## Additional disclosures to be mandated for high risk FPIs

- A Consultation Paper has been issued by SEBI today (May 31, 2023) inviting public comments on the proposed framework for mandating additional granular disclosures by identified high-risk FPIs having either concentrated single group exposures and/ or significant overall holdings in their India equity investment portfolio.
- An objective criteria has been provided for identifying the FPIs as low, moderate and high risk as provided below (applies to both Category I and II FPIs):

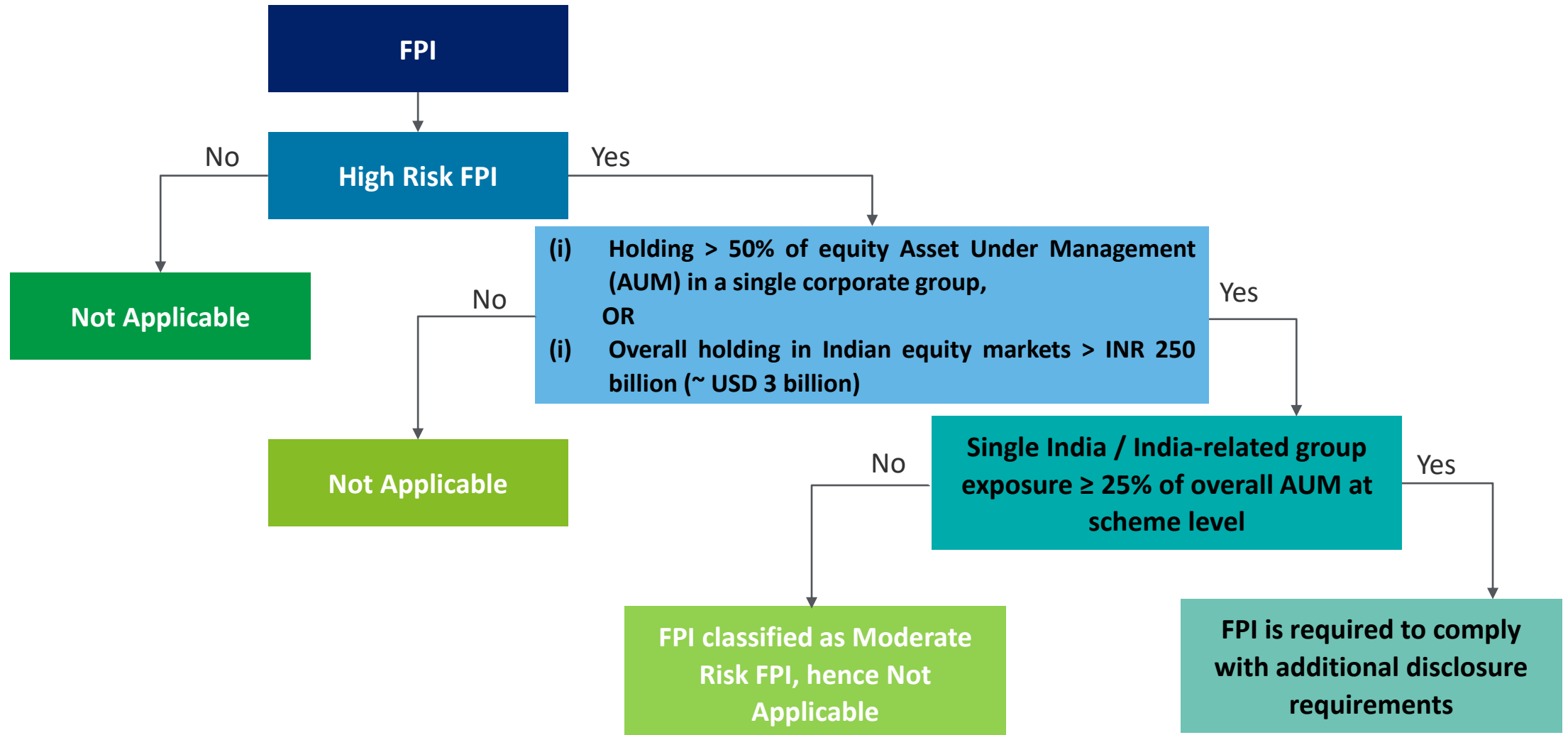
Low Risk FPI	Moderate Risk FPI	High Risk FPI
Government and Government related entities such as central banks, sovereign wealth funds, etc. since the ownership, economic and control interest in such entities is known due to predominant ownership by the Government of the respective country.	<ul style="list-style-type: none"><li>• Pension Funds or <b>Public Retail Funds</b> as defined under Regulation 22(4) <b>with widespread and dispersed investors in such funds</b></li><li>• DDPs to independently validate and confirm this status</li></ul>	All other FPIs that are not low or medium risk.

- FPIs identified as high risk will be required to provide additional granular details to their DDP such as details of **all** holders of ownership, economic, and control rights. These details are to be provided on a look-through basis down to the level of natural persons, public retail funds, or large listed corporates.
- The aforesaid details are required to be provided irrespective of (i) any equivalent PMLA rules or secrecy laws that may be applicable in the home jurisdictions (including tax havens, if any) (ii) any materiality thresholds as currently provided under the FPI or PMLA regulations.
- New and existing FPIs to submit an undertaking that they have suitable mechanisms/ agreements in place with their investors (on a full look through basis), which shall include waiving off their privacy rights in their respective home jurisdictions in favor of SEBI, to allow for submission of additional granular disclosures to SEBI/ DDP. Existing FPIs to submit such undertaking within 6 months.
- Additional disclosures shall apply only to high risk FPIs fulfilling certain criteria and shall not impact low and moderate risk FPIs.
- The consultation paper is open for public comments on the proposals suggested therein and the inputs (if any) are to be submitted to SEBI latest by **June 20, 2023**. Please refer to Annexure 1 for the format in which the proposals are to be submitted along with the relevant contact details of SEBI officials.



# SEBI Consultation paper

Which FPIs shall be subject to additional disclosure requirements





# SEBI consultation paper

## Exemptions, Reporting Timelines and Implications of failure to provide disclosures

Criteria	FPI	Timelines	Remarks
<b>At the time of issuance of framework for additional disclosures</b>			
50% group concentration	New FPIs	6 months	This applies to FPIs that have just begun investing and a time period of 6 months is available before the need of disclosures become effective
	FPIs in process of winding down	6 months	This period is available before the need of disclosures become effective provided the FPI is wound down within this period
	Existing High Risk FPIs	6 months	This period is available to bring down exposure below 50% before additional disclosure requirements become effective
Holding in Indian equity market > INR 250 billion	Existing High Risk FPIs	6 months	This period is available to comply with additional disclosure requirements or bring down its AUM below INR 250 billion
<b>In future and on an ongoing basis</b>			
50% group concentration	Existing High Risk FPIs	10 days	A window of 10 days is provided to bring down exposure below 50% before additional disclosure requirements become effective
Holding in Indian equity market > INR 250 billion	Existing High Risk FPIs	3 months	This period is available to comply with additional disclosure requirements or bring down its AUM below INR 250 billion

**Note:** Failure to provide the required additional granular disclosures required will render the FPI registration invalid. Also, such FPIs would also be required to wind down within 6 months.



# SEBI consultation paper

## Certain practical challenges

Meaning of “widespread and dispersed investors in such funds”

How to identify ‘single corporate group’

Process to be put in place to find out how much of the global AUM is invested in single India / India-related corporate groups

Examples of entities that could be regarded as high risk FPIs even if they are located in FATF member countries and regulated in their home jurisdictions :

- Funds which are not open to retail investors
- Funds which have investor type requirements like accredited investors;
- University funds or endowment funds
- Banks, asset management companies, investment managers, investment advisors, portfolio managers

High risk FPIs would need to put in place a system to monitor their investments in India to keep a track whether:

- 50% of their AUM in India is in a single corporate group
- Overall holding in Indian equity markets is more than INR 250 billion



# Annexure 1

## Formats to provide comments on SEBI consultation paper and contact details

### 5. Public Comments

6.1. Public comments are invited for the proposals given above. The comments / suggestions may be provided in MS Excel file as per the format given below:

Name of the person/ entity proposing comments:	
Name of the organization (if applicable):	
Contact details:	
Category: whether market intermediary/ participant (mention type/ category such as FPI, law firm, consultant, etc.) or public (investor, investee company, academician etc.)	

Sr. No.	Para. no. of the consultation paper	Extract from the consultation paper	Comments / Suggestions	Rationale

6.2. Kindly mention the subject of the communication as, “*Consultation Paper on framework for mandating additional disclosures from Foreign Portfolio Investors (FPIs)*”.

6.3. Comments as per aforesaid format may be sent to the following, latest by June 20, 2023, in any of the following manner:

(i) Preferably by email to [afdconsultation@sebi.gov.in](mailto:afdconsultation@sebi.gov.in), with a copy to Mr. Arpit Anand, Assistant General Manager ([arpit\\_anand@sebi.gov.in](mailto:arpit_anand@sebi.gov.in)) and Ms. Chitra M, Manager ([chitram@sebi.gov.in](mailto:chitram@sebi.gov.in)).

(ii) By post to:  
Shri Vikash Narnoli,  
Deputy General Manager,  
Alternative Investment Fund and Foreign Portfolio Investors Department,  
Securities and Exchange Board of India,  
SEBI Bhavan, C4-A, G-Block, Bandra Kurla Complex,  
Bandra (East), Mumbai -400051



# Thank you!

Kindly spare a minute to help us with your feedback for today's session...

For any queries, please feel free to write to us at [intax@deloitte.com](mailto:intax@deloitte.com)





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