TRANSPARENCY, PRIVACY AND PROPORTIONALITY: RETHINKING BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS FOR FOREIGN PORTFOLIO INVESTORS IN INDIA

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ABSTRACT

With their contributions of foreign capital, liquidity, and international engagement, Foreign Portfolio Investors (FPIs) play a significant role in India's securities market. Simultaneously, as cross-border investment arrangements become more complicated, it becomes more difficult to identify the people who ultimately own, control, or profit from investments made through FPIs. As a result, beneficial ownership disclosure has grown in importance within India's securities regulations.

In 2023, the Securities and Exchange Board of India ("SEBI") implemented an extra disclosure framework for some FPIs, mainly in reaction to worries about potential evasion of takeover laws, Minimum Public Shareholding requirements, and limitations on investments from land-bordering nations.[1] Extensive disclosure requirements may result in substantial compliance and confidentiality difficulties, especially for big investment funds with distributed ownership, even while such information fosters transparency and market integrity.

This study looks at how well India's FPI beneficial ownership disclosure regime strikes a balance between proportionality, privacy, and transparency. It examines how SEBI's disclosure framework changed between 2023 and 2026 and applies the constitutional concepts of proportionality and privacy to the regulatory issue. Additionally, it takes into account recent empirical evidence that suggests ownership-transparency rules may impede some lawful cross-border investment without necessarily discouraging potentially illegal actors.

In light of the regulatory risk that a specific FPI presents, the article contends that the primary regulatory concern should not be whether or not FPIs must disclose information, but rather how much information must be provided. It suggests a risk-calibrated paradigm in which high-risk FPIs continue to be subject to thorough look-through disclosure, medium-risk FPIs are subject to enhanced disclosure, and low-risk FPIs are subject to regular disclosure obligations. The article also makes a distinction between public and regulatory openness, contending that information required for SEBI's oversight duties shouldn't always be freely disclosed to the public.

INTRODUCTION

Foreign Investment plays a crucial role in the development of India's capital markets. Foreign Portfolio Investment involves holding financial assets in a different country for diversification and does not confer management control over these assets[1]. It allows retail investors to access international markets through stocks, bonds, and ETFs, offering a more liquid but volatile investment option. It contributes to the integration of Indian financial markets with international financial markets and promote foreign investment while also making sure that such investment is in line with Indian requirements regarding market integrity, ownership, investor protection and transparency.

FPI is important for India as it affects the economy through various linkage effects via the domestic capital market. Supporters of FPI state that it helps to increase domestic stock prices and fills a gap between what a country saves and what it would need to invest. It also brings in the foreign currency required for a country's growth. It also brings about non-monetary benefits such as improved market practices, transparency.[2]

The regulatory difficulty arises when the entity registered as a FPI may not be the person that owns, controls or derived benefit from the transaction. A foreign investment may pass through multiple entities across several jurisdictions before reaching the Indian market. For example, an individual or institutional investor may invest through an offshore fund which may be managed by another entity and registered in India as an FPI. However, identifying the individual or entity holding securities does not answer the crucial question of who ultimately owns or controls the investment? SEBI's beneficial disclosure seeks to address this regulatory issue.

SEBI's concern is legitimate as this issue becomes particularly significant where foreign investments are centralized or concentrated in an Indian corporate group or where multiple

[1] James Chen, Exploring Foreign Portfolio Investments: Benefits and Challenges, Investopedia (August 11, 2026, 10:04 AM), https://www.investopedia.com/terms/f/foreign-portfolio-investment-fpi.asp
[2] Dr. J Udhayakumar, Shankar R, Foreign portfolio investment in India and its consequence on economic portrayers, Volume 3, International Journal of Academic Research and Development, Page no. 122-125, Page no 122 (2018)

FPI's might have common beneficial ownership. If the relationship between such investors remains undisclosed, there is a risk that these structures could be used to bypass the regulatory requirements relating to Minimum Public Shareholding or restrictions applicable to investments connected with countries sharing a land border with India under Press Note 3[3]. SEBI therefore, in its 2023 consultation paper, proposed additional disclosure guidelines for FPIs fulfilling certain conditions[4]. The purpose was to obtain greater insight into ownership structures, economic interest and control of FPIs presenting particular regulatory concerns.

Such transparency however has a corresponding cost. Large diversified investment funds may have investors across various jurisdictions. It may create an administrative and compliance burden on such funds to provide information about every single underlying investor particularly in cases where they may have no ability to influence meaningful decisions.

To mitigate these concerns, SEBI introduced the additional disclosure framework in its circular dated August 24,2023. This was done to ensure that greater access was provided into the ownership, economic interests, control underlying significant foreign investment wherein certain regulatory risks were present.

The regulatory debate concerning FPI involvement basically has two contrasting interests. The first one is transparency. Regulators should be aware of hidden ownership, control and regulatory circumvention and should be provided with relevant information regarding the same. The second one is privacy and confidentiality. Investors should not be burdened by additional regulatory and compliance requirements that provide little to no additional legal benefit.

This paper argues that the appropriate solution is not to choose transparency over privacy but to balance both competing interests in a manner guided by proportionality. The central idea that this paper aims to explore is how much beneficial ownership information should the FPI disclose and should the intensity of the disclosure depend upon the risk presented by the FPI?

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[3] Securities & Exchange Board of India, *Consultation Paper on Framework for Mandating Additional Disclosures from Foreign Portfolio Investors (FPIs) That Fulfil Certain Objective Criteria* (May 31, 2023).
[4] Securities & Exchange Board of India, *Consultation Paper on Framework for Mandating Additional Disclosures from Foreign Portfolio Investors (FPIs) That Fulfil Certain Objective Criteria* (May 31, 2023).

RESEARCH OBJECTIVES

The research aims of this paper are:

1. To examine the rationale for increased positive disclosure regarding FPIs.
2. To track the evolution of the framework of disclosure of the FPI of India.
3. To explore the conflict of transparency of markets and investor privacy.
4. To consider proportionality as a legal principle for evaluating the obligations of disclosure.
5. To differentiate transparency that is intended for the regulators from transparency that is intended for the public.
6. To suggest a risk-based approach for future disclosure requirements for FPI regulation.

RESEARCH METHODOLOGY

The paper adopts a doctrinal and comparative methodology. The primary sources are SEBI (Foreign Portfolio Investors) Regulations, 2019, SEBI circulars and consultation papers and decisions of the Supreme Court of India on privacy and proportionality. The peer-reviewed research on the economic and regulatory impacts of ownership transparency is included in the secondary analysis.

DISCUSSION

I. The Regulatory importance of beneficial ownership

Beneficial ownership broadly refers to an individual who enjoys the benefits of ownership over assets even though the title is in another entity's name. It also can mean any individual or group of individuals who directly or indirectly has the power to vote or influence the transaction decisions regarding a specific security such as shares in a company. Identifying the beneficial owner is necessary as there may be multiple complex investment structures which may conceal common ownership or control. For example: 2 FPIs may appear to be independent: FPI A may hold 8% of a company and FPI B may hold 6% of a company. If both of them are controlled by the same beneficial owner then their combined economic and voting power may be materially different from what appears on paper.

Beneficial ownership can help in determining whether holdings are independent completely or if there is some substantial connection between holdings that appear to be independent.

The OECD has recognized the importance of disclosures and reporting rules and regulations regarding beneficial ownership transparency. It is an important element of corporate governance infrastructure in a country as it helps in identifying persons who ultimately benefit, own and control entities and this can lead to authorities addressing illegal financial activity or opaque ownership structures. European Union also has long recognized the importance of mandatory disclosures of significant shareholdings. In 1988, EU adopted a "directive on the Information to be published when a major holding in a listed company is acquired or disposed of" which is one of the most landmark regulations in the history of financial transparency.

In the Indian regulatory framework, beneficial ownership disclosures have an additional securities market dimension. SEBI's circulars and directives have also included possible circumvention of MPS and Press Note 3 restrictions.

Transparency is therefore not the end in itself. It is a regulatory framework intended to achieve identifiable objectives. In the background of securities regulation, these objectives include the prevention of market abuse, identifying hidden beneficial owner in complex structures, imposition of foreign investment restrictions and preservation of market integrity and investor confidence. It operates as a means of reducing information asymmetry between market participants and regulators, thereby enabling more effective supervision of financial investment structures. The extent and the depth of the disclosure must be justified by regulatory purpose that it seeks to serve i.e. it should be proportional in nature. Excessive compliance may lead to unnecessary compliance burdens, confidentiality issues and legitimate investment could be deterred as well. This distinction is important while ascertaining the appropriate amount of disclosure. If the intention is to identify beneficial control, information concerning investors who have no control over economic or voting decisions has lesser value then information concerning investors who exercise decisive influence. The regulatory approach should be which information is necessary to identify the beneficial owner and the relevant regulatory risk.

II. Evolution of SEBI's Additional FPI Disclosure framework

1. The 2023 Framework

SEBI's 2023 disclosure guidelines represented a massive development in FPI regulation. The circular that came out in August 24,2023 mandated additional disclosures from FPIs fulfilling additional criteria. An FPI must disclose full look through ownership if it meets the concentration test which states that a FPI holds more than 50% of its Indian equity AUM in a single Indian corporate entity or group; or Size test which means that the FPI holds more than 25000 crore rupees of equity AUM in Indian markets either individually or with its investor group. This framework was designed particularly to address concerns relating to possible evasion of MPS requirements, takeover regulations and Press Note 3. The most important aspect of this approach is its recognition that not every FPI poses the same level of regulatory risk and it can vary based on their structure, size and investment patterns. SEBI introduced objective criteria instead of imposing a standard uniform criterion to identify risky circumstances. This ensures that the FPI framework shifts from being a threshold-based system to a risk-based system[5].

2. The 2024 Reassessment

SEBI went on reconsider aspects of the framework and in July 2024, they released a consultation paper addressing additional information requirements for FPI. The consultation paper on the Proposal to Improve Ease of Doing Business with Respect to the Additional Disclosure Framework for Large FPIs stated that FPIs having AUM exceeding INR 25000 crores have to provide granular information concerning all entities holding any ownership, economic interest or control in an FPI on a look through basis without any threshold and they should fulfill either the concentration or size test as given in SEBI's 2023 regulations. There was a disclosure of appropriate majority proposed to be implemented instead of specified thresholds as given in SEBI 2023 circular.

[5] Securities & Exchange Board of India, *Mandating Additional Disclosures by Foreign Portfolio Investors (FPIs) That Fulfil Certain Objective Criteria*, Circular No. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 (Aug. 24, 2023).

This development is necessary because SEBI takes accountability and recognizes that full look through disclosure could create difficulties and problems for legitimate investors. The objective is largely the same which is identifying if an FPI is connected with a land bordering country but the mechanism was made to be more targeted. This proves that we shifted from the debate of whether disclosure is important to what degree of disclosure is necessary.[6]

3. Further Amendments

SEBI continued to further amend the framework by introducing various amendments and new guidelines. In March 2024, SEBI released a circular providing exemptions for FPI having more than 50% of its Indian equity AUM in corporate group from additional disclosure requirements provided that they comply with certain conditions. The first being that they should not hold more than 50% of its Indian equity AUM in corporate group after disregarding its holding in apex company with no identified promoter and the second one is that the composite holdings of all FPIs that meet the first criteria in the apex company shall be less than 3% of total equity share capital of apex company. The FPI has two options in case it meets the 50% criterion namely, to realign their investment below 50% threshold within 10 trading days or make the mandated disclosures given in August 24,2023.[7]

In January 2025, SEBI introduced a consultation paper which debated increasing the size criterion for additional disclosures given in the 2023 circular. They proposed raising the size criterion from INR 25000 crore to INR 50000 crore. This was passed as a circular on April 9, 2025. This was a significant development as the regulator recognized the substantial expansion of India's securities market since 2023. [8]

These additional developments showcase that numerical thresholds are just indicators for regulatory risks and are not permanent measures for the same.

[6] Securities & Exchange Board of India, *Consultation Paper on Proposal to Improve Ease of Doing Business with Respect to the Additional Disclosure Framework for Large FPIs* (July 30, 2024).
[7] Securities & Exchange Board of India, *Amendment to Circular for Mandating Additional Disclosures by FPIs That Fulfil Certain Objective Criteria*, Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/19 (Mar. 20, 2024).
[8] Securities & Exchange Board of India, *Consultation Paper on Proposal to Increase the Size Criteria Set to Guard Against Potential Circumvention of Press Note 3 Stipulations in the Additional Disclosure Framework* (Jan. 10, 2025).

4. The Current Position

The current SEBI (Foreign Portfolio Investors) Regulations of 2019 were last amended on July 7, 2026 and this refined compliance mechanisms and fee structures under notification schedules. [9]

SEBI also introduced the SWAGAT-FI framework. In January 2026, SWAGAT-FI provides for simplified and unified compliances for certain foreign investors including government or government related investors, regulated unit trust open for subscription to retail investors and mutual funds if they comply with certain requirements, regulated insurance company investing its own funds and not having segregated portfolio, regulated pension funds. This was described to be a framework for reduction of repetitive compliance and decreasing the documentation for certain qualifying investors. While this framework does not resolve the beneficial ownership disclosure issue, it showcases a broader regulatory principle that foreign investors need not be subjected to uniform compliances when their regulatory characteristics differ. This can help to change beneficial ownership disclosure.[10]

III. Transparency: Pros and Cons

The argument in favor of strong transparency is compelling. Ownership transparency can help identify control that is hidden or is not very obvious in nature. A person or entity attempting to acquire substantial influence over an Indian company may use several vehicles to hide the extent of its holdings.

Disclosure can also assist regulators in enforcing foreign enforcement rules and regulations. If the ultimate beneficial owner is linked with a country such as a land bordering country, then the regulator needs to have basic sufficient information to understand the link or connection.

Transparency can also reduce regulatory arbitrage. If the investor can achieve his objective through a FPI mechanism which he was unable to achieve on his own, then the effectiveness of such restrictions imposed on that individual will be undermined.

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[9] Securities & Exchange Board of India, *Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019* (as amended July 7, 2026).
[10] Securities & Exchange Board of India, *Single Window Automatic and Generalised Access for Trusted Foreign Investors (SWAGAT-FI) Framework for FPIs and FVCIs* (Jan. 16, 2026).

These reasons justify why particular disclosures are needed and justify the substantial powers invested in regulators for mandating disclosures. The point of debate that arises is that whether every layer of information is necessary regarding every underlying investor.

When we balance the regulatory benefits of transparency against the costs of disclosure, a new picture unfolds. Imagine a global fund with thousands of investors and underlying beneficiaries. Providing information regarding every investor and beneficiary creates an additional burden on the entity as well as it generates huge quantities of useless information and does not help SEBI in identifying who controls the economic and investment decisions. There is a huge difference between economic participation and regulatory control. A small investor may have an economic interest but he may have no power to influence investment decisions. Considering such investor to be on the same level as that of the person making investment decisions will lead to an outcome that is inefficient and is a burden on both sides of the transaction. Excessive disclosure will lead to entities being subjected to administrative costs, additional legal formalities, verification burdens, delays, confidentiality concerns and exposure of sensitive information.

Recent empirical research has highlighted the potential unintended consequences of ownership transparency requirements. Amberger, Wilde and Wu have examined the effects of beneficial ownership transparency following the staggered adoption of beneficial ownership transparency in European Union and found that investment from non-EU havens into EU countries declined after introduction of such registers. Their findings are relevant to the present analysis because they show that transparency requirements may influence the behavior of legitimate cross border investors and therefore involve certain costs that regulators must consider alongside the benefits of increased transparency. Their findings have also indicated that public scrutiny and enforcement have played a strong role in the decline of such investment while potentially illicit actors did not appear to comply with the same and continued using the same investment patterns[11].

The study, whilst not talking about India's FPI framework, produces useful comparative evidence for present analysis and identifies the fact that ownership transparency regulation can impose certain additional consequences for cross border investment and the regulatory benefits

[11] Harald Amberger, Jaron Wilde & Yuchen Wu, *Cross-Border Investment, Deterrence, and Compliance Effects of Ownership Transparency*, 80 **J. Acct. & Econ.** 101809 (2025).

of such additional transparency should be assessed against its potential effects on legitimate cross border investment. This is particularly relevant to India where FPIs are a major source of foreign capital investment. If increasingly granular disclosure requirements impose certain compliance costs on legitimate investors without improving SEBI's ability to identify risks, then such a blanket approach may be difficult to justify. This raises an important policy question that if disclosure can impose such massive costs on legitimate investment without necessarily producing proportional deterrence of problematic actors, should regulators rely upon increasingly broad disclosure requirements or should they focus on a risk calibrated approach? Subsequent research on the paper by Thomas Rauter in the Journal of Accounting and Economics(2025)[12] identifies the possibility that mandated ownership transparency may discourage legitimate investment while failing to deter all potentially illicit acts. This insight is particularly helpful to the FPI disclosure framework where enhanced beneficial ownership requirements may affect legitimate foreign portfolio inflows without necessarily eliminating underlying risks of regulatory circumvention. Therefore, transparency should be assessed by the regulatory value generated by the information.

IV: Privacy and Constitutional Principle of Proportionality

The right to privacy is provided under Article 21 of the Constitution. In Justice K.S. Puttaswamy[13] (Retd) v Union of India, the nine judge bench of Supreme Court held that the right to privacy is a fundamental, constitutionally protected right intrinsic to life, personal liberty and dignity under Article 21 and Part III of the Constitution. The court made it clear that privacy is not absolute and that an invasion of privacy must satisfy constitutional requirements. The court stated that any state intrusion must satisfy three tests of proportionality, legality, legitimate aim.

The relevance of privacy to FPI disclosure does not arise from the fact that every beneficial ownership disclosure constitutes an infringement of fundamental rights. The constitutional jurisprudence on privacy provides a useful framework for exploring whether the extent and intensity of information disclosure demanded by regulatory authority are justified by the objective sought to be achieved. The Supreme Court's proportionality test requires an assessment of whether a measure has any legitimate objective, if the measure is rationally

[12] Thomas Rauter, *The Promises and Pitfalls of Mandated Ownership Transparency: A Discussion of Amberger, Wilde, and Wu (2025)*, 80 **J. Acct. & Econ.** 101814 (2025).
[13] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

connected to that objective and whether a less restrictive but more effective alternative is available, and if the impact is proportionate to the benefit sought to be achieved. Proportionality requires more than establishing that a regulatory measure serves a legitimate purpose; it also requires consideration of whether the means adopted are appropriately tailored to that purpose.

Subsequent judgements have elaborated on the proportionality judgement. The court identified four components in K.S. Puttaswamy (Aadhar)[14] case:

i. the measure must pursue a legitimate goal

ii. it must be a suitable means of achieving that goal

iii. there must not be a less restrictive but equally effective alternative

iv. the measure must not have a disproportionate impact on the right holder

When we apply this to the FPI disclosure framework, the reasoning raises four questions:

a. Is the regulatory objective legitimate?

The first question that is raised is that if the objective underlying enhanced FPI disclosure is legitimate. In this context, the answer is positive. Preventive regulatory circumvention, identifying beneficial ownership and control, protecting market integrity and ensuring compliance with securities and foreign investment regulations constitute legitimate regulatory objectives. SEBI's 2023 framework was introduced against concerns relating to possible circumvention of MPS requirements and Press Note 3.

b. Is disclosure rationally connected to that objective?

Information concerning the persons or entities exercising ownership, economic interest or control can assist SEBI in determining whether apparently independent investment structures are in fact connected. It may also enable the regulator to identify relationships that would not be apparent from examining only the immediate FPI. Accordingly, requiring relevant beneficial ownership information has a rational connection with the regulatory objective of identifying

[14] *K.S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637; *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274.

hidden ownership and control.

c. Is the extent of disclosure necessary?

This question is a bit more difficult. The fact that beneficial ownership information is necessary does not automatically establish that all information concerning every underlying investor is necessary. This distinction is particularly important in the context of large and diversified investment funds. An investor with negligible economic interest and no meaningful ability to influence investment decisions may present substantially less regulatory risk than an investor exercising significant ownership or control. Requiring identical levels of disclosure in both circumstances may produce information that has limited additional regulatory value. The question of necessity consequently requires consideration of whether the regulatory objective can be achieved through a less intrusive or more targeted mechanism. SEBI's July 2024 consultation paper is significant as it considered moving away from full look through disclosure for certain large FPIs towards an approach based on specified ownership thresholds.[15]

d. Is the disclosure proportionate?

The final question concerns proportionality in the strict sense is that if regulatory benefit generated by the disclosure requirement justifies the burden imposed upon affected investors. This requires balancing the both sides of the coin. On one side, the SEBI's interest in obtaining sufficient information to protect market integrity, identify hidden ownership and prevent regulatory circumvention. On the other side, there is compliance, confidentiality and privacy interests associated with requiring increasingly granular information from legitimate foreign investors. The concern is not that enhanced disclosure is disproportionate but it is that disproportionality will arise where additional information produces little incremental regulatory benefit while imposing substantial additional burdens.

This distinction is central to this paper. The question is not whether SEBI should have access to beneficial ownership information. It is whether the intensity of disclosure should correspond to the degree of regulatory risk presented by the FPI. A risk calibrated approach would be more consistent with the principle of proportionality. Where an FPI presents minimal disclosure risk, basic and ordinary disclosure requirements are sufficient. Where particular risk indicators exist,

[15] Securities & Exchange Board of India, *Single Window Automatic and Generalised Access for Trusted Foreign Investors (SWAGAT-FI) Framework for FPIs and FVCIs* (Jan. 16, 2026).

enhanced disclosure is justified. Where there is a risk of regulatory circumvention or concealed control, comprehensive look through disclosure is needed and becomes valid. The proportionality principle provides a useful analytical framework for evaluating whether FPI's disclosure regime can achieve its objectives without imposing broad disclosure obligations. It provides a framework for determining the intensity of regulatory intervention.

V. Regulatory Transparency versus Public Transparency

Regulatory transparency means that SEBI and other competent authority possess the information necessary to supervise the market whereas public transparency means that information is disclosed to the broader investing public. Both these things are not identical and should not be treated as such. For example, SEBI may legitimately require an FPI to disclose detailed beneficial ownership information during regulatory inquiry. This does not mean that the information of every investor has to be made public.

If there has to be a proportionate model, it could operate as follows: Detailed beneficial ownership information shall be only given to SEBI and authorized authorities when required. Material ownership or detailed control information shall only be publicly disclosed when necessary and irrelevant personal or commercially sensitive information should be restricted from being disclosed. This distinction would permit strong regulatory surveillance without automatically converting all regulatory information into public information. It fits more comfortably as well with India's current data protection framework. Digital Personal Data Protection Act 2023 establishes a framework for processing digital personal data. The act should not be interpreted as preventing financial regulation. It rather reinforces the principle that personal information should be handled for legitimate and defined purposes.

RESEARCH GAP AND RECOMMENDATION

Indian regulatory discussions have primarily been based on the necessity of beneficial ownership disclosure and not the identification of high risk FPIs and the quantitative thresholds. The evolution of the current framework shows that these questions are still under active regulatory consideration. A more important and essential question is still that how should the intensity of FPI disclosure correspond to the actual regulatory risk presented by an individual FPI? A second disclosure gap is the difference between regulator facing and public disclosure. The fact that SEBI requires information for all supervisory purposes does not mean that all this information has to be publicly disclosed.

Identifying this gap, the paper proposes a three-tier system.

Tier One would include low risk FPIs which would have an investor with diversified ownership, transparent ownership structures, strong regulatory supervision in its home jurisdiction, no significant concentration in an Indian corporate group and with no apparent common control concerns. These FPIs should be subjected to ordinary KYC mechanisms and beneficial ownership requirements but should not be asked to make extensive disclosures.

Tier Two shall include medium risk FPIs wherein enhanced disclosure requirements shall apply when certain indications arise such as significant concentration, multiple complex ownership chains, common ownership with other FPIs, rapid accumulation of Indian securities and significant exposure to a particular corporate group. They should provide sufficient information to identify material which would be beneficial to identify ownership and control.

Tier Three shall include high risk FPIs wherein full look through disclosure shall remain available where there are substantial regulatory concerns such as possible violation of Press Note 3 or MPS requirements, opaque ownership structures, unexplained concentration, inconsistent beneficial ownership information, evidence of common control between investors who are supposed to be independent investors. The most important aspect is that here full look-through disclosure remains available but is targeted at high-risk situations.

This proposed framework provides four benefits. Firstly, it enhances regulatory efficiency. SEBI can devote greater investigative resources to investors who present identifiable risks and reduce wasted regulatory efforts behind identifying common control or ownership. Second, it reduces compliance costs. Low risk investors who are legitimate would not be facing the same disclosure burden as concentrated or opaque structures. Third, this framework protects confidentiality. Sensitive information could remain within regulatory channels until public disclosure is necessary. Fourth, Risk classifications can be updated as market conditions change and this would create regulatory flexibility. This approach is also consistent with SEBI's efforts towards differentiated compliance as seen by SWAGAT-FI framework.

A risk-based model could be however criticized because sophisticated investors might structure their affairs to appear low risk and this is a legitimate concern. The solution is not universally uniform disclosure but is the fact that a risk calibrated approach should operate on a trust but verify basis. SEBI should have the power to request additional information, conduct risk-based reviews, verify beneficial ownership, require updated disclosures, coordinate efforts with foreign regulators and penalize false or incomplete disclosures. Just because a FPI is deemed to be a low-risk classification does not mean that they get permanent immunity. If an investor's circumstances change then their regulatory classification shall be reassessed.

Certain additional recommendations that SEBI can implement shall be:

i. Introduce an express proportionality principle: FPI disclosure obligations should be designed so that the extent of information demanded corresponds to the regulatory objective being pursued.

ii. Treat AUM thresholds as risk indicators: AUM should remain relevant but shall not be treated as conclusive evidence of regulatory risks

iii. Incomplete qualitative indicators: SEBI should consider concentration, common control, ownership complexity, jurisdictional factors and other indicators alongside quantitative thresholds.

iv. Separate regulatory and public transparency: Detailed beneficial ownership information should be accessible to SEBI where necessary without automatically requiring unrestricted public disclosure.

v. Periodically review threshold: SEBI should reassess thresholds using market size, enforcement experience and compliance data.

CONCLUSION

Transparency about beneficial ownership is crucial for modern financial markets to be effectively regulated. If authorities don't have enough information on the individuals ultimately responsible for foreign investments, India's securities markets won't be able to effectively handle disguised ownership, common control, or regulatory circumvention. As a result, SEBI's improved FPI disclosure structure is founded on justifiable regulatory goals. While later amendments showed an attempt to lessen needless compliance demands, the 2023 framework addressed concerns about potential circumvention of MPS, takeover laws, and Press Note 3.

However, unrestricted disclosure is not the same as transparency.

Whether or not SEBI should be aware of the ultimate ownership or control of an FPI is not the main question. It should in situations where there is real regulatory danger. The answer ought to be no. A helpful framework for dealing with this issue is provided by the constitutional principle of proportionality. Even if a disclosure requirement aims to accomplish a legitimate regulatory goal, it may still be unfair if a less invasive method may accomplish the same goal.[2]."

Thus, India ought to adopt a structure for FPI disclosure that is risk-calibrated. High-risk investors should continue to be subject to thorough look-through disclosure, while low-risk investors should be subject to standard disclosure standards and medium-risk investors to more stringent ones.

India should make a distinction between public and regulatory transparency, which is equally crucial. For supervisory purposes, SEBI may lawfully need information without necessarily making all of it public.

The need for regulation design to take unforeseen outcomes into account is further supported by recent empirical studies on ownership transparency. While clever, potentially illegal players may modify their activity to avoid discovery, transparency may have an impact on lawful cross-border investment. Therefore, India should aim for maximum relevant transparency rather than maximal disclosure.

It is not appropriate to portray the future of FPI regulation as a choice between privacy and transparency. The following principle is more suitable:

The reason for intrusive disclosure is stronger when the regulatory risk is higher; the case for appropriate and limited disclosure is stronger when the regulatory risk is lower.

This strategy would lessen needless constraints on lawful foreign investors while maintaining SEBI's capacity to detect concealed ownership and regulatory evasion.

In the end, sound financial regulation necessitates gathering the appropriate information from the appropriate entities for the appropriate regulatory purpose at the appropriate level of disclosure rather than gathering as much data as possible.

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