

IFSCA (Fund Management) Regulations, 2022

Background

International Financial Services Centre Authority (IFSCA) is endeavoring to develop a comprehensive regulatory framework for Investment Funds based on global best practices, with a special focus on ease of doing business. IFSCA had released a consultation paper in February 2022 to seek comments from public on the proposed IFSCA (Fund Management) Regulations, 2022. IFSCA has notified the Final IFSCA (Fund Management) Regulations, 2022 ("FM Regulations"), which was effective from 19th May 2022.

Earlier, in the IFSC, there was a framework for Alternative Investment Funds (AIF) which largely regulates "Funds" and through Funds, there is some oversight exercised over Fund Managers. These regulations are largely adopted from the AIF regulations notified by the Securities and Exchange Board of India. There is no detailed regulatory framework for mutual fund type products though there are regulations with respect to Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs). With respect to "separate accounts", there is a

regulatory framework for portfolio managers and investment advisers in IFSC. One of the key aspects to consider as one evaluates the regulatory framework for Investment Funds is determining "who should be regulated" – i.e., the Fund or the Fund Manager or both. Drawing an analogy from the manufacturing sector, it is like determining who should be regulated i.e., the product (the Fund) or the manufacturer (the Fund Manager) or both? There are pros and cons of each of the alternative approaches. Regulating Fund Managers provide direct oversight to the Regulator over the "manufacturer" whereas regulating Funds imply prescribing more rules for the "product" and less for the "manufacturer". Internationally, certain jurisdictions prefer to regulate Fund Managers whereas certain jurisdictions prefer to regulate Funds. After much deliberation, the committee was of the view that a comprehensive investment funds regime that is based on regulating the fund managers, with uncomplicated registration and on-going requirements shall facilitate smooth fund launch and fund raising along with an overlay of specific requirements for certain funds (such as retail funds, AIFs, REITs, and InvITs and

Exchange Traded Funds [ETFs]), would be the right approach for the IFSC. This is intended to ease the onboarding process of Funds or Schemes, thereby facilitating quicker launch, and allowing the Fund Managers to suitably time the launch of the Funds or Schemes. This will also ensure ease of doing business for the fund managers as a single registration would facilitate multiple activities which hitherto required multiple registrations at different point of time. This would give comfort to investors as well. Thus, it was concluded that it may be more appropriate to exercise regulatory oversight through regulation of Fund Managers as compared to regulation of Funds. Similar to various global jurisdictions, some form of regulation or registration may, nonetheless, be required for Funds as well.

In line with global practices, IFSCA intends to regulate the Fund Managers as against exercising regulatory oversight over the Funds.

A Fund Manager can undertake host of activities related to fund management viz. manage retail schemes, non-retail schemes, undertake portfolio management services or operate as a manager to various investment trusts by seeking a single unified registration from IFSCA.

Fund Management Entity ("FME") can be registered under the following categories, depending upon the activity proposed to be undertaken-

- **Categories of Fund Management Entities (FME)**
 - Authorised Fund Management Entity
 - Registered Fund Management Entity (Non-Retail)
 - Registered Fund Management Entity (Retail)
- **Other Fund Management Activities**
 - Portfolio management services
 - Family Investment Fund
- **Authorised FME**
 - Can manage Start up or Early-stage ventures through Venture Capital Scheme
 - Can manage Family Investment fund investing in permitted class of assets

- **Registered FME (Non-Retail)**
 - Can manage Venture capital and Restricted schemes in permitted class of assets
 - Can provide Portfolio management services
 - Investment manager of Investment Trust (REITs and InvITs) offered under private placement
- **Registered FME (Retail)**
 - Managing Retail schemes investing in securities, financial products etc. in other permitted asset class
 - Investment manager of Investment Trust (REITs and InvITs) offered under public
 - Managing Exchange Traded Funds
- **Legal Form of Applicant**
 - Applicant shall be present in an IFSC by forming a company or Limited Liability Partnership (LLP) or branch thereof or any other form as may be permitted by the IFSCA, subject to certain conditions;
 - A Registered FME (Retail) shall not be permitted though LLP mode or its branch;
 - Branch structure is permitted only for a FME which is already registered and/or regulated by a financial sector regulator in India or a foreign jurisdiction for conducting similar activities;
 - Activity of fund management should be permitted by the memorandum of association in case of a company or the LLP agreement in case of LLP;

A Registered FME (Retail) shall have at least 4 directors with at least 50% of the directors to be independent directors and not associated with the FME.

Net Worth Requirements

An entity seeking registration as a FME shall, at all times, comply with the net worth requirements:

Authorised FME = USD 75,000

Registered FME (Non-Retail) = USD 500,000

Registered FME (Retail) = USD 1,000,000

An entity operating as a branch shall at all times comply with the minimum net worth requirements which may be maintained at the parent level. However, the parent entity shall ensure that adequate funds are available for branch for its day-to-day operations.

Minimum contribution requirement with respect to FMEs, will be included while calculating the net-worth as stated above.

Key Management Personnel (KMP)

Minimum Qualification of KMP

Professional qualification or post graduate degree in finance, law, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institute organised by the Central or State Government or recognised foreign university or certification from any organisation or institution or association or stock exchange which is recognised / accredited by authority or a regulation in India or foreign jurisdiction.

Minimum Experience of KMP

At least 5 years in related activities in the securities market or financial products including in a portfolio manager, broker dealer, investment advisor, wealth manager, research analyst or fund management.

Other Aspects

Green Channel

Venture Capital Schemes or non-retail schemes soliciting money from accredited investors eligible for Green Channel.

Green Channel allows schemes filed with the IFSCA to be open for subscription by investors immediately upon filing with IFSCA.

Innovation Sandbox and Fund Lab

Platform proposed to be provided to aspirational fund managers to try new strategies in a controlled manner.

IFSCA may provide exemption from the operation of all or any of the provisions of the

proposed regulations for up to 18 months, for furthering innovation in aspects relating to testing new products, strategies, processes, services, business models, use of technology, etc. in live environment of regulatory sandbox in the financial markets.

Such Funds cannot solicit money from public.

Any exemption granted will be subject to conditions as may be specified by the IFSCA

Benefits for AIFs in IFSC

Apart from Direct Tax and Indirect Tax benefits, AIFs in GIFT IFSC can have the following benefits

- Lower Operating Cost
- Competitive tax regime
- No limit on outbound investment
- Engagement with Unified financial regulator
- Permitted to borrow funds and engage in leveraging activities
- Enabling ecosystem for fund management and fund administrators
- State of Art Infrastructure

KEY TAKE AWAY

- Regulating Fund Manager instead of Fund
- Single Registration for Multiple activities
- Risk based approach based on activity to be undertaken
- Eased out registration procedure
- In line with the Global Fund Management practice



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