




IFSCA (Fund Management)
Regulations, 2022

Topics for discussion




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Background

Background of the IFSCA (Fund Management) Regulations, 2022

- International Financial Services Centres 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 now notified the Final IFSCA (Fund Management) Regulations, 2022 (“FM Regulations”), to be effective from 19 May 2022
- The FM Regulations are broadly similar to the draft Fund Management regulations released by the IFSCA, with some changes

Regulating Fund Manager instead of Fund

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

Single registration for multiple activities

- 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

Risk Based approach based on activity to be undertaken

- Fund Management Entity (“FME”) can be registered under three categories, depending upon the activity proposed to be undertaken
- Higher regulatory oversight for Fund Management Entity managing Retail Funds as compared to Fund Management Entity managing non-retail Funds or Venture Capital Funds

Fund Management Entity and Funds/ Schemes

Fund Management in IFSC

Fund Management Entities

- Authorised Fund Management Entity
- Registered Fund Management Entity (Non-Retail)
- Registered Fund Management Entity (Retail)

Other Fund Management Activities

- Portfolio Management Services
- Investment Trust
- Family Investment Fund

Types of Funds

Schemes for Fund Management

- Venture Capital Schemes
- Restricted Schemes (schemes for non-retail Funds)
- Retail Schemes
- Special Situation Funds
- Exchange Traded Funds (ETFs)
- Environmental, Social And Governance (ESG)

Regulatory Framework

Fund Management Entity

Types of Fund Management Entities (1/2)

| Particulars | Authorised Fund Management Entity | Registered Fund Management Entity (for Non-retail Funds) | Registered Fund Management Entity (for Retail Funds) |
|--|--|--|--|
| Permissible activities | <ul style="list-style-type: none"> Managing Schemes investing in start-ups or early-stage ventures through Venture Capital Scheme Managing Family Investment Fund investing in securities, financial products and such other permitted asset classes | <ul style="list-style-type: none"> Managing Venture Capital and Restricted Schemes investing in securities, financial products and such other permitted asset classes Portfolio Management Services (including for multi-family office) Investment Manager of Investment Trust (REITs and InvITs) offered under private placement All activities as permitted to Authorised FMEs | <ul style="list-style-type: none"> Managing Retail Schemes investing in securities, financial products and such other permitted asset classes Investment Manager of Investment Trust (REITs and InvITs) offered to public Managing Exchange Traded Funds All activities as permitted to Authorised FMEs and Registered FMEs (for non-retail Funds) |
| Types of Schemes which can be managed | <ul style="list-style-type: none"> Venture Capital Schemes | <ul style="list-style-type: none"> Venture Capital Schemes and Restricted Schemes | <ul style="list-style-type: none"> All Schemes (retail as well as non-retail) |
| Launch of new scheme | <ul style="list-style-type: none"> Immediately upon filing the Private Placement Memorandum (“PPM”) with the IFSCA | <ul style="list-style-type: none"> PPM to be filed 21 working days prior to launch of the scheme The draft regulations provided that scheme can be launched if no comments received from IFSCA within 21 days, which has been removed in the final regulations | <ul style="list-style-type: none"> Offer document to be filed 21 working days prior to launch of the scheme Fund can be launched only after receiving comments from IFSCA and incorporating the same in the offer document |
| Type of investors permissible | <ul style="list-style-type: none"> Accredited investors Minimum investment of USD 250,000 (USD 60,000 for employees/ directors/ designated partners of FME) | <ul style="list-style-type: none"> Accredited investors Minimum investment of USD 150,000 (USD 40,000 for employees/ directors/ designated partners of FME) | <ul style="list-style-type: none"> Retail as well as non-retail investors |
| Legal Structure of the FME | <ul style="list-style-type: none"> Company, LLP, Branch | <ul style="list-style-type: none"> Company, LLP, Branch | <ul style="list-style-type: none"> Company or Branch of a Company |

Types of Fund Management Entities (2/2)

| Particulars | Authorised Fund Management Entity | Registered Fund Management Entity (for Non-retail Funds) | Registered Fund Management Entity (for Retail Funds) |
|--|---|--|---|
| Minimum net worth | <ul style="list-style-type: none"> • USD 75,000 | <ul style="list-style-type: none"> • USD 500,000 | <ul style="list-style-type: none"> • USD 1,000,000 |
| Minimum Number of Directors | <ul style="list-style-type: none"> • NA | <ul style="list-style-type: none"> • NA | <ul style="list-style-type: none"> • 4 (atleast 50% to be independent) |
| Minimum Experience of FME | <ul style="list-style-type: none"> • Employ such employees who have relevant experience | <ul style="list-style-type: none"> • Employ such employees who have relevant experience | <ul style="list-style-type: none"> • FME or its holding company has atleast 5 years of experience in managing AUM of atleast USD 200 million with more than 25,000 investors; or • One person in control of FME holding more than 25% shareholding/ share in profits carrying on business in financial services for a period of not less than 5 years |
| Minimum number of Key Managerial Personnel (“KMP”) | <ul style="list-style-type: none"> • 1 | <ul style="list-style-type: none"> • 2 | <ul style="list-style-type: none"> • 3 |
| Changes to KMP | <ul style="list-style-type: none"> • Prior approval of IFSCA required | <ul style="list-style-type: none"> • Prior approval of IFSCA required | <ul style="list-style-type: none"> • Prior approval of IFSCA required |
| Minimum Qualification of the Key Managerial Personnel | <ul style="list-style-type: none"> • Professional qualification or post-graduate degree or post graduate diploma (minimum 2 years) in finance, law, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognised by the Central or State Government or a recognised foreign university or institution or association; or a certification from any organization or institution or association or stock exchange which is recognised/ accredited by Authority or a regulator in India or Foreign Jurisdiction | | |
| Minimum Experience of the Key Managerial Personnel | <ul style="list-style-type: none"> • At least five 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 | | |
| Substance requirement in IFSC | <ul style="list-style-type: none"> • The proposal on the portfolio composition shall be initiated by a person who is based in office of the FME in the IFSC • The following requirements in the draft regulations have been done away with in the final regulations: <ul style="list-style-type: none"> ○ Have personnel exercising influence or control over the management of the investment portfolio in IFSC; and ○ Undertake key management and commercial decisions relating to investment management and trade execution that are necessary for the conduct of the business of the FME, in substance, from the IFSC | | |

Regulatory Framework

Funds/ Schemes

Types of Funds/ Schemes (1/5)

| Particulars | Venture Capital Schemes** | Restricted Schemes (schemes for Non-retail) | Retail Schemes |
|---|---|---|---|
| Permissible investments | <ul style="list-style-type: none"> Permitted to invest in listed, to be listed as well as unlisted securities, money market instruments, debt securities, securitised debt instruments, schemes of other venture capital schemes, units of Mutual Funds and AIFs (whether in India, IFSC or abroad), LLPs and such other financial products/ assets as may be specified Investment should be in accordance with the venture capital scheme | <ul style="list-style-type: none"> Permitted to invest in listed, to be listed as well as unlisted securities, money market instruments, debt securities, securitised debt instruments, other investment schemes, derivatives (including commodity derivatives), units of Mutual Funds and AIFs (whether in India, IFSC or abroad) , LLPs and such other financial products/ assets as may be specified Investment should be in accordance with the investment objective of the scheme Close ended scheme may invest up to 20% of the corpus in other physical assets such as real estate, bullion, art or any other physical asset as may be specified | <ul style="list-style-type: none"> Permitted to invest in listed, to be listed as well as unlisted securities, money market instruments, debt securities, securitised debt instruments, other investment schemes, derivatives (including commodity derivatives), units of Mutual Funds and AIFs (whether in India, IFSC or abroad) and such other assets as may be specified Investment should be in accordance with the investment objective of the scheme |
| Investment pending deployment of money | <ul style="list-style-type: none"> Certificate of deposits, units of investment schemes such as liquid or money market schemes, money market instruments or any other securities or financial assets or instruments as may be specified by IFSCA | <ul style="list-style-type: none"> Certificate of deposits, units of investment schemes such as liquid or money market schemes, money market instruments or any other securities or financial assets or instruments as may be specified by IFSCA | <ul style="list-style-type: none"> Certificate of deposits, units of investment schemes such as liquid or money market schemes, money market instruments or any other securities or financial assets or instruments as may be specified by IFSCA |

**For Venture Capital Funds launched by Registered FME, the condition of Restricted schemes would apply

Types of Funds/ Schemes (2/5)

| Particulars | Venture Capital Schemes** | Restricted Schemes (schemes for Non-retail) | Retail Schemes |
|--|--|---|--|
| Investment restrictions | <ul style="list-style-type: none"> At least 80 percent of the AUM in investee companies incorporated for less than 10 years (as against 7 years in draft regulations) or other venture capital schemes | <ul style="list-style-type: none"> NA | <ul style="list-style-type: none"> Maximum investment in a single investee company: 10% of AUM (15% with prior approval of fiduciaries), no restriction for Index schemes Maximum investment in a sector: 25% of AUM (50% in case of financial services sector), no restriction for sectoral, thematic or Index Scheme |
| Investment in associates of the FME | <ul style="list-style-type: none"> Permissible, subject to prior approval of 75% investors in the scheme by value | <ul style="list-style-type: none"> Permissible, subject to prior approval of 75% investors in the scheme by value | <ul style="list-style-type: none"> 25% of the AUM |
| Investment in unlisted entities | <ul style="list-style-type: none"> No restriction | <ul style="list-style-type: none"> Open-ended schemes: Maximum 25% of the corpus Close-ended schemes: No restriction | <ul style="list-style-type: none"> Open-ended schemes: Maximum 15% of the AUM of the scheme Close-ended schemes: Maximum 50% of the AUM of the scheme |
| Corpus of the Scheme | <ul style="list-style-type: none"> Minimum: USD 5 million Maximum: USD 200 million | <ul style="list-style-type: none"> Minimum: USD 5 million Maximum: NA | <ul style="list-style-type: none"> Minimum: USD 5 million Maximum: NA |
| Tenure | <ul style="list-style-type: none"> Minimum 3 years Extension upto 2 years permissible with 2/3rd investor's consent | <ul style="list-style-type: none"> Minimum 1 year (as against 3 years in draft regulations) for close ended scheme Extension upto 2 years permissible with 2/3rd investor's consent | <ul style="list-style-type: none"> Minimum 3 years for close ended scheme Extension upto 2 years permissible with 2/3rd investor's consent |
| Minimum number of investors in the Scheme | <ul style="list-style-type: none"> NA | <ul style="list-style-type: none"> NA | <ul style="list-style-type: none"> Minimum 20 investors, with no single investor investing more than 25% |

Types of Funds/ Schemes (3/5)

| Particulars | Venture Capital Schemes** | Restricted Schemes (schemes for Non-retail) | Retail Schemes |
|---|---|---|---|
| 'Skin-in-the-game' contribution by FME** | <ul style="list-style-type: none"> Targeted corpus < USD 30 mn: Minimum 2.5% but not exceeding 10% Targeted corpus > USD 30 mn: Minimum USD 750,000 but not exceeding 10% (as against "Lower of 2.5% of the corpus or USD 750,000" in the draft regulations) Time limit for contribution by FME – 45 days, which can be extended, subject to satisfaction of the IFSCA (as against 6 months in the draft regulations) | <ul style="list-style-type: none"> Open ended scheme: Targeted corpus < USD 30 mn: Minimum 5% but not exceeding 10% Targeted corpus > USD 30 mn: Minimum USD 1,500,000 but not exceeding 10% (as against "Lower of 5% of the corpus or USD 1,500,000" in the draft regulations) Close ended scheme: Targeted corpus < USD 30 mn: Minimum 2.5% but not exceeding 10% Targeted corpus > USD 30 mn: Minimum USD 750,000 but not exceeding 10% (as against "Lower of 2.5% of the corpus or USD 750,000" in the draft regulations) Time limit for contribution by FME – 45 days, which can be extended, subject to satisfaction of the IFSCA (as against 6 months in the draft regulations) | <ul style="list-style-type: none"> Lower of 1% of the corpus or USD 200,000 (for both open and close ended scheme) Time limit for contribution by FME – 45 days, which can be extended, subject to satisfaction of the IFSCA (as against 6 months in the draft regulations) |
| Maximum number of investors in the Scheme | <ul style="list-style-type: none"> 50 investors | <ul style="list-style-type: none"> 1,000 investors | <ul style="list-style-type: none"> No restriction |

**Not mandatory in case of relocation of Funds/ Schemes and Fund of Funds investing in scheme with similar requirements. Also, not mandatory for Authorised FME and Registered FME (non-retail), if approval received from atleast 2/3rd investors or if atleast 2/3rd investors are accredited

Types of Funds/ Schemes (4/5)

| Particulars | Venture Capital Schemes** | Restricted Schemes (schemes for Non-retail) | Retail Schemes |
|---|---|---|---|
| Minimum contribution/ commitment from the investor in the scheme | <ul style="list-style-type: none"> Accredited investors Investors investing atleast USD 250,000 (USD 60,000 for employees/ directors/ designated partners of FME) | <ul style="list-style-type: none"> Accredited investors Investors investing atleast USD 150,000 (USD 40,000 for employees/ directors/ designated partners of FME) | <ul style="list-style-type: none"> Open ended scheme: Nil Close ended scheme: Nil (USD 10,000 in case investment in unlisted exceeds 15% of the AUM) |
| Leverage | <ul style="list-style-type: none"> Permissible, subject to disclosure in the PPM and consent of 2/3rd investors by value | <ul style="list-style-type: none"> Permissible, subject to disclosure in the PPM and consent of 2/3rd investors by value | <ul style="list-style-type: none"> Not permissible except to meet temporary liquidity needs for the purpose of redemption or payment of interest or dividend to the investors Maximum borrowing permissible is 20% of the AUM for a duration not exceeding 6 months |
| Disclosure of NAV | <ul style="list-style-type: none"> Yearly | <ul style="list-style-type: none"> Open ended scheme: Monthly Close ended scheme: Half yearly | <ul style="list-style-type: none"> Open ended scheme: Daily Close ended scheme: Weekly |
| Co-investment | <ul style="list-style-type: none"> Permissible, subject to conditions | <ul style="list-style-type: none"> Permissible, subject to conditions | <ul style="list-style-type: none"> NA |
| Independent custodian | <ul style="list-style-type: none"> Mandatory if AUM exceeds 70 millions (as against 10 million in the draft regulations) | <ul style="list-style-type: none"> Mandatory if AUM exceeds 70 millions (as against 10 million in the draft regulations) | <ul style="list-style-type: none"> Mandatory |
| Valuation to be done by | <ul style="list-style-type: none"> Independent third-party service provider (In-house Fund valuation team independent from Fund Management function were permitted to undertake valuation in the draft regulations, but not in final regulations) | <ul style="list-style-type: none"> Independent third-party service provider (In-house Fund valuation team independent from Fund Management function were permitted to undertake valuation in the draft regulations, but not in final regulations) | <ul style="list-style-type: none"> Independent third-party service provider |

Types of Funds/ Schemes (5/5)

Special Situation Funds (SSFs)

- SSFs can be launched by a registered FME
- SSFs are permitted to acquire special situation assets, which includes:
 - Stressed loan available for acquisition
 - Security Receipts (SRs) issued by an Asset Reconstruction Company (ARC) registered with the RBI
 - Securities of investee companies (i) whose stressed loans are available for acquisition, (ii) against whose borrowings, SRs have been issued by an ARC, (iii) whose borrowings are subject to corporate insolvency resolution process, (iv) who has continuing default of loans, subject to conditions
- Only close ended SSFs are permissible, with minimum tenure of 3 years
- Scheme corpus, eligible investors, investment conditions may be specified by the IFSCA
- Leverage not permissible except to meet day-to-day operational requirements

Exchange Traded Funds (ETFs)

- Only Registered FMEs (Retail) shall launch Exchange Traded Funds (ETFs)
- ETFs are mandatorily required to be listed on recognized stock exchanges in IFSC
- ETFs include:
 - Equity Index based ETFs
 - Debt Index based ETFs
 - Commodity based ETFs
 - Gold ETFs
 - Silver ETFs
 - Hybrid ETFs (investing in 2 or more asset class)
 - Actively Managed ETF
 - Any other ETFs
- Stock exchange may provide a simplified framework for authorization of intermediaries registered with the IFSCA as market makers
- NAV of ETFs are required to be computed on daily basis

Environmental, Social and Governance (ESG)

- FME managing AUM > USD **3 billion** (as against 1 billion in the draft regulations)
 - Establish policy on governance around material sustainability-related risks and opportunities
 - Disclose in its annual report how the FME identifies, assesses and manages material sustainability-related risks
 - Disclose in its annual report the process of factoring sustainability related risks and opportunities into fund manager's investment strategies and processes
- FME that launches a scheme related to ESG shall make full disclosure regarding investment objective, investment policy, strategy, material risk, benchmark, etc.
- Scheme documents filed by FME with the IFSCA shall disclose whether sustainability related risks are incorporated in the decision making. If not, a negative statement shall be included

Other aspects

| Particulars | Key considerations |
|---|---|
| Green Channel | <ul style="list-style-type: none">• 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 | <ul style="list-style-type: none">• 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 upto 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• Exemption subject to conditions as may be specified by the IFSCA |
| Special purpose vehicle (SPV) as a co-investment structure | <ul style="list-style-type: none">• Fund managers permitted to create SPVs under the main scheme to undertake co-investment or leverage along with the Fund/ scheme, subject to conditions |
| Retail participation in private markets | <ul style="list-style-type: none">• Proposed to facilitate retail close ended schemes to invest in unlisted securities, subject to certain conditions<ul style="list-style-type: none">- Facilitate investors at large invest in private markets |

Regulatory Framework

Other Fund Management Activities

Portfolio Management Services

Who can undertake PMS activity

- Registered FME may offer Portfolio Management Services (PMS) to its clients



Eligible clients

- Person resident outside India and NRI
- Resident non-individual Indian eligible to invest offshore under FEMA
- Resident individual Indian eligible to invest under LRS
- Multi-family office



Permissible investments

- Permitted to invest in securities and financial products in an IFSC, India or Foreign Jurisdiction
- Discretionary PMS: securities listed or traded on the stock exchanges, money market instruments, units of investment scheme and other financial products

Dealing with funds of the client

- Minimum ticket size: USD **150,000** (as against USD 70,000 in the draft regulations)
- Funds to be kept in separate account, to be maintained in a banking unit
- To segregate each portfolio management client's holding in securities in separate accounts



Investment restrictions

- Investment in derivatives subject to express consent of the client
- Speculative transactions other than derivative not permissible
- Segregation required of each clients' funds and portfolio of securities from its own funds and securities

Advisory services

- Permissible to provide advisory services, subject to compliance with IFSCA (Capital Market Intermediaries) Regulations, 2021
- Minimum ticket size: USD **150,000** (as against USD 70,000 in the draft regulations)



Furnishing report to clients

- PMS entity shall periodically furnish a report to the portfolio management client in terms of its agreement with the client, containing details such as composition and value of the portfolio, transactions undertaken during the period, beneficial interest, expenses, etc.

Family Investment Fund

Eligibility Conditions

- May be set-up as a Company, Trust (Contributory Trust only) or Limited Liability Partnership or any other form as may be permitted. In case of Contributory Trust Vehicle, it should be ensured that:
 - The beneficiaries are identifiable based on Trust deed, even though not specifically named;
 - The share of each beneficiary should be capable of being determined based on prescribed provision/ formula prescribed in the trust deed;
 - Addition of further contributors shall not make the existing beneficiaries unknown or their shares indeterminate
- Net worth condition not applicable. Minimum corpus – USD 10 million
- May be open ended or close ended
- Leveraging and borrowing permissible, as per their risk management ability

Permissible Activities and Instruments

- **Permissible activities:** All activities related to managing family investment fund as may be specified by IFSCA
- **Permissible instruments:**
 - Securities issued by the unlisted entities
 - Securities listed or traded on stock exchanges in India and foreign jurisdictions
 - Money Market Instruments and Debt securities
 - Securitised debt instruments, which are either asset backed or mortgage-backed securities
 - Other investment schemes set up in the IFSC, India and foreign jurisdiction
 - Derivatives including commodity derivatives
 - Physical assets such as real estate, bullion, art, etc.
 - Such other securities or financial assets or instruments as specified

Funds in IFSC v. Funds in India

Funds in IFSC v. Funds in India

| Particulars | Proposed Regulations in IFSC | Regulations in India |
|--|---|--|
| Regulated entity | Fund Management Entity | Fund |
| Registration for multiple activities | Single unified registration from IFSCA for undertaking 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 | Separate registration required for each activity |
| Net worth for the Fund Management Entity | Minimum net worth required for Fund Management Entity | No minimum net worth requirement, except for Mutual Fund Managers (INR 50 crores) |
| Portfolio diversification conditions | Applicable only in case of retail schemes | Generally applicable |
| 'Skin-in-the-game' contribution by Fund Management Entity | May be waived for schemes other than retail schemes, subject to conditions | Mandatory, except in some specified circumstances |
| Leverage in India | Permissible, except for retail schemes who can borrow only to meet temporary liquidity needs for redemption or payment of interest or dividend | Not permissible, except for meeting temporary Funding requirement (except permissible for Category III AIFs – two times of NAV) |
| Taxation of Cat-III AIFs | <ul style="list-style-type: none"> Capital gains from equity shares – taxable at Indian domestic tax rates Capital Gains from derivatives, bonds, debentures and all securities other than equity shares of Indian company - Exempt from tax Dividend income – taxable at 10% plus surcharge and cess (highest tax rate of 11.96%) | <ul style="list-style-type: none"> Capital gains from equity shares – taxable at Indian domestic tax rates Capital Gains from derivatives, bonds, debentures and all securities other than equity shares of Indian company - Taxable at tax rates ranging from 10.4% to 42.744% Dividend income – taxable at 30% plus surcharge and cess (highest tax rate of 35.88%) |
| Profits of the Investment Manager entity | Tax holiday for 10 out of 15 years on management fees | Taxable at 22%/ 25% (plus applicable surcharge and cess) |
| MAT on profits of the Investment Manager entity | Applicable at 9% (except where company opts for special tax regime under section 115BAA) | Applicable at 15% (except where company opts for special tax regime under section 115BAA) |
| GST on management fees | GST not applicable on management fees | GST applicable @ 18% on the Management fees |

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



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