

Major Amendments to the IFSCA (Fund Management) Regulations, 2022 Announced

On December 19, 2024, at the 42nd meeting of the IFSCA Authority Board (“IFSCA Board”), a number of amendments (“December Amendments”) to the IFSCA (Fund Management) Regulations, 2022 (“IFSCA FM Regulations”) were approved. There is no change in the IFSCA’s overarching principle of registering a fund management entity (FME) and permitting such FME to undertake a host of fund management activities. All the December Amendments seek to further the ease of doing business in an IFSC, clarify the intent of certain regulatory provisions and introduce additional safeguards for the protection of investors. Notification of the revised IFSCA FM Regulations is expected soon.

On August 5, 2024, the IFSCA had brought out a consultation paper (“Consultation Paper”) which proposed a number of amendments to the IFSCA (Fund Management) Regulations, 2022. The December Amendments are largely based on the Consultation Paper. A few of the proposals contained in the Consultation Paper have been left out and a few of the December Amendments were not proposed in the Consultation Paper.

We have listed below and analysed the key December Amendments that have been approved by the IFSCA Board, last Thursday, on December 19, 2024.

- **Minimum fund size:** The minimum size of schemes has been reduced from USD 5 Million to USD 3 Million.

ELP COMMENTS:

This amendment was proposed in the Consultation Paper and has been implemented without any change.

- **Validity of PPM extended:** The validity of the placement memorandum (“PPM”) for launch of a scheme was 6 months from the date of filing with the IFSCA. This has now been increased to 12 months from IFSCA’s communication taking the PPM on record. Further, for open-ended schemes, investment activities may commence upon the scheme achieving a corpus of USD 1 Mn and the minimum corpus of USD 3 Mn shall be achieved within the aforementioned 12-month period.

ELP COMMENTS:

This amendment was proposed in the Consultation Paper and has been implemented with some changes. The Consultation Paper had also proposed that the FME is required to declare the first close of the scheme within such period of 12 months by achieving at least the minimum size of corpus, failing which the FME would have to file the PPM again with the IFSCA by paying the full fee as applicable for a fresh scheme. This rule was meant to apply to all schemes whether open-ended or close-ended. In the December Amendments, only open-ended schemes are required to achieve the minimum prescribed corpus within the aforementioned 12-month period. Further, open-ended schemes are permitted to commence making investments as soon as the scheme achieves a corpus of USD 1 Mn. What would happen if after investments are commenced and the open-ended scheme fails to achieve a corpus of USD 3 Mn. within the aforementioned 12-month period? Presumably, the scheme would have to windup and an open-ended scheme can do so easily since most, if not all its investments, will be in listed securities. For close-ended schemes, the law is likely to continue to be the same since the December Amendments do not propose any change. The current position is that there is no deadline to declare the first close of any close-ended scheme.

- **Relaxation in ceiling on FME's commitment:** The IFSCA FM Regulations prescribe minimum commitments for the FMEs of each scheme. Further a ceiling of 10% of the scheme's corpus has been prescribed on the FME's contribution in the case of venture capital schemes ("VCS") and restricted schemes. The December Amendments provide that the aforementioned ceiling on the FME's commitment shall not apply if the following conditions are met:
 - the FME (and its associate, if any) are not Indian resident and do not have any Indian resident as their ultimate beneficial owners; and
 - not more than 1/3rd of the scheme's corpus shall be invested in an investee company and associates of such company.

ELP COMMENTS:

This amendment was proposed in the Consultation Paper and has been implemented without any change.

- **Facilitation of joint investments:** The IFSCA's press release containing the December Amendments states that "a provision for joint investments by two individuals with specific relationships is provided for non-retail schemes".

ELP COMMENTS:

The Consultation Paper had clarified that where multiple investors act together as joint investors, each such investor has to invest at least the minimum applicable investment amount, which is USD 250,000 for VCSs and USD 150,000 for Restricted Schemes. The Consultation Paper had proposed that where the following pairs of individuals act as joint investors, the individuals can jointly meet the prescribed minimum investment threshold: (i) An investor and his/her spouse (ii) An investor and his/her parent (iii) An investor and his/her daughter/son. The December Amendments do not spell out the specific relationships and we will have to wait for the revised IFSCA FM Regulations to find out what they will be.

- **Categorisation of AIFs:** The Press release containing the December Amendments states that "the categorization for AIFs and Family Investment Funds (FIFs) is streamlined for better clarity".

ELP COMMENTS:

The Consultation Paper had not proposed any modification or streamlining of the three AIF categories or the FIFs. We will have to wait for the revised IFSCA FM Regulations to find out what these changes will be.

- **Investments in associates by restricted schemes:** Currently a VCS or a restricted scheme may invest in its associate subject to the prior approval of 75% of the investors in the scheme by value. The December Amendments have elaborated this rule to state that VCSs and restricted schemes will be restricted from buying or selling securities from associates, other schemes of the FME or their associates, or any major investor in the scheme (who has committed to invest at least 50% of the corpus of the scheme), unless prior approval has been obtained from seventy-five percent (75%) investors in the scheme by value. Further, a new rule has been introduced to provide that major investors shall be excluded from the voting process if the transaction is with the major investor.

ELP COMMENTS:

This amendment was proposed in the Consultation Paper and has been implemented without any change. Retail schemes continue to be prohibited from investing more than twenty-five percent (25%) of their AUM in any associate

- **Mandatory valuations:** Currently the IFSCA FM Regulations provides that the valuation of the assets of a VCS, a restricted scheme and a retail scheme by an independent third-party service provider is optional. The December Amendments provide that the valuation of scheme's assets by an independent service provider is exempted for fund of funds ("FoF") schemes if the underlying fund has been valued by an independent service provider.

ELP COMMENTS:

The Consultation Paper had proposed to make it mandatory to carry out a valuation of the assets of VCS, restricted and retail schemes by an independent third-party service provider, unless the scheme is a FoF scheme investing in regulated scheme(s) which are valued by any independent third-party service provider. The December Amendments have implemented this proposal with one change, namely that the December Amendments do not require the underlying fund to be regulated.

- **Appointment of KMPs:** The requirement to appoint KMPs with the prior approval of IFSCA is dispensed with. Henceforth, FMEs shall only need to intimate the appointment of any KMP to IFSCA.

ELP COMMENTS:

Obtaining the prior approval of the IFSCA meant that the IFSCA would review whether the proposed KMP was suitably qualified. Henceforth, appointed KMPs will be reviewed post their appointments and it is possible that IFSCA may question the appointment of a KMP if IFSCA finds that KMP to be not suitably qualified.

The Consultation Paper had not proposed this amendment.

- **Third Key Managerial Person (KMP) for Fund Management Entities (FME) managing an AUM of USD 1 billion or more:** All FMEs that manage an AUM of USD 1 billion or more should appoint a third KMP. Appointment of the third KMP should be before the filing of the retail schemes or ETFs in case of Registered FME (Retail). When calculating the AUM, the AUM of FoF schemes shall not be considered.

ELP COMMENTS:

This amendment will impact only Registered FME (Non-Retail). Currently, every FME is required to designate a principal officer who shall be responsible for overall activities of the FME including but not limited to fund management, risk management and compliance. In case of a Registered FME, in addition to the principal officer, one additional KMP is required to be designated as Compliance and Risk Manager. In case of Registered FME (Retail), in addition to the principal officer and Compliance and Risk Manager, the FME is required appoint an additional KMP who shall be designated with the responsibility of fund management. So, every Registered FME (Retail) already has a third KMP. A VCS cannot have an AUM of more than USD 200,000.

This amendment had been mooted by the Consultation Paper, but the Consultation Paper did not provide a carve-out for FoF schemes. The Consultation Paper had also provided that the appointment of the third KMP should be within 3 months from the close of the financial year in case of FMEs that are managing AUM of at least USD 1 Billion as at the close of a financial year. However, this stipulation is not provided for in the December Amendments.

- **Educational qualification and professional experience of the KMPs:** Though the Consultation Paper had contained detailed proposals for the educational qualification and professional experience of the KMPs, the press release for the December Amendments merely says that "Further, with respect to the educational qualification and professional experience of the KMPs the same is being streamlined. In order to ensure continued competence, employees of FMEs will be required to undergo certifications from such institutions as may be specified by IFSCA."

ELP COMMENTS:

A KMP is required to have a professional qualification or a post-graduate degree or post graduate diploma (which is of a minimum of 2 years in duration) 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 Government or any 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. In this context, the Consultation Paper had proposed that:

- the requirement that the post-graduate degree or post graduate diploma should be of a minimum of 2 years in duration is proposed to be changed to 1 year's duration; and
- the option to hold 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" is being modified with the specific requirement that the certification should be a CFA or a FRM from the Global Association of Risk Professionals.
- It is also clarified by the Consultation paper that the Professional qualification shall include membership of Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI), Institute of Cost Accountants of India (ICMAI) or any institution equivalent thereto in a foreign jurisdiction. For a Compliance and Risk Manager, the professional qualification may be bachelor's degree in law.

Currently, a KMP is required to have at least 5 years' experience 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. The Consultation Paper proposed to amend these requirements in the following manner:

- Experience as an investment banker or in a credit rating agency will also be counted;
- For a Compliance and Risk Manager, the relevant experience may be 3years (instead of 5years) if such KMP is a member of the ICSI or any institution equivalent thereto in a foreign jurisdiction and has experience in compliance or risk management in an entity regulated by a financial sector regulator or a listed company.

- **'Track record' of a Registered FME (Retail):**

The IFSCA FM Regulations provide that in the case of a Registered FME (Retail), "sound track record" shall mean:

- the FME or its holding company having not less than five (5) years of experience in managing an AUM of at least USD 200 million with more than twenty-five thousand (25,000) investors; or
- at least one (1) person in control of the FME (who holds more than twenty-five percent (25%) shareholding in the FME) be carrying on business in financial services for a period of not less than five (5) years.

The December Amendments provide that

- criterion (a) above may be evaluated by considering not only the experience of FME and its holding company, but also that of their subsidiaries; and
- criterion (b) above is revised as follows:
 - The FME shall have person(s) with more than 25% shareholding in the FME, each carrying on activities related to fund management, including portfolio management, wealth management,

- distribution of financial products, and investment advisory, for a period not less than 5 years, collectively for at least one-thousand (1,000) investors on assets of at least USD 50 million, and
- The FME has a net worth of USD 2 Million or such other net worth as may be specified by IFSCA.

ELP COMMENTS:

The December Amendment has relaxed criterion (a) for “sound track record” by permitting evaluation of the experience of the subsidiaries of the FME and its holding company. It has provided clarity by replacing the words “business in financial services” used in criterion (b)(i) with specific activities such as fund management, portfolio management, wealth management, distribution of financial products, and investment advisory. Further the IFSCA FM Regulations has objectivity in evaluation of the track record of the Retail FMEs by specifying net worth criteria as one of the conditions to be fulfilled by FMEs if they rely on criterion (b).

The Consultation Paper had not proposed this amendment.

- **Sectoral caps for a sectoral/thematic/Index schemes:** The December Amendments provide that the cap of investment in single company by a sectoral / thematic / Index scheme is linked to the weightage of that company in the representative index (by an independent entity) that such scheme intends to benchmark with or 15%, whichever is higher.

ELP COMMENTS:

The IFSCA FM Regulations provide that retail schemes shall not invest more than twenty five percent (25%) of their AUM in a single sector and not more than fifty percent (50%) of the AUM in the financial services sector. The aforementioned limits on sectoral caps did not apply in case of a sectoral or thematic or an Index Scheme. The December Amendments have now replaced this waiver with a more sensible rule.

- **Exemption for Fund of Funds Schemes from Investment Restrictions:** The December Amendments provide that the investment restrictions applicable to retail schemes, such as limits on single-company and single-sector exposure, do not apply to fund of funds (FoF) schemes, provided the underlying funds adhere to the investment limits set forth in the regulations.

ELP COMMENTS:

FoF schemes spread their risk by investing across multiple funds. The exemption has granted flexibility to FoF schemes while ensuring that the underlying funds continues to adhere to investment norms at the underlying level.

The Consultation Paper had not proposed this amendment.

- **Optional Listing of Close-Ended Retail Schemes:** The mandatory requirement to list close-ended retail schemes on recognized stock exchanges has been made optional by the December Amendments if each investor’s minimum investment in the scheme is at least USD 10,000.

ELP COMMENTS:

The IFSCA FM Regulations provide that close-ended retail schemes are required to be mandatorily listed on at least one recognized stock exchange to provide liquidity and transparency to investors. If the minimum investment amount by each investor in a close-ended retail scheme is at least USD 10,000, the scheme is exempt from the mandatory listing requirement. This flexibility acknowledges that higher

investment thresholds typically attract well-informed or institutional investors who may not rely on stock exchange listings for liquidity or price discovery.

The Consultation Paper had not proposed this amendment.

- **Clarification on appointment of custodian:** The December Amendments provide that schemes mandated by the IFSCA FM Regulations to appoint a custodian shall only appoint an IFSCA-registered custodian; however, a FoF schemes are exempted from this requirement. For securities issued in foreign jurisdictions where local laws mandate the appointment of a custodian, a regulated custodian in that jurisdiction may be appointed, provided the FME ensures arrangements to furnish information to the Authority upon request. Additionally, schemes required to appoint custodians in the IFSC as per regulations are granted a 12-month transition period to comply with this requirement.

ELP COMMENTS:

This amendment has clarified which FMEs are exempt from or required to appoint a custodian, addressing the gaps in the IFSCA FM regulations, which previously only mandated custodians for retail schemes, open-ended restricted schemes, and other schemes with AUM exceeding USD 70 million. This amendment was proposed in the Consultation Paper and has been implemented without any change.

- **Expected changes in the Fit and proper requirements:** The IFSCA Board in its press release has indicated further streamlining 'fit and proper' requirements for the applicants and their employees.

ELP COMMENTS:

Currently, anyone who has been convicted for any offence – economic offence or any offence against securities laws is disqualified from being a KMP. The Consultation Paper proposed that, instead of a conviction, mere filing of a charge-sheet by any enforcement agency in matters concerning economic offences would disqualify such person as long as the charges are pending. The Consultation Paper did not propose any change in law in case of offences involving moral turpitude, where conviction is required.

Since the December Amendments have not said much on this issue, it is possible that the proposal contained in the Consultation Paper is still being deliberated upon by the IFSCA Board.

- **Investment Options for Non-Retail and Retail Schemes having pending Deployment of Funds:** The December Amendments have provided that, in addition to the existing permissible financial products, such as certificates of deposits, units of investment schemes (like liquid or money market schemes), and other money market instruments, schemes are also permitted to invest in bank deposits and overnight schemes. The Consultation Paper proposed to permit investments in bank deposits but did not provide for overnight schemes.

ELP COMMENTS:

The proposal in the Consultation Paper has been accepted with additional changes by the IFSCA Board by providing for more low-risk, short-term investment options for schemes until their funds are deployed, in accordance with the scheme's investment objectives.

- **Reduction in investment amount for PMS:** The December Amendments have reduced the minimum investment amount for investors opting for portfolio management services ("PMS") from USD 150,000 to USD 75,000. Additionally, PMS clients are now allowed to transfer their funds to a designated broking account, which can then be managed by the FME under the PMS, subject to specific safeguards.

ELP COMMENTS:

This amendment is in line with the proposal contained in the Consultation Paper. The lower threshold for PMS is expected to result in higher levels of participation by investors in the PMS market.

- **Opening of branches/representative offices in other jurisdictions by FMEs:** The December Amendments provides that the FMEs are permitted to open branches or representative offices in other jurisdictions without requiring any prior approval from the IFSCA, provided the purpose is limited to marketing their offerings and providing client services.

ELP COMMENTS:

Until now, the IFSCA FM Regulations required the IFSCA's prior approval to be obtained in case the FME wanted to undertake any business activities other than as specified under the IFSCA FM Regulations. Post the December Amendment, FMEs can expand their reach and enhance their client engagement in international markets while maintaining regulatory compliance with the IFSCA for their core activities.

The Consultation Paper had not proposed this amendment.

The following proposals contained in the Consultation Paper have been entirely left out from the press release for the December Amendments:

- **Requirement for KMPs to be based in GIFT City:** The IFSCA FM Regulations require the Principal Officer and other KMPs to be based out of the relevant IFSC. The Consultation Paper had proposed the insertion of a declaration in the format of the application form prescribed by the IFSCA FM Regulations to the effect that the applicant shall ensure that the Principal Officer and other KMPs shall be based out of IFSC.
- **Investments of 80% of corpus in startups:** At present, VCSs are required to invest at least 80% of their AUM in investee companies incorporated for less than 10 years or in other venture capital schemes. The Consultation Paper proposed that 80% of their AUM shall be replaced with 80% of their corpus.
- **Deadline for disclosure of NAV:** Every Authorised FME is required to ensure that the portfolio under the scheme and Net Asset Value (NAV) is disclosed to the investors at least on a yearly basis. Every Registered FME (Retail) is required to ensure that the NAV of a Restricted Scheme is disclosed to the investors at least on a monthly basis in case of an open-ended scheme and half-yearly in case of a close ended scheme. The Consultation Paper had proposed to amend (i) Regulation 24(2) provide that such disclosure shall be within 30 days from the end of half-year and (ii) Regulation 36 (3) to provide that such disclosure shall be within 15 days from the end of month in case of an open-ended scheme and within 30 days from the end of half-year in case of a close ended scheme.

ELP COMMENTS:

It is possible that the aforementioned three proposals were left out of the press release for the December Amendments since they are not substantial and are more procedural or clarificatory. Hence, they may be incorporated in the revised IFSCA FM Regulations to be released soon.

A link to the press release dated December 21, 2024 containing the December Amendments can be found [here](#).

A link to the Consultation Paper dated August 5, 2024 can be found [here](#).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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