

## SEBI AMENDS PMS REGULATIONS FOR REGISTRATION OF FUND MANAGERS TO PROVIDE SERVICES TO OVERSEAS FUND

Finance Minister in the Union budget 2015-16 permitted Indian fund managers to carry out fund management activity for overseas funds from India. Subsequently, Section 9A was introduced under the Income Tax Act, 1961 ('IT Act') providing 'safe harbour' conditions to carry out such fund management services by an Eligible Fund Manager ('EFM'). One of the eligibility requirements under Section 4(b) of the IT Act is that an EFM must be registered with SEBI. Pursuant to this, the Securities and Exchange Board of India ('SEBI') issued a consultation paper on proposed amendments to the SEBI (Portfolio Manager) Regulations, 1993 ('PMS Regulations'). Finally, on January 02, 2017, SEBI notified amendments to PMS Regulations. Set out below is a brief overview of said amendments under the PMS Regulations.

### Introduction of a new Chapter II-A

A new Chapter II-A has been inserted under the PMS Regulations that would be exclusively applicable to EFM for carrying out fund management activity for Eligible Investment Fund (EIF).

An EIF means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and complies with prescribed conditions under Sub-clause (3) of Section 9A of IT Act.

An EFM, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and complies with prescribed conditions under Sub-clause (4) of Section 9A of IT Act.

**Procedure for registration by existing portfolio manager :** procedure for EFM registration of an existing SEBI registered portfolio manager. This registration is subject to the following:

- (a) Fulfillment under Sub-clause (4) of Section 9A of IT Act;
- (b) Intimation to SEBI prior to understanding such activity; and
- (c) Submit declarations in the manner and form as prescribed under Schedule VI of the PMS Regulations.

**Procedure for registration by fund manager desirous of relocating to India or a fresh applicant:** 12D of the PMS Regulations provides procedure for an applicant to make fresh application for registration as EFM subject to the following:

- (a) Fulfillment under Sub-clause (4) of Section 9A of IT Act;
- (b) Compliance with requirements under Chapter II of PMS Regulations;
- (c) Payment of fees as prescribed under Schedule II of PMS Regulations; and
- (d) Submit declarations to SEBI in the manner and form as prescribed under Schedule VI of the PMS Regulations.

### Obligations of the portfolio manager

Regulation 12E provides for a list of responsibility that an EFM have to comply with under the PMS Regulations which inter alia include:

- Providing discretionary, non-discretionary and advisory services or a combination thereof to EIF;
- Providing quarterly report to SEBI;
- Ensuring compliance with Prevention of Money Laundering Act, 2002 and rules and regulations prescribed therein;
- Maintaining segregation of funds and securities of EIF from that of its other clients; and
- Maintaining and segregating its books and accounts pertaining to its activity as a portfolio manager to EIF and other clients.

### ARA LAW View - Way Ahead:

This notification is certainly a positive move by SEBI in developing and promoting fund management industry in India and may lead the way for operationalisation of this regime. Also, amendments in tax treaty with Mauritius, Singapore and Cyprus will provide impetus to this regime. Further, relaxation in conditions relating to investor criteria, nature of investments under Section 9A of the IT Act and

## Exemptions

Regulation 12F prescribes that the following provisions of the PMS Regulations shall not be applicable to EFM pertaining to their activities as fund manager to EIF:

clarity on interpretation of safe harbour conditions and provisions of GAAR (whenever implemented), would certainly boost fund managers confidence to operate from India.

Regulations	Content	Rationale
Reg. 14 (1)(a), 14 (1)(b), Sch. IV	These regulations specify requirements of a contract between portfolio manager and client and contents of the same.	The terms of agreement between an EIF and an EFM may vary depending on the jurisdiction and business requirements of EIF.
Reg. 14(2)(a), 14(2)(b), Form C in Sch. I, Sch. V	These regulations specify requirements of providing disclosure documents by the portfolio manager to client	This may be governed as per the regulatory requirements of jurisdiction of EIF, if any.
Reg. 15(1A)	Provides for minimum investment that a portfolio manager can accept.	The EIF shall comply with the corpus requirements as specified under Section 9A(3) (j) of IT Act.
Reg. 15(2)	Act in Fiduciary Capacity: The Portfolio Manager shall act in a fiduciary capacity with the client's funds.	The relationship between the EFM and EIF may be governed as per the mutually agreed terms and the regulatory requirements of jurisdiction of EIF, if any.
Reg. 15(2A)	Portfolio manager shall keep the fund of all clients in a separate account maintained by scheduled bank.	Regulation 12E(9) deals with the issue of maintaining funds with scheduled commercial bank.
Reg. 15(4A), 15(5)	These regulations specify the requirement on borrowing, lending, leveraging of clients' securities and funds by the portfolio manager.	The lending, borrowing, leveraging of clients' securities and funds by the portfolio manager may be governed as per the mutually agreed terms and the regulatory requirements of jurisdiction of EIF, if any.
Reg. 16(1)(b), 16(2)(a)	This Regulation specifies that any renewal of portfolio fund on maturity of the initial period shall be deemed as a fresh placement. Further, client can terminate the contract before maturity in case of voluntary or compulsory termination of the portfolio services by portfolio manager or client.	Not required in this case.
Reg. 16(4)	Regulation specifies that the	The fund management of EIF

	portfolio manager shall not enter into a speculative transaction.	funds by the EFM may be governed as per the investment objective of the fund, mutually agreed terms and the regulatory requirements of jurisdiction of EIF, if any.
Reg.16B(1)	Regulation provides for appointment of custodian in respect of securities managed or administered .	Regulation 12(E)(8) of the revised PMS Regulations addresses this issue.
Reg. 18	Every portfolio manager shall furnish to the Board half-yearly-unaudited financial results.	Regulation 12(E)(11) of the revised PMS Regulations requires EFM to provide quarterly reports to SEBI.
Reg. 20 (3)	Regulation specifies that portfolio manager shall audit portfolio accounts annually and provide certificate to client.	Audit of the portfolios of the EIF may be done as per the regulatory requirements of jurisdiction of EIF, if any.
Reg. 21(1) 21(1A), 21(2), 21(3)	Regulations specify the various reports to be provided by the portfolio manager to the clients, like portfolio composition, transactions undertaken, corporate actions received, expenses, risks of the portfolio etc., and other requirements associated to client reporting.	The reports to be provided by the EFM to EIF may be governed as per the mutually agreed terms, if any.

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## REGULATORY SNAPSHOTS

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**REVISED POSITION LIMITS FOR FPI'S - CATEGORY I FPI CATEGORY & II FOR STOCK DERIVATIVES CONTRACTS** Securities and Exchange Board of India ("SEBI") vide its circular SEBI/HO/MRD/DP/CIR/P/2016/143 dated December 27, 2016 have modified the position limits for equity derivative contracts for FPI Category

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**GUIDELINES FOR FUNCTIONING OF FOREIGN PORTFOLIO INVESTORS (FPIS) AND ELIGIBLE FOREIGN INVESTORS (EFIS) IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)** Securities and Exchange Board of India has vide a notification (IMD/HO/FPIC/CIR/P/2017/003) dated January 4, 2016, issued guidelines for participation/functioning of

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