

Who can advise What?: SEBI Investment Adviser Regulations notified

Securities Exchange Board of India (“**SEBI**”) notified on January 21, 2013 the much awaited SEBI (Investment Advisers) Regulations, 2013 (“**Regulations**”) requiring mandatory registration of Investment Advisers.

Investment Advisors

Investment Advisers are defined as persons providing Investment Advice for consideration, whether cash or non-cash. Existing Investment Advisers are given an additional time of 6 (six) months to ensure compliance with the Regulations.

Investment Advice

For the purposes of this Regulation, Investment Advice shall mean any advice in relation to dealing in securities or investment products, including investment portfolio, financial planning etc. The advice can be delivered in writing orally or through any other means of communication for the benefit of the client and includes financial planning.

Exempt Persons

- Persons providing general comments in good faith on financial trends and securities without commenting on specific securities or products;
- Insurance agents, insurance brokers etc. registered with IRDA or pension advisors registered with PFRDA;
- Fund manager, distributor of mutual funds whether registered with Asset Management Company or member of self-regulatory organization approved by SEBI;
- Stock broker, portfolio manager, merchant bankers etc. registered with SEBI;
- Professionals like lawyers, chartered accountants, cost accountants, company secretaries etc. providing advice incidental to their professional services;
- Any Person providing Investment Advice exclusively to clients based out of India (but does not include NRIs & PIOs).

IndusLaw Quickview: From a reading of the text of the Regulations it appears that it is SEBI's intent to bring under its ambit all Investment Advisors unless specifically exempted. The intent of the Regulations appears to be to exclude persons already regulated by other authorities such as the IRDA, PFRDA or the SEBI itself under other regulations (such as the Stock Broker, Portfolio Managers or Merchant Banker Regulations).

The term Investment Advice is wide in scope and could include financial investment products such as deposits (whether with a company or a bank), and national savings certificates. Such breadth and inclusiveness of the definition may not have been an intended result, and would require clarification.

The wording of the Regulations is not clear as to whether the consideration should only flow from clients to Investment Advisers. As currently worded it appears that the consideration can flow from anyone (including for example a supplier of financial products), and not necessarily only a client. This reading would expand the scope of the term Investment Adviser, and may need to be clarified.

Specifically with respect to Venture Capital and Private Equity Funds, all persons providing Investment Advice and management services to such funds may fall under the ambit of these Regulations. However, an exemption is available for persons rendering Investment Advice exclusively to clients based out of India (not being NRIs or PIOs).

Eligibility Criteria

The Regulations prescribe qualification and capital adequacy criteria for Investment Advisers as follows:

- Investment Advisers should have professional qualification or post-graduate degree/diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance. Alternately, a graduate in any discipline with an experience of not less than five years relating to advice in financial products or securities or fund, asset or portfolio management would also qualify. In case the Investment Adviser is a firm, all partners in the firm and in case the Investment Adviser is a body corporate, all representatives of such body corporate would need to meet the qualification criteria.
- Investment Advisers should have a net worth of not less than INR2.5 Million in case of body corporates, and net tangible assets of not less than INR 100 Thousand in case of individuals and firms.

General Obligations

The Regulations also lay down some express obligations of Investment Advisers which significantly include:

- Disclosure of conflict of interest, acting in fiduciary capacity, adhering to confidentiality obligations, following KYC norms, always acting on the basis of the advice of the client and following the elaborate code of conduct prescribed under the Regulations;
- Obtaining the prior approval of SEBI for any change in control;
- Ensuring risk profiling of clients and provide Investment Advice accordingly;
- Adhering to a stringent disclosure regime as provided in the Regulations;
- Appointing compliance officers, where the Investment Adviser is a body corporate; and
- Putting in place a system of grievance redressal for the investors and any disputes therefrom shall be settled (i) if it relates to a financial product, by the relevant regulator or (ii) by an arbitrator/ombudsman authorized or appointed for the purpose by the relevant regulator.

Segregation of Business

Further, the Regulations require Banks, NBFCs and corporates providing Investment Advice along with other services including distribution or execution of Investment Advice to do the following:

- Segregate the distribution or execution business from the Investment Advisory business;
- Not obligate the client to avail distribution or execution services offered by the Investment Adviser;
- Maintain an arm's length basis between its Investment Advisory business and distribution and execution business;
- Ensure that all payments by a client for distribution and execution will have to be made directly to such services provider, and not through the Investment Adviser.

IndusLaw Quickview: The Regulations impose a fairly heavy and potentially expensive burden with respect to registration and compliance on small Investment Advisers.

The requirements of conflict check and disclosure mechanisms as well as adequate qualifications are a welcome measure to ensure a basic level of transparency and competence. That said, the elaborate nature of the provisions with respect to KYC and client risk profiling may result in summary procedures that fulfil the spirit but not necessarily the intent of the Regulations.

The Regulations provide for basic qualifications, but also provide for an additional certification on financial planning or fund or asset or portfolio management or investment advisory services from the National Institute of Securities Markets established by SEBI. The reasoning for this additional requirement is not entirely clear.

While the Regulations do make some welcome moves in delivering to a client a more transparent and qualified Investment Adviser, the procedurally heavy and cumbersome nature of some of these provisions may require a rethink, or fine tuning, to ensure the Regulations are followed both in letter and spirit.



BANGALORE
101, I Floor, "Embassy
Classic"
11, Vittal Mallya Road,
Bangalore -560001, India
Tel: +91 80 4072 6600
Fax: +91 80 4072 6666
bangalore@induslaw.com

DELHI
A-4, Sector 26
Noida -201301
NCR of Delhi , India
Tel: +91 120 472 8100
Fax: +91 120 472 8114
delhi@induslaw.com

MUMBAI
1002A, 10th Floor, Tower 2
Indiabulls Finance Centre
Senapati Bapat Marg,
Elphinstone Road
Mumbai 400 013
mumbai@induslaw.com

HYDERABAD
302, Apurupa Classic
Apartment
Road No.1 , Banjara Hills
Hyderabad - 500034, India
Tel : +91 40 4026 4624
Fax: +91 40 4004 0979
hyderabad@induslaw.com