

## Regulatory Alert Tracking Change

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## SEBI (Investment Advisers) Regulations 2013 notified

### Background

Presently, SEBI does not register and regulate Investment Advisers as a separate class of intermediary. SEBI's concerns regarding regulation of Investment Advisers emanates from the following 2 situations:

- 1) Entities not registered with SEBI and providing investment advise to specific clients; and
- 2) Entities not registered with SEBI and rendering investment advise on publically accessible media

SEBI had on 26 September 2011 issued a concept paper and draft regulations for Investment Advisers for public comments. After considering comments and suggestions received from various stakeholders, SEBI has, on 21 January 2013 notified SEBI (Investment Advisers) Regulations 2013 [SEBI IA Regulations]. The SEBI IA Regulations will be effective from the 90<sup>th</sup> day of its notification i.e. w.e.f. 20 April 2013.

This Alert summarizes key features of the SEBI IA Regulations.

### Applicability of SEBI IA Regulations

Any individual, company, body corporate, partnership firm or LLP who provides 'investment advice' (including 'financial planning') for a 'consideration' to clients or other persons or group of persons including any person who holds himself as an IA will be regulated by SEBI IA Regulations. Such persons will require mandatory registration with SEBI.

## Key Definitions

### 1) Investment Adviser

- Investment Adviser means any person, who for consideration is engaged in the business of providing 'investment advice' to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

### 2) Investment Advise

- Investment Advise means any advice:
  - relating to investing in, purchasing, selling or otherwise dealing in securities or investment products;
  - on investment portfolio containing securities or investment products including; whether written, oral or through any other means of communication for the benefit of the client and includes Financial Planning.

Investment Advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, is not considered as Investment Advise.

### 3) Financial Planning

- Financial planning means analysis of clients' current financial situation, identification of their financial goals and developing and recommending financial strategies to realise such goals.

### 4) Consideration

- Consideration means any form of economic benefit including noncash benefit, received or receivable for providing investment advise.

## Registration of IA

- Mandatory to obtain Certificate of registration from SEBI to act as IA.
- Existing IA may continue to provide Investment Advise for 6 months i.e. upto 20 October 2013 or if the application for registration as IA is made with SEBI within 6 months i.e. upto 20 October 2013, till disposal of such application by SEBI.
- Fees payable for registration of IA are nominal.

## Validity of Registration as IA

- 5 years from the date of its issue of certificate of registration and can be further renewed.

## Recognition of body for regulation of IA

- SEBI may recognise any body or body corporate for the purpose of regulating IA and may delegate administration and supervision powers to such body or body corporate.
- SEBI may specify membership of body or body corporate to act as IA. In such event, the provisions of SEBI IA Regulations and bye laws or Articles of such body or body corporate to be complied with by IA.

## Consideration of application by SEBI and key eligibility criteria

- Where the applicant is a bank or NBFC, it should be permitted by RBI to act as IA and the application should be made through a subsidiary or separately identifiable department or division.
- Where the applicant is a body corporate, other than a Bank or NBFC, the application should be made through a separately identifiable department or division.
- Where an entity incorporated outside India proposes to undertake IA services, the application should be made by the subsidiary in India of such foreign entity.

- Where a foreign citizen proposes to undertake IA services, the applicant should set up an office in India and undertake IA services through such office.
- Fulfillment of capital adequacy requirement which are as under:

Category of IA	Capital Adequacy
Body corporate	<ul style="list-style-type: none"> <li>• Minimum net worth of INR. 2.5 million</li> </ul>
Individuals and / Partnership firms	<ul style="list-style-type: none"> <li>• Minimum net tangible assets of INR. 0.1 million</li> </ul>

Existing IA to comply with the capital adequacy requirement within 1 year i.e. upto 20 April 2014.

## Exemption from registration as IA

The following persons shall not be required to seek registration with SEBI under SEBI IA Regulations:

- Any person giving general comments in good faith in regard to trends in the financial or securities market or economic situation where such comments do not specify any particular securities or investment product;
- Insurance agent or broker registered with IRDA offering investment advice solely in insurance products;
- Pension adviser registered with PFRDA offering investment advice solely on pension products;
- Distributor of mutual funds, who is a member of a self-regulatory organisation recognised by SEBI or is registered with an association of asset management companies of mutual funds, providing investment advice to its clients incidental to its primary activity;
- Any advocate, solicitor or law firm, who provides investment advice to their clients incidental to their legal practice;
- Member of ICAI, ICSI, ICWAI, Actuarial Society of India or any other professional body as may be specified by the SEBI, who provides investment advice to their clients incidental to their professional service;
- Stock Broker, sub-broker, Portfolio manager and Merchant banker registered with SEBI who provides investment advice to their clients incidental to their primary activity. Existing portfolio manager offering only investment advisory services may apply for registration under SEBI IA Regulations after expiry of the current certificate of registration as a portfolio manager;
- Fund manager of a mutual fund, AIF or any other intermediary or entity registered with SEBI;
- Any person who provides investment advice exclusively to clients based out of India other than to NRI and PIO;
- Any representative and partner of an investment adviser which is registered under SEBI IA Regulations;
- Any other person as may be specified by SEBI.

## Disclosures to Client

Following disclosures are required to be made by IA to its client:

- all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision by clients;
- any consideration by way of remuneration or compensation or in any other form, received or receivable by it or any of its associates or subsidiaries for any distribution or execution services in respect of the products or securities;
- before recommending the services of a stock broker or other intermediary to a client, disclose any consideration by way of remuneration or compensation or in any other form, if any, received or receivable by the investment adviser;
- holding or position, if any, in the financial products or securities which are subject matter of advice;
- any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services;
- all material facts relating to the key features of the products or securities, particularly, performance track record.

## General obligations and responsibility

Particulars	Details
General responsibility	<ul style="list-style-type: none"> <li>To act in a fiduciary capacity and disclosure of all conflict of interests;</li> <li>Consideration by way of remuneration or compensation to be received only from the client being advised;</li> <li>To maintain an arms-length relationship between its activities as an IA and other activities;</li> <li>Confidentiality of information to be maintained except where disclosure is required under any law;</li> <li>Not to enter into transactions on its own account which is contrary to its advice for a period of 15 days from the day of such advice given to the client;</li> <li>To adhere to KYC procedure as specified by SEBI;</li> <li>To follow Code of Conduct;</li> <li>In case of change in control of the IA, prior approval from SEBI will be required;</li> <li>To furnish information and report to SEBI as may be required from time to time;</li> <li>To ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements at all times;</li> </ul>
Risk profiling	<ul style="list-style-type: none"> <li>IA to do the risk profiling of the clients periodically</li> </ul>
Suitability	<ul style="list-style-type: none"> <li>Investment advice should be appropriate to the risk profile of the client</li> <li>Selection of investments by IA should meet the investor's objectives and financial situation</li> </ul>
Appointment of compliance officer	<ul style="list-style-type: none"> <li>Body corporate or a partnership firm which is an IA shall appoint a compliance officer who shall be responsible for monitoring the compliance by the IA</li> </ul>
Segregation of execution services	<ul style="list-style-type: none"> <li>IA which are banks, NBFCs and body corporate shall keep their investment advisory services segregated from the activities of providing distribution or execution services to their clients</li> <li>Distribution or execution services can only be offered subject to the following conditions: <ul style="list-style-type: none"> <li>The client shall not be under any obligation to avail of the distribution or execution services offered by IA;</li> <li>IA shall maintain arms-length relationship between its activities as investment adviser and distribution or execution services;</li> <li>All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through IA.</li> </ul> </li> </ul>
Qualification and certification requirement	<ul style="list-style-type: none"> <li>An individual, partners and representatives of an IA, registered as an IA under SEBI IA Regulations offering investment advice shall have minimum qualifications and certification, at all times, as prescribed.</li> </ul>

## Conclusion

SEBI IA Regulations will necessitate registration of IA with SEBI and other body or body corporate as may be recognised by SEBI. IA would now be categorised as a separate class of intermediary which is registered and regulated by SEBI.

Any IA who provides Investment Advise exclusively to clients (such as FII, Private Equity/Venture funds) based out of India will be exempted from registration as IA. The SEBI IA Regulations will ensure relative uniformity and appropriate disclosures for IA and is expected to provide greater transparency to investors.

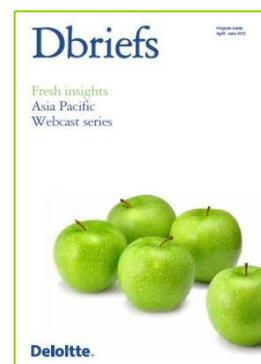
## Glossary

Short Form	Long Form
AIF	Alternative Investment Fund
CG	Central Government
IA	Investment Adviser
SEBI IA Regulations	SEBI (Investment Advisers) Regulations, 2013
ICAI	Institute of Chartered Accountants of India
ICSI	Institute of Company Secretaries of India
ICWAI	Institute of Cost and Work Accountants of India
IRDA	Insurance Regulatory and Development Authority
KYC	Know Your Customer
LLP	Limited Liability Partnership
NRI	Non Resident Indian
PIO	Person of Indian Origin
PFRDA	Pension Fund Regulatory and Development Authority
RBI	Reserve Bank of India
SEBI	Securities and Exchange Board of India

Source: SEBI (Investment Advisers) Regulations 2013 notified on 21 January 2013

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