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Analysing developments impacting business

RELOOKING AT THE HARMONISATION OF INVESTMENT NORMS FOR IFSC AIFS WITH ONSHORE AIFS

21 August 2019

The Securities and Exchange Board of India (SEBI), vide its circular SEBI/HO/IFSC/CIR/P/2019/91 dated 9 August 2019 (Circular) harmonized the provisions governing investments by alternative investment funds (AIFs) incorporated in International Financial Services Centre (IFSC) with those provisions governing investments by domestic AIFs.

Based on the reading of the said Circular that intended to rationalise the investment regimes applicable to onshore AIFs and IFSC based AIFs, we have analysed the potential implications of the said Circular on the harmonization of such investment restrictions under the SEBI (Alternative Investment Fund) Regulations 2012 (AIF Regulations) and the SEBI (Foreign Portfolio Investors) Regulations 2014 (FPI Regulations) *vide* our publication "[Time for fund managers to go the 'Gift' Way: IFSC AIFs made more attractive](#)", published on 12 August 2019.

Contrary to how the said Circular effectively reads, it appears to us now that the intention of the regulator may not have been to create parity between onshore AIFs and IFSC AIFs except to the extent of permissible securities for investments by such AIFs. Thus, all other conditionalities of the foreign portfolio investment (FPI) and foreign venture capital investment (FVCI) routes will continue to apply to IFSC based AIFs to the extent they are investing onshore. If this were to be the case, all the investment conditionalities applicable to FPIs, such as restrictions on NRI participation, investment caps for FPIs, etc. will continue to apply to IFSC based AIFs. In light of this, the said Circular essentially only reiterates what was already stated in the SEBI circular SEBI/HO/IMD/DF1/CIR/P/143/2018 dated 26 November 2018 "*Operating Guidelines for Alternative Investment Funds in International Financial Services Centres*" (Operating Guidelines) and clarifies the position *vis-à-vis* participation of IFSC AIFs in derivative securities. It is notable that the Operating Guidelines had, *inter alia*, stated that "*all provisions of the AIF Regulations and the guidelines and circulars issued thereunder, shall apply to AIFs setting up/ operating in IFSC, their investors, sponsors, managers and other intermediaries as applicable, except para 2(B) of SEBI circular dated October 1, 2015 governing overseas investments by AIFs.*"

Therefore, it appears that the said Circular re-emphasises on what was stated in the Operating Guidelines, to the effect that IFSC based AIFs should now be permitted to invest in potentially all classes of securities that onshore AIFs are permitted to invest in, including onshore derivatives. The said Circular has left its contents and the underlying rationale behind the same, open to interpretation. In a way, given the ameliorating nature of developments being introduced for the IFSC regime, one could have expected policy makers to create a true level playing field between onshore AIFs

as well as IFSC based AIFs. Considering the above, a clarification from SEBI with respect to the nature of implications of the Circular would be helpful to reduce the scope of confusion that the said Circular may have inadvertently created with respect to streamlining of investment norms for IFSC AIFs.

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