GIFT City Express

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GREENER PASTURES - EXPANSION OF THE GREEN CHANNEL BY IFSCA

- IFSCA expands Green Channel to all Non-Retail Schemes launched by Registered FMEs.
- PPMs filed with GIFT City regulator to contain a standard set of disclosures required by IFSCA.
- Introduction of a web portal for filings with IFSCA.

Recently, the International Financial Services Centres Authority ("**IFSCA**"), issued a circular ("**Circular**") prescribing minimum disclosure requirements in the private placement memorandum ("**PPM**") of the schemes to be launched by a Fund Management Entity ("**FME**"). Aimed at streamlining procedures and increasing the ease of doing business for entities operating within the IFSC, the Circular introduces several key changes designed to attract investment, support fund management activities, and bolster the GIFT City's position as a global financial hub.

STANDARDIZATION OF PPMS FILED WITH IFSCA

As per the Circular, the FME is now required to ensure that the PPM for each scheme includes comprehensive disclosures which cover crucial aspects essential to investor understanding and decision-making. Examples of the disclosures include detailed representations of the structure of the scheme and its governance, as well as details regarding the scheme's target investors and portfolio investments. With respect to principal terms, commercials such as fund offering, target investors, and the tenure of the scheme are also required to be provided, along with specifics on the FME's contribution, capital structure, and closing timelines.[1] It should be noted that unlike the Securities and Exchange Board of India ("**SEBI**"), IFSCA did not previously provide a template PPM or request such information. Accordingly, while most managers provided these disclosures voluntarily, the Circular has turned this ad hoc disclosure process into one that is clearly defined.

EXTENSION OF GREEN CHANNEL TO ALL NON-RETAIL SCHEMES

In addition to standardizing disclosures under PPMs of schemes launched in GIFT City, the Circular has also made it possible for Registered FMEs (Non-Retail) to launch all their Restricted Schemes (Non-Retail) under the Green Channel. The Green Channel is essentially an application route whereby certain FMEs are permitted to launch specified schemes immediately after filing the PPM with IFSCA. Prior to the Circular, only (i) Authorized FMEs launching venture capital schemes and (ii) Restricted Schemes (Non-Retail) soliciting money only from accredited investors, were permitted to apply under the Green Channel. Registered FMEs (Non-Retail) were required to wait 21 days after filing of their PPMs for comments from IFSCA before launching their respective schemes. The Circular's expansion of the Green Channel for Registered FMEs (Non-Retail) reflects a streamlined approach to scheme launches in GIFT City, fostering efficiency and enabling quicker access to investment opportunities within the regulatory framework.

IFSCA VIS-À-VIS SEBI

On the Launch of Schemes

The extension of the Green Channel not only enhances the efficiency of the approval process but also surpasses the previous regulatory framework (which set a 21-day cap on IFSCA approval), offering a significant improvement over SEBI's registration procedure for Alternative Investment Funds ("**AIFs**"), where there was no specified cap on approval timelines.

Now, fund managers seeking to launch schemes (other than retail schemes) will not be required to wait for comments from IFSCA prior to launch. With an intent to offset (or at least mitigate) the risks posed by such a direct launch, the Circular requires a declaration[2] to the effect that IFSCA has neither cleared, nor approved the memorandum.

In a positive step for participants in the private equity and private debt sectors, this move undoubtedly improves the business environment in GIFT City by streamlining processes and enhancing efficiency. This is in line with IFSCA's intent to create a more business-friendly, less regulated framework for investment funds operating out of GIFT City and is also on par with global fund jurisdictions.

On Private Placement Memorandums

Notably, SEBI, the regulator of AIFs in India, had previously issued a circular on February 5, 2020, aiming to standardize information and disclosure standards by mandating a template for PPMs of AIFs. This template was designed with an intent similar to that of IFSCA: to offer preliminary information to potential investors in a standard,

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pre-vetted format. While the Circular from IFSCA largely follows a similar approach, it grants more flexibility to FMEs compared to SEBI's provisions for investment managers of AIFs. For instance, the section covering market opportunity/industry outlook/Indian economy, which is part of SEBI's prescribed PPM template, is not included in the list of disclosure requirements mandated by the IFSCA Circular.

Moreover, specific sub-items under the Principal Terms of the Fund, such as "Excuse and Exclusion", "Defaulting Unitholders", "Hurdle Rate of Return", "Mandatory Exit of Investors", "Listing", and "Auditors", are also not required to be disclosed in terms of schemes launched by FMEs.

While IFSCA has standardized the inclusion of certain terms and disclosures in IFSC Fund PPMs, it has also allowed for fund managers' autonomy in setting commercial terms without mandatory regulatory scrutiny. For example, SEBI's review and approval process for a PPM under the AIF Regulations often involves questions and scrutiny on commercial terms like side letters, warehousing, and investor exclusions. Depending on the terms proposed, this scrutiny can prompt changes or clarifications, extending the approval timeline. However, as IFSCA will now process PPMs for Restricted Schemes (Non-Retail) under the Green Chanel, the regulator has not only streamlined scheme launches but has also reduced the likelihood of regulatory scrutiny, modifications to commercial terms, and delayed launch.

A SINGLE WINDOW PORTAL

Additionally, the Circular has also paved way for the institution of a web portal for making filings with the GIFT City regulator, including filing of scheme documents. This signifies the embracing of technological innovation in regulatory processes by IFSCA. The web portal will offer a convenient and efficient platform for FMEs, among other participants, to submit required documents, streamlining the regulatory approval process. Additionally, it will also enhance transparency by providing FMEs with access to relevant information related to the scheme in a timely manner.

CONCLUSION

By mandating the submission of PPMs with standardized, minimum disclosure requirements, IFSCA has ensured that the investors have access to comprehensive information before making investment decisions, while providing clarity to managers with respect to the minimum amount of information IFSCA expects to see disclosed in the PPM. This, coupled with applying through an online portal and the permission to launch schemes directly after filing of such PPMs with IFSCA will result in expediting the scheme launch process and mitigating the risk of delays and changed commercials due to regulatory scrutiny.

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You can direct your queries or comments to the authors.

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[1]Moreover, sections such as investment objectives, strategies, guidelines, determination of Net Asset Value, conflicts of interest, risk factors, legal, regulatory, and tax considerations, distribution waterfall, fees and expenses, and disciplinary history which further enhance transparency and understanding are also required to form a part of the PPM now.

Additionally, terms regarding investment periods, unit transfer, gating restrictions, indemnification, warehoused investments, side letters, co-investment, borrowings, temporary fund deployment, fees, distributions, redemption, valuation, termination, custodian details, grievance redressal mechanisms, and other pertinent matters are also required to be detailed out in the PPM.

[2]*"It is to be distinctly understood that filing of the placement memorandum with the Authority is for the purpose of record and should not in any way be deemed or construed that the same has been cleared or approved by the Authority. The Authority does not take any responsibility either for the financial soundness of any scheme or for the correctness of the statements made or opinions expressed in the placement memorandum. The Fund Management Entity, has certified that the disclosures made in the placement memorandum are adequate and are in conformity with the IFSCA (Fund Management) Regulations, 2022. This requirement is to facilitate investors to take an informed decision for making investment. The Fund Management Entity issuer is responsible for the correctness, adequacy and disclosure of all relevant information in the placement memorandum"*

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