Move aimed at bringing them on a par with India-focused funds in jurisdictions such as Mauritius

IFSC-based AIFs Get Borrowing Flexibility, More Room to Operate

Reena.Zachariah@timesgroup.com

Mumbai: The International Financial Services Centres Authority (IFSCA) has brought IFSC-based alternative investment funds on a par with offshore India-focused funds established in jurisdictions such as Mauritius and Singapore by allowing them to borrow funds, burnishing the facility's allure as the potential future home for such funds that are currently overseas.

At present, the Securities and Exchange Board of India (Sebi) rules allow private equity funds to borrow funds only for temporary funding needs. It prevents category 1 and 2 alternative investment funds (AIF) from borrowing more than four times a year and each borrowing must be for not more than 30 days and not more than 10% of the investable funds.

"Now AIFs set up in the IFSC may borrow as much as they want, as long as there is prior disclosure to investors in the PPM (placement memorandum) of the AIF's plan to take leverage," said Vinod Joseph, partner, Argus Partners.

Increasing Allure

AIFs CAN NOW:

Borrow, but leverage should be exercised subject to consent of investors	**Issue a** separate class of units to investors and use those funds to co-invest in any portfolio co	**Invest in** another AIF of any category, which Sebi rules currently don't allow

Invest any portion of their total corpus in an investee company provided their placement memorandum allows it

The regulator for IFSC said the leverage should be exercised subject to the consent of investors. Besides, the AIF employing leverage should have a comprehensive risk management framework appropriate to the size, complexity and risk profile of the fund.

The IFSCA also said an AIF can issue a separate class of units to its investors and use those funds to co-invest in any portfolio company.

"It is interesting to see that AIFs in IFSC can now create segregated portfolios, something which is akin to the international practice followed by many global funds," said Dhaval Jariwala, partner, PNDJ & Associates LLP, a boutique advisory firm. "These clarifications should encourage fund managers to actively evaluate IFSC as a possible jurisdiction to set up funds," Jariwala said.

Joseph of Argus Partners added that investors in an AIF set up in a IFSC can put in more money into a portfolio company if it is to its liking. "The only restriction is that the investment terms for the co-investment cannot be more favourable than the terms offered to the AIF's main investment or common portfolio. For instance, if the first investment has been offered a RoFo (right of first offer) and no other exit right, the segregated portfolio that is making the co-investment cannot have a RoFR (right of first refusal) or a drag-along right," he said.

The regulator for IFSCA has also allowed AIFs set up in IFSC to invest any portion of their total corpus in an investee company provided their placement memorandum allows it.

At present, Sebi AIF rules say category 1 and 2 funds cannot invest more than 25% of their investable funds in one investee company, while category 3 AIF cannot invest more than 10% of their investable funds in one investee company.

The IFSCA has also allowed AIFs set up in an IFSC to invest in another AIF of any category, which Sebi rules currently don't allow.

"Permitting borrowing and leverage for all categories of IFSC-based AIFs, removing the stringent diversification norms, permitting segregated co-investment portfolios, permitting a mix of investments in other funds alongside the portfolio entities are all important changes to make the IFSC-based fund regime competitive and as per global standards, which was otherwise lacking due to straightjacket applicability of domestic AIF regulatory provisions," said Tejesh Chitlangi, senior partner, IC Universal Legal.