Sebi issues norms to ring-fence AIF assets, defines first close

ASHLEY COUTINHO
Mumbai, November 17

THE MANAGER, TRUSTEE, board or designated partners of an alternative investment fund (AIF) have to ensure that assets, liabilities, bank and securities accounts of each AIF scheme are segregated and ring-fenced from other schemes, a Sebi notification dated November 15 said.

What's more, bank accounts and securities accounts of each scheme have to segregated and ring-fenced.

Currently, ring-fencing of assets and liabilities among various schemes of an AIF was being achieved primarily based on contractual provisions through fund documents. Also, each scheme under the AIF obtained a separate PAN. The notification will give regulatory credence to the practice, according to experts.

"This amendment should primarily address the concerns of overseas investors who were apprehensive of such umbrella AIF structures under the extant regulatory framework. The amendment would reduce regulatory cost for the sponsor as it will not be nudged by potential investors to apply for a separate AIF registration. Moreover, similar ring-fencing provisions are already part of the Sebi (Mutual Fund) Regulations," said Suneet Barve, founder of SSB Legal.

"It would now be considered breach of law if AIF managers and trustees fail to ensure ring-fencing of assets and liabilities between different schemes of an AIF. This further strengthens the case for a trust to be the most optimum structure for Indian AIFs as compared to a company or an LLP," added Nandini Pathak, leader, Investment Funds, Nishtith Desai Associates.

Sebi has said the "first close" of a close-ended AIF scheme will be taken as the start date to compute its tenure. If the AIF fails to declare the first close of the scheme in the specified manner, it will be required to file a fresh application for launch of the scheme.

THE RULEBOOK

- Ensure bank accounts and securities accounts of each scheme are segregated and ring-fenced
- The 'first close' of a close-ended AIF scheme will be taken as the start date to compute its tenure
- If an AIF fails to declare first close of the scheme in specified manner, it will have to file fresh application for launch of the scheme

"This will give clarity to investors who come in the scheme at its first close, as to the tenure for which they will remain invested in the scheme. However, this will also put the onus on the investment manager to accelerate the subsequent closings to achieve the target corpus so as to have sufficient time to deploy and make portfolio exits within the stated tenure," said Barve.

In a separate circular on Thursday, Sebi said the first close of a scheme has to be within 12 months from the date of Sebi communication for taking the private placement memorandum (PPM) of the scheme on record. In case of open ended schemes of category III AIFs, the first close will be the close of their initial offer period. Existing AIF schemes that have not declared their First Close have to do so within a year of the circular.

Corpus of the scheme at the time of declaring its First Close shall not be less than the minimum corpus prescribed in AIF Regulations for the respective category or sub-category of the AIF.

Similarly, the First Close of Large Value Fund for accredited investors will be within a year from grant of registration of the AIF or date of filing of PPM, whichever is later.

Earlier regulations were silent on when a fund needs to be launched or complete its first close after it is registered with Sebi. As this paper had reported, the regulator had, in a study, found that 300-odd schemes received their commitments and investments more than five years after they were first registered with Sebi.

"Sebi's intention appears to be standardization of terms and calculation of the tenure across the industry for close-ended funds. One major issue that remains is the extension of the tenure beyond the permissible two years for those who have not completely exited from their AIF portfolio," said Yashesh Ashar, partner, Bhuta Shah & Co.

Prior approval from Sebi will be required in case of change of sponsor or manager, or change in control of the AIF, sponsor or manager. This is subject to levy of fees and other conditions as specified.

For instance, a fee equivalent to the registration fee will be levied in case of change in control of manager or sponsor as well as change in manager or sponsor. The cost paid towards such fees will not be passed on to the investors of the AIF.

"The amendments pertaining to change of sponsor/manager being subject to prior Sebi approval are likely to cause delays in enforcement of GP removal provisions and may cause concern among investors," said Pathak.