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Cautious US seeks to regulate private funds

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THE US Securities & Exchange Commission (SEC) may be able to regulate the private equity industry, if legislation introduced in the US Congress becomes law.

A Bill recently introduced in the US Senate called the Hedge Fund Transparency Act seeks to regulate the hitherto-unregulated industry. The term hedge funds in this legislation, introduced by senators Chuck Grassley and Carl Levin, also encompasses private equity funds, venture capital funds and funds investing in real estate and infrastructure.

According to lawyers advising private equity funds, if the Bill is enacted, it would have far-reaching consequences as any fund with a size greater than \$50 million and marketed to US investors may require compulsory registration with SEC, which is quite onerous.

The proposed legislation would also impact private equity funds floated by Indian firms since a large chunk of the offshore funds is garnered from US investors. Under the Bill, a private fund with at least \$50 million in assets would be subject to SEC regulation and oversight provided it has US investors.

Such a fund would be required to register with SEC, file an information form with the US regulator every year, maintain such books and records as may be required by SEC, and adopt and implement an antimoney laundering programme.

"The Bill seems to be a knee-jerk reaction of the SEC in response to the global economic and financial turmoil, with hedge funds being held partially responsible. It may take some time for the regulators and the private funds industry to find the right balance between the need to regulate versus the flexibility to operate," Nishith Desai Associates' Vikram Shroff said.

Across the world, the private funds industry is largely unregulated, said a senior official with a large domestic private equity fund. "It's a good move since it's a largely unregulated industry... it was bound to happen. As managers, we have to be careful when we deal with other people's money," he said.

"As a bank-related fund, we are already complying with the anti-money programme. However, the issue is that some of the limited partners are reluctant to disclose their investments," said a managing director with a US-based PE fund.

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