

Monday, August 10, 2009 2:14:00 AM

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Next up on St, FIIs from Cayman isles

Sachin P Mampatta / DNA

A flood of funds may be waiting to rush into India, this time from the Cayman Islands. The Securities and Exchange Board of India (Sebi) is learnt to be in talks with its counterpart, the Cayman Islands Monetary Authority (Cima), over allowing funds based in the Caribbean tax haven into the country.

Sebi officials were not available for comment.

The regulator has reportedly received numerous applications from Cayman-based funds since Cima was admitted as a full member of the international body of securities market regulators, the International Organisation of Securities Commissions (Iosco), on June 10.

Given that Iosco's constituents regulate 90% of the world's securities markets, the Cayman funds would be hoping to find easier access into India, say experts.

Going by sources, Sebi's current discussions with Cima are to determine which grades of investment funds can be admitted expeditiously and which should be examined more carefully.

"So far, any Cayman fund seeking to invest in India was required to undergo the Sebi's tedious scrutiny, and in most cases, Sebi treated these funds (especially hedge funds) unfavourably. Considering Cima is now a party to the Iosco MoU, it is expected that Sebi will henceforth recognise Cayman funds as eligible applicants," said Anoop Narayanan, partner at Majmudar & Co.

"A lot of global hedge funds are based out of Cayman Islands. Many of them would be looking to enter India," agreed Siddharth Shah, head - funds practice, Nishit Desai Associates.

Over the last month, Sebi has made two additions to the list of registered foreign institutional investors from Cayman Islands, taking the total to 19. The two FIIs are Fir Tree Capital Opportunity Master Fund and Fir Tree Value Master Fund.

But this may be just a speck considering there are a whopping 9,870 investment funds based out of Cayman Islands.

The total number of FIIs currently registered with the Indian market regulator is 1,682. That might just set the stage for a deluge, Cima's new legitimacy and India's attractiveness as an investment destination thrown in.

Foreign funds registering with Sebi do so either as a foreign venture capital investor under the Sebi (Foreign Venture Capital Investors) Regulations, 2000, or as a foreign institutional investor under the Sebi (Foreign Institutional Investors) Regulations, 1995.

Both these regulations prescribe stringent eligibility requirements for registering the funds, such as regulation by an appropriate foreign regulator and a sound track record and reputation of fairness and integrity.

Previously, most funds looking at India had to invest through intermediate jurisdictions or through participatory notes.

Still, some believe a deluge is some way off yet.

"In the current economic situation, when most developing countries, including India, are trying to capture the liquidity in the global market, Cayman's Iosco membership is likely to bring significant investment into India," said Narayan. This is because, besides being a hub of investment funds, Caymans is a preferred jurisdiction for US investors as well due to its proximity to the USA, he said, but added that an increase in registrations would depend on the regulator and tax considerations as well.

India does not yet have a tax treaty with Cayman Islands.

Depending on the type of fund, trading might also take place through a third jurisdiction to avoid taxation, said Shah. "Some funds may take a practical view on investing directly from Caymans relying on the domestic tax provisions applicable to FIIs, which exempts long-term capital gains tax on listed securities, but for tax purposes, others might want to through a treaty jurisdiction like Mauritius or Cyprus," he said.

"I would expect that there is interest for following such a route. However, since it has been only so long since the entry of Cima into Iosco, one cannot say for certain how things might develop," said Ben Lim, chief executive officer of Intercontinental Trust Ltd, a licensed offshore management company in Mauritius. He pointed out that Mauritius too, follows its own stringent policies of appraisal before allowing funds to invest through the country.