

Corpsec Hotline

June 16, 2009

SEBI FII REGULATIONS: CAYMAN ISLANDS' CIMA SET TO BE IN SEBI'S IVY LEAGUE

Recent Development

With the Cayman Islands Monetary Authority ("CIMA") now being admitted as an 'ordinary member'¹ of IOSCO, the investment gateway for investing in the Indian capital markets has opened up for Cayman Islands-based CIMA registered funds and fund managers.

"IOSCO" stands for the International Organization of Securities Commissions. It is a body comprising of securities regulators from across the world and includes the Securities and Exchange Board of India ("SEBI"), which is registered with it as an ordinary member.

IOSCO has been primarily set up to achieve the following objectives, which it seeks to attain through its network of members².

- co-operation to promote high standards of regulation in order to maintain just, efficient and sound markets;
- exchange of information on their respective experiences in order to promote the development of domestic markets;
- unite their efforts to establish standards and an effective surveillance of international securities transactions;
- provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

Indian Regulatory Considerations

The SEBI (Foreign Institutional Investors) Regulations, 1995 ("FII Regulations"), require any applicant applying to SEBI for a registration as an FII under the FII Regulations to be regulated by an 'appropriate foreign regulatory authority'. SEBI recognizes 'ordinary member's' of IOSCO as appropriate foreign regulatory authorities.

Implications

The Cayman Islands is a major international financial center with over 9,000 registered funds. With a well-developed financial services sector, hedge funds with global investment strategies have set up their shop in the Cayman Islands. Also, due to its proximity to the United States, Cayman Islands has earned itself a name for being a preferred jurisdiction to U.S. investors.

Due to IOSCO not recognizing CIMA as an 'ordinary member', SEBI did not look favorably at applications made by CIMA registered funds and fund managers. With CIMA now being admitted as an 'ordinary member' of IOSCO, funds and fund managers regulated by CIMA with interest in the capital markets in India may now consider getting themselves registered with the SEBI under the FII Regulations.

Considering that Cayman Islands does not have a tax treaty with India, we may see structures with Cayman Islands based fund's registered as a FII with its wholly owned subsidiary, situated in a tax-favorable jurisdiction, registering as a proprietary sub-account. Alternatively, we may also see Cayman Islands based fund manager's registering as a FII and setting up a pooling vehicle in a tax-favorable jurisdiction, to be registered as a broad based sub-account.

¹ <http://www.iosco.org/library/statements/pdf/statements-6.pdf>

² <http://www.iosco.org/about/>

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You can direct your queries or comments to the authors

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