

AIFs in IFSC

IFSCA (Fund Management) Regulations, 2022

April 2022

SHAH & SANGHARAJKA
CHARTERED ACCOUNTANTS

616, One World West, Near Ambli T Junction,
S P Ring Road, Ambli, Ahmedabad 380 058.
T : +91 2717 450 293 | www.snsca.co.in

Contents

1

Journey of AIFs in IFSC

2

Framework for Fund Management Entity

3

Schemes for Fund Management

4

Other Fund Management Activities

5

Regulations repealed by IFSCA (Fund Management) Regulations, 2022

Journey of AIFs in IFSC

Journey of AIFs in IFSC



SEBI (International Financial Services) Guidelines, 2015

SEBI Circular dated 23 May 2017 permitted AIFs to invest in securities issued by companies incorporated in India

SEBI Circular dated 26 November 2018 issued Operating Guidelines for AIF in IFSC

SEBI Circular dated 9 August 2019 aligned the investments by AIFs in IFSC with domestic AIFs

Establishment of unified regulator IFSCA

IFSCA Circular dated 9 December 2020 clarification on leverage, co-investment and diversification limits

IFSCA Circular dated 25 June 2021 issued relaxation in continuing interest for relocation of funds outside India to IFSC

IFSCA (Fund Management) Regulations, 2022

1

Report of the Expert Committee on Investment Funds submitted to IFSCA on 31 January 2022

2

IFSCA released consultation paper to seek comments from public by 28 February 2022 on the draft IFSCA (Fund Management) Regulations, 2022

3

IFSCA issued IFSCA (Fund Management) Regulations, 2022 vide Notification No. IFSCA/2021-22/GN/REG024 dated 19 April 2022

Framework for Fund Management Entity

Framework for Fund Management Entity

- Entity intending to undertake fund management activity to obtain registration as FME under any of the three categories (mainly based on different permitted investment activity and permitted investors for pooling investment)
 - Authorised FME;
 - Registered FME (Non-Retail);
 - Registered FME (Retail)
- Legal form of FME – company or LLP or branch or any other form as may be permitted by the Authority (i.e. trust) (additional conditions for operating as branch structure in IFSC);
- Other conditions
 - sound track record and general reputation of fairness and integrity;
 - appointment of Principal officer and KMP (based out of IFSC) with professional qualification and at least 5 years of experience;
 - net worth requirements;
 - applicant and its principal officer, directors / partners / designated partners, KMP and controlling shareholders to be fit and proper persons at all times;
 - infrastructure requirements – having adequate, dedicated, secured office space in IFSC

Comparative analysis of FME

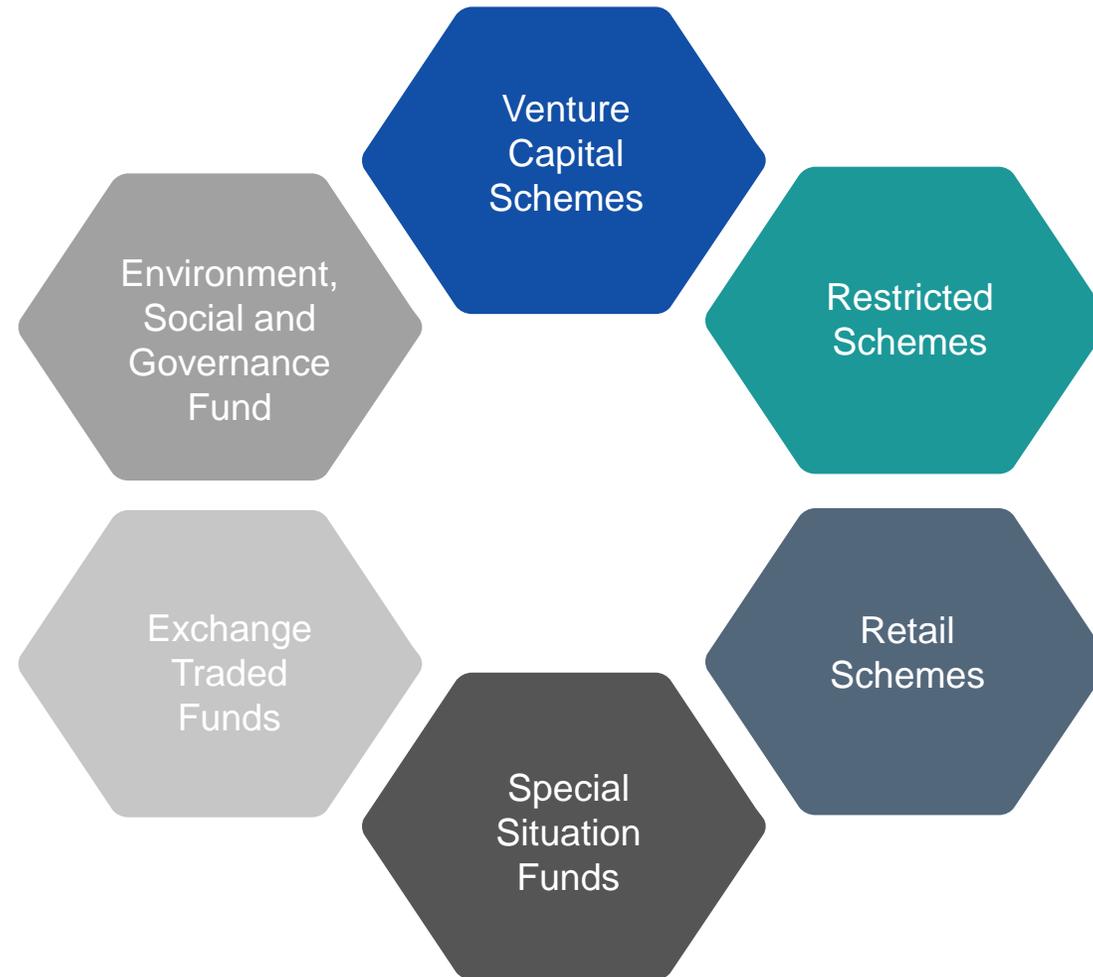
Parameters	Authorised FME	Registered FME (Non-Retail)	Registered FME (Retail)
Permitted investors	<ul style="list-style-type: none"> ▪ accredited investors or investors investing above the threshold by way of private placement 		<ul style="list-style-type: none"> ▪ Any investors
Permitted investment / activities	<ul style="list-style-type: none"> ▪ Investment into start-ups or early stage ventures through Venture Capital Scheme and investment in securities through Family Investment Fund 	<ul style="list-style-type: none"> ▪ Investment into restricted schemes; portfolio management services and to act as investment manager for private placement of REITs / InvITs ▪ All activities as permitted to Authorised FME 	<ul style="list-style-type: none"> ▪ Investment into retail or restricted schemes, launching of ETF and to act as investment manager for public offer of REITs / InvITs ▪ All activities as permitted to Authorised FME and Registered FME (Non-Retail)
Form / Legal Structure of the FME	<ul style="list-style-type: none"> ▪ Company or LLP or branch or any other form as may be permitted by the Authority (i.e. trust) 		<ul style="list-style-type: none"> ▪ Company or any other form as may be permitted by the Authority (i.e. trust)
Net worth	<ul style="list-style-type: none"> ▪ USD 75,000 	<ul style="list-style-type: none"> ▪ USD 5,00,000 	<ul style="list-style-type: none"> ▪ USD 1,000,000
Additional conditions in case of branch	<ul style="list-style-type: none"> ▪ FME is already registered and/or regulated by financial sector regulator in India or foreign jurisdiction ▪ To ring fence the operation of branch; minimum net worth requirements to be maintained at parent level; minimum capital to be earmarked for IFSC and may be held in jurisdiction of incorporation 		<ul style="list-style-type: none"> ▪ Not Applicable

Comparative analysis of FME

Parameters	Authorized FME	Registered FME (Non-Retail)	Registered FME (Retail)
Experience of FME (Sound track record)	<ul style="list-style-type: none"> To employ such employees who shall have relevant experience 		<ul style="list-style-type: none"> not less than 5 years of experience in managing AUM of at least USD 200mn with more than 25000 investors; or at least 1 person in control of FME holding more than 25% and be carrying on business in financial services for a period of not less than 5 years
Directors	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> at least 4 directors (50% to be independent directors)
Principal Officer / KMP to be based out of IFSC	<ul style="list-style-type: none"> 1 KMP as Principal Officer 	<ul style="list-style-type: none"> 1 KMP as Principal Officer 1 KMP as Compliance and Risk Manager 	<ul style="list-style-type: none"> 1 KMP as Principal Officer 1 KMP as Compliance and Risk Manager
Additional KMP	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> 1 additional KMP with the responsibility of fund management
Regulatory oversight	<ul style="list-style-type: none"> Low 	<ul style="list-style-type: none"> Medium 	<ul style="list-style-type: none"> High

Schemes for Fund Management

Schemes for Fund Management



Schemes / Funds

Parameters	Venture Capital Scheme	Restricted Schemes (Non-Retail)	Retail Schemes
Minimum number of investors	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> Not Applicable 	<ul style="list-style-type: none"> Minimum 20 investors with no single investor investing more than 25%
Maximum number of investors	<ul style="list-style-type: none"> 50 investors 	<ul style="list-style-type: none"> 1000 investors 	<ul style="list-style-type: none"> No restriction
Corpus	<ul style="list-style-type: none"> Minimum – USD 5mn Maximum – USD 200mn 	<ul style="list-style-type: none"> Minimum – USD 5mn Maximum – Not Applicable 	<ul style="list-style-type: none"> Minimum – USD 5mn Maximum – Not Applicable
Minimum contribution from the investor	<ul style="list-style-type: none"> Accredited investors Investors investing at least USD 250,000 (USD 60,000 for employees / directors) 	<ul style="list-style-type: none"> Accredited investors Investors investing at least USD 150,000 (USD 40,000 for employees / directors) 	<ul style="list-style-type: none"> Open ended scheme – Nil Closed ended scheme – Nil (USD 10,000 in case the investment in unlisted securities exceeds 15% of the AUM)
Tenure	<ul style="list-style-type: none"> Minimum – 3 years Extension up to 2 years with consent of 2/3rd investors Extension beyond 2 years with express consent of investors and exit opportunity to remaining investors 	<ul style="list-style-type: none"> Minimum – 1 year for closed ended scheme Extension up to 2 years with consent of 2/3rd investors Extension beyond 2 years with express consent of investors and exit opportunity to remaining investors 	<ul style="list-style-type: none"> Minimum – 3 years for close ended scheme Extension up to 2 years with consent of 2/3rd investors and approval of the Authority

Schemes / Funds

Parameters	Venture Capital Scheme	Restricted Schemes (Non-Retail)	Retail Schemes
Permissible investments	<ul style="list-style-type: none"> Permitted to invest in listed as well as unlisted securities, money market instruments, debt securities, securitised debt instrument, schemes of other venture capital schemes, units of mutual finds, investment in LLP or such other securities or financial products as specified 	<ul style="list-style-type: none"> Permitted to invest in listed as well as unlisted securities, money market instruments, debt securities, securitised debt instrument, other investment schemes, derivatives (including commodity derivatives), units of mutual finds, investment in LLP or such other securities or financial products as specified Close ended scheme may invest up to 20% of the corpus in other physical assets such as real estate, bullion, art or any other physical assets as may be specified 	<ul style="list-style-type: none"> Permitted to invest in listed as well as unlisted securities, money market instruments, debt securities, securitised debt instrument, other investment schemes, derivatives (including commodity derivatives), units of mutual finds or such other securities or financial products as specified

Schemes / Funds

Parameters	Venture Capital Scheme	Restricted Schemes (Non-Retail)	Retail Schemes
Investment restrictions	<ul style="list-style-type: none"> At least 80 percent of the AUM in investee companies incorporated for less than 10 years or other venture capital schemes 	<ul style="list-style-type: none"> Open ended schemes – Maximum 25% of the corpus in securities of unlisted companies Closed ended schemes – no restriction 	<ul style="list-style-type: none"> Maximum investment in a single investee company – 10% of AUM (15% with prior approval of fiduciaries) [no restrictions on index schemes] Maximum investment in a sector – 25% of AUM (50% in case of financial services sector), no restriction on sectoral, thematic or index scheme Open ended schemes – Maximum 15% of the corpus in securities of unlisted companies Closed ended schemes – Maximum 50% of the corpus in securities of unlisted companies
Investment in associates of FME	<ul style="list-style-type: none"> Permissible, subject to prior approval of 75% of investors in the scheme by value 	<ul style="list-style-type: none"> Permissible, subject to prior approval of 75% of investors in the scheme by value 	<ul style="list-style-type: none"> Not more than 25% of AUM
Co-investment	<ul style="list-style-type: none"> Permissible through SPV, subject to conditions 	<ul style="list-style-type: none"> Permissible through SPV, subject to conditions 	<ul style="list-style-type: none"> Not Applicable

Schemes / Funds

Parameters	Venture Capital Scheme	Restricted Schemes (Non-Retail)	Retail Schemes
'Skin in the game' by FME	<ul style="list-style-type: none"> at least 2.5% and not exceeding 10% of corpus - in case corpus is less than USD 30mn at least USD 750,000 and not exceeding 10% of corpus - in case corpus is more than USD 30mn Contribution exempted in case at least 2/3rd investors are accredited investors / permits waiver 	<p>Open ended scheme</p> <ul style="list-style-type: none"> at least 5% and not exceeding 10% of corpus - in case corpus is less than USD 30mn at least USD 1,500,000 and not exceeding 10% of corpus - in case corpus is more than USD 30mn <p>Closed ended scheme</p> <ul style="list-style-type: none"> at least 2.5% and not exceeding 10% of corpus - in case corpus is less than USD 30mn at least USD 750,000 and not exceeding 10% of corpus - in case corpus is more than USD 30mn Contribution exempted in case at least 2/3rd investors are accredited investors / permits waiver 	<ul style="list-style-type: none"> Lower of 1% of the corpus or USD 200,000 Not mandatory in case of relocation of funds / schemes
Leverage	<ul style="list-style-type: none"> Permissible in accordance with disclosure in placement memorandum and any deviation shall be subject to consent of 2/3rd of the investors by value 	<ul style="list-style-type: none"> Permissible in accordance with disclosure in placement memorandum and any deviation shall be subject to consent of 2/3rd of the investors by value 	<ul style="list-style-type: none"> Not permissible except to meet temporary liquidity needs for the purpose of redemption Maximum– 20% of the AUM for a duration not exceeding 6 months

Schemes / Funds

Parameters	Venture Capital Scheme	Restricted Schemes (Non-Retail)	Retail Schemes
Disclosure of NAV	<ul style="list-style-type: none"> ▪ Yearly 	<ul style="list-style-type: none"> ▪ Open ended scheme – Monthly ▪ Close ended scheme – Half yearly 	<ul style="list-style-type: none"> ▪ Open ended scheme – Daily ▪ Close ended scheme – Weekly
Green Channel i.e. open for subscription on filing with the Authority	<ul style="list-style-type: none"> ▪ Venture Capital Schemes shall be under Green Channel 	<ul style="list-style-type: none"> ▪ Restricted schemes soliciting money only from accredited investors shall be under Green Channel 	<ul style="list-style-type: none"> ▪ Not Applicable

Special Situation Fund

Special Situation Fund

- Registered FME may launch Special Situation Fund (SSFs)
- SSF permitted to invest in 'special situation assets'
- Special situation assets, includes
 - stressed loan available for acquisition;
 - Securities receipts issued by ARCs registered with RBI;
 - Securities of investment companies
 - whose stressed loans are available for acquisition;
 - against whose borrowings, securities receipts have been issued by an ARCs registered with RBI;
 - whose borrowings are subject to corporate insolvency resolution process;
 - who have disclosed all the defaults and such default is continuing for a period of at least 90 days after occurrence of such default
- Only close ended schemes permitted with minimum tenure of 3 years;
- Scheme Corpus, eligible investors, investment conditions may be specified by the Authority from time to time;
- No leverage permissible except to meet day to day operational requirements

Exchange Traded Funds

Exchange Traded Funds

- Registered FME (Retail) may launch Exchange Traded Funds (ETFs)
- ETFs shall include Equity Index based ETFs, Debt Index based ETFs, Commodity based ETFs, Hybrid ETFs, Actively Managed ETF or any other ETFs subject to approval from the concerned recognized stock exchange and the Authority
- ETFs shall be mandatorily listed and traded on the recognized stock exchange
- Recognized stock exchange to provide simplified framework for authorization of intermediaries registered with the Authority as market makers
- FME to appoint market maker who shall be responsible for liquidity in the trading of ETF by providing two quotes
- Market makers shall be permitted to create units and seek redemption directly from FME
- Investors, other than market makers, may also directly approach FME for redemption and no exit load shall be charged if
 - traded price of ETF is at discount of more than 5% of NAV for continuous 30 trading days; or
 - no quotes are available for 5 consecutive trading days;
 - total bid size is less than higher of 1% of total units valued at NAV or USD 2,500 in value, averaged over a period of 7 consecutive trading days

Environmental, Social and Governance

ESG

- FME managing AUM above USD 3 billion shall
 - establish policy on governance around material sustainability-related risks and opportunities;
 - disclose in its annual report how the FME identifies, assesses and manages sustainability related risks;
 - establish and disclose in its annual report the process of factoring sustainability-related risks and opportunities into fund manager's investment strategies and processes, including where relevant, data and methodologies used; and
 - comply with any other sustainability related requirements as specified by the Authority
- FME may launch a scheme related to ESG
- All scheme documents filed by FME shall disclose whether sustainability related risks are incorporated in decision making. A negative statement shall be included when sustainability related risks are not incorporated in the decision making.

Other Fund Management Activities

Portfolio Management Services

- Registered FME may offer Portfolio Management Services to the following categories as clients (including multi family office):
 - person resident outside India;
 - non-resident India;
 - non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted;
 - an individual resident in India who is eligible under FEMA to invest funds offshore, to the extent allowed under LRS of RBI
- Minimum ticket size of USD 150,000
 - Manner of grandfathering to be specified by the Authority, in case of existing portfolio managers having clients with funds less than USD 150,000
- Funds / securities to be kept in separate account in a banking unit
- FME to segregate each portfolio management client's holding in securities in separate (exception in case omnibus account structure subject to conditions)
- Investment in securities and financial products in IFSC, India or foreign jurisdiction
- Investment in derivatives with express consent from the clients
- Speculative transaction (i.e. settled other than actual delivery) not permitted, except derivatives
- Investment Advisory Services shall be in compliance with IFSCA (Capital Market Intermediaries) Regulations, 2021 with minimum ticket size of USD 150,000

Family Investment Fund

- Family Investment Fund means self managed fund set up pooling money only from single family;
- Single family means group of individuals who are the lineal descendants of a common ancestor and includes their spouses (including widows and widowers, whether remarried or not) and children (including step children, ex nuptial children)
- Family Investment Fund could be set up in IFSC as a Company or LLP or Trust (Contributory Trust);
- In case of Trust structure,
 - the beneficiaries are identifiable based on the provisions of the Trust Deed;
 - the share of beneficiary should be capable of being determined – i.e. specific trust and should not be at the discretion of the trustee;
 - addition of further contribution shall not make existing beneficiaries unknown or their shares indeterminate
- Requirement of legal form and net worth shall not be applicable
- Family Investment Fund should have and maintain minimum corpus of USD 10mn within 3 years of certificate of registration
- Permitted investments in
 - unlisted or listed securities; money market instruments, debt securities, securitized debt instruments, other investment schemes, derivatives, units of mutual funds, investment in LLPs, physical assets such as real estate, bullion, art etc. or such other assets as specified by the Authority

Regulations repealed by IFSCA (Fund Management) Regulations, 2022

IFSCA (Fund Management) Regulations, 2022

On effective date of
the IFSCA (Fund
Management)
Regulations, 2022

Regulations that shall not apply in IFSC

- Chapter VI – Funds of the SEBI (International Financial Services) Guidelines, 2015
- SEBI (AIF) Regulations, 2012 and SEBI (MF) Regulations, 1996

Regulations that stand suspended

- SEBI Circular dated 23 May 2017 permitting AIFs to invest in securities issued by companies incorporated in India;
- SEBI Circular dated 26 November 2018 containing Operating Guidelines for AIF in IFSC;
- SEBI Circular dated 9 August 2019 aligning the investments by AIFs in IFSC with domestic AIFs;
- IFSCA Circular dated 9 December 2020 clarifying on leverage, co-investment and diversification limits
- IFSCA Circular dated 2 June 2021 providing revised application form
- IFSCA Circular dated 25 June 2021 providing relaxation in continuing interest for relocation of funds outside India to IFSC
- IFSCA Circulars dated 21 October 2021 on REIT and InvIT

Regulations that stand omitted

- Regulations 30 to 42 of the IFSCA (Capital Market Intermediaries) Regulations, 2021 pertaining to Portfolio Manager

Thank you

Disclaimer:

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as on the date of it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a through examination of particular situation.

SHAH & SANGHARAJKA
CHARTERED ACCOUNTANTS

616, One World West, Near Ambli T Junction,
S P Ring Road, Ambli, Ahmedabad 380 058.
T : +91 2717 450 293 | www.snsca.co.in

Annexure – Code of Conduct and Obligations

Code of Conduct and Obligations for FME

- Part A of the Third Schedule
 - to take **all reasonable steps and exercise due diligence** to ensure that the investment of funds pertaining to any scheme is not contrary to the provisions of these regulations;
 - FME shall be **responsible for the acts of commission or omission by its employees or the persons whose services have been procured by FME**;
 - FME or its directors or partners or other officers **shall not be absolved of liability** to the scheme or its investors for **their acts of commission or omission**, while holding such position or office;
 - CEO of FME shall **ensure that FME complies with all the provisions of these regulations**;
 - FME shall **not appoint any person as key personnel who has been found guilty of any economic offence or involved in violation of securities laws**;
 - FME shall **compute and carry out valuation of investments** made by its scheme(s) in accordance with the investment valuation norms specified and shall **publish the same**;
 - FME and its controlling shareholders **shall be liable to compensate the affected investors** and/or the scheme for any unfair treatment to **any investor as a result of inappropriate valuation**;

Code of Conduct and Obligations for FME

- Part A of the Third Schedule
 - FME must ensure that all investors are provided with **adequate, accurate, explicit and timely information fairly presented in a simple language** about the investment policies, investment objectives, financial position and general affairs of the scheme;
 - FME shall ensure that the **assets and liabilities of each scheme are segregated and ring-fenced** from other schemes of FME; and **bank accounts and securities accounts of each scheme are segregated and ring-fenced**;
 - FME must **not use any unethical means to sell, market or induce any investor** to buy their schemes;
 - FME shall **maintain high standards of integrity and fairness** in all their dealings and in the conduct of their business;
 - FME shall render at all times **high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment**;
 - FME shall **not make any exaggerated statement**, whether oral or written, either **about their qualifications or capability** to render **investment management services or their achievements**;
 - FME shall ensure **compliance with the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) norms as applicable**

Code of Conduct and Obligations for Fiduciaries

- Part B of the Third Schedule
 - to ensure that monies of the schemes are invested **to achieve the objectives of the scheme and in the interest of the investors;**
 - to ensure that the assets, liabilities, bank accounts and securities accounts are **segregated and ring-fenced** from other schemes of FME;
 - to ensure that different activities of FME are carried out **at arm's length** and interest of investor under one activity are not being compromised ;
 - to render at all times **high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment;**
 - to ensure before launch of the scheme that i) it has systems in place for **back office, dealing room and accounting;** ii) **appointed all key personnel;** iii) **appointed auditors** to audit its accounts; iv) **designated compliance officer;** v) **appointed fund administrator;** vi) obtained **prior in principle approval from recognized stock exchange** where the units are proposed to be listed;
 - to ensure that **FME has not given undue or unfair advantage to any associates** or dealt with any of the associates of FME in any manner detrimental to the interest of the investors;
 - to **quarterly review all transactions** carried out between the schemes, FME and its associates

Code of Conduct and Obligations for Principal Officer, Fund Manager and Compliance Officer

- Part C of the Third Schedule
 - Principal Officer shall ensure that all the activities of FME are **in accordance with the provisions of these regulations and various circulars and guidelines** issued thereunder
 - Principal Officer shall ensure that the **funds of the schemes are invested to achieve the objectives of the scheme** and in the interest of the investors
 - Where the Principal Officer has reason to believe that the conduct of business of FME is not in accordance with these regulations it shall forthwith **take such remedial steps as are necessary** by it and shall **immediately inform the Authority of the violation and the action taken by it**
 - Principal Officer shall periodically **review the investor complaints received** and shall **ensure immediate redressal** of the same by FME

Code of Conduct and Obligations for FME acting as Portfolio Manager

- Part C of the Third Schedule
 - Principal Officer and Fund Managers shall:
 - abide by the **Act, Rules, Regulations, Guidelines and Circulars governing the securities market**;
 - strive for **highest ethical and professional standards** to enhance the reputation of the markets;
 - **act honestly in dealings** with other market participants;
 - **act fairly and deal with market participants in a consistent and transparent manner**;
 - **act with integrity**, particularly in avoiding questionable practices and behaviour;
 - **not indulge in any unethical business activities or professional misconduct** involving dishonesty, fraud or deceit or commit any act that could damage the reputation of the organisation or the fund management industry;
 - **identify existing or potential conflicts of interest** as per their institutions policies and **address the same**;
 - **not offer or accept any inducement** in connection with the affairs or business of managing the funds of investors which is likely to conflict with the duties owed to the investors;

Code of Conduct and Obligations for FME acting as Portfolio Manager

- Part C of the Third Schedule
 - Principal Officer and Fund Managers shall:
 - **not carry out any transaction on behalf of a scheme** with any counter party who is an associate of the **FME / controlling shareholders** unless such transaction is carried
 - **out on arm's length basis** after taking into account the interest of investors and;
 - **in terms of the provisions of these regulations** and circulars issued thereunder
 - **not receive any gift or entertainment** which is not in adherence of the gift and entertainment policy of the FME framed in this regard
 - KMP designated as compliance officer shall
 - be responsible for **monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the Authority** and for **redressal of investors grievances immediately;**
 - **independently report to the Authority any non-compliance observed by him**