

Corpsec Hotline

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LICENSE NEEDED FOR MARKETING FUNDS IN UAE: SECURITIES AND COMMODITIES AUTHORITY

The Securities and Commodities Authority ("SCA"), pursuant to a Memorandum of Understanding with the Central Bank of UAE in 2009 was required to regulate the offering of offshore mutual funds and investment funds (collectively referred to as "Funds") in UAE.¹ The SCA in a recent board decision announced regulations ("Regulations")² for marketing of Funds in the UAE by way of private placement or public offering.

Prior to the Memorandum of Understanding, no registration with the UAE Central Bank was required if the sale of the Fund occurred outside UAE, however, as per the present regulations, SCA now requires prior registration of the Funds, before the same can be marketed in UAE.

CONDITIONS FOR REGISTRATION

Chapter III of the Regulations lays down the registration and marketing requirement for a Fund proposed to be promoted in UAE on a public or private placement basis.

For the public promotion of any foreign Fund, the prerequisites that must be satisfied by the Fund prior to approaching SCA for registration are: (i) the fund must be established in a foreign country and subject to the oversight of a regulator similar to SCA; and (ii) the fund is licensed to make public offering in its home country.

SCA being an ordinary member of International Organization of Securities Commissions ("IOSCO") should recognize other ordinary members of IOSCO as regulators with similar oversight as SCA. Therefore, mutual funds registered with Securities and Exchange Board of India ("SEBI") should fulfill the prerequisite conditions as prescribed in the Regulation as SEBI is an ordinary member of IOSCO and mutual funds in India are permitted to be offered to the public.

In respect of Funds being marketed on a private placement basis, no pre-registration have been prescribed by SCA, however, it has retained the right to impose conditions as it deems fit on a case of case basis.

MINIMUM SUBSCRIPTION PER INVESTORS

The SCA has also prescribed a minimum subscription limit for Funds being promoted within the UAE either via private placement or public offering. In case of foreign funds being promoted via private placement, the minimum subscription requirement is US\$ 137,000 (500,000 dirhams), while the threshold in case of a mutual fund established in the free zone outside the UAE has been increased to US\$ 273,000 (1 million Dirhams).

In case of public offering of foreign mutual funds, there exists no minimum subscription amount, and would be the same as stated in the offer document.

PROCESS FOR REGISTRATION

Prior to any promotion of a Fund within the UAE, an application must be submitted to SCA by the local promoter³ in the prescribed form. SCA is required to issue its decision approving or rejecting the application within a period of 30 days from the submission of complete application. Please note that relevant documents for each fund proposed to be promoted within the UAE must be submitted to SCA. Therefore, a fund house will have to get approval for each fund (i.e. scheme / class / plan etc.) it wishes to promote within the UAE.

METHOD OF PROMOTION AND DETERMINATION OF TARGET INVESTORS

Any promotion by way of private placement of foreign funds in the UAE would have to be by direct contact with predetermined persons. While in case of a public offering of foreign mutual fund units, the SCA has allowed any and all methods of promotion available to investors. Thus, marketing to unsolicited investors is prohibited while privately placing foreign funds in the UAE.

IMPACT

It must be made clear that the impact of these regulations do not fall on Dubai. For this purpose, Dubai (formally referred to as the Dubai International Finance Center) is an independent jurisdiction or a free-zone under the UAE Constitution which amongst other things has its own financial regulator, the Dubai Financial Services Authority (or the DFSA). The SCA regulates the rest of the UAE in this regard.

The Regulations will restrict fund raising for options for PE Funds and mutual funds which are especially India focused, which have managed to raise over USD 4 billion from investors based in the UAE.⁴ The imposition of a minimum subscription amount in cases of funds seeking to promote funds via private placement is of particular concern with the amount set at a sizeable USD 137,000 for foreign funds, which could result in issues for PE funds seeking to source investments out of the UAE.

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Another impact of these Regulations is likely an increased time-line on fund raising with investors from the UAE, arising from the need to seek prior approval of the SCA for every fund/scheme launched by foreign mutual funds. In addition, this requirement of regulatory compliance could further enhance compliance burden for Indian mutual and private equity funds sourcing investments out of the UAE.

– Prasad Subramanyan, Vivek Mimani & Siddharth Shah

You can direct your queries or comments to the authors

¹ Securities and Commodities Authority, A Memorandum of Understanding (MoU) Signed between the Central Bank of UAE & the Securities & Commodities Authority (SCA), available at <http://www.sca.gov.ae/English/news/Pages/2009-02-25-2.aspx> (last visited on October 12, 2012)

² Securities and Commodities Authority, Board Decision No. (37) of 2012, Concerning the Regulation of Mutual Funds, available at <http://www.sca.gov.ae/English/legalaffairs/LegalLaws/201208MF.pdf> (last visited on October 11, 2012)

³ means (i) Banks licensed by the Central Bank; or (ii) Investment companies licensed by the Central Bank; and (iii) Companies licensed for this purpose by SCA. However, units of a Fund may also be promoted within the UAE on a private placement basis through the representation office of the foreign company, provided the minimum subscription per subscriber shall be US\$ 2.7 million (10 million Dirhams).

⁴ Indian Mutual Funds, PE, wealth managers may face regulatory hurdle in UAE, The Economic Times, October 8, 2012, available at http://articles.economictimes.indiatimes.com/2012-10-08/news/34323042_1_private-equity-funds-indian-mutual-funds-misuse-of-investor-funds (last visited on October 12, 2012)

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