

## **FAQs for Intermediaries**

### **What is the procedure for registering a mutual fund with SEBI?**

#### **A. How to get registered as a Mutual Fund?**

An applicant proposing to sponsor a mutual fund (MF) in India must submit an application in Form A [first schedule of the SEBI (Mutual Funds) Regulations, 1996 (hereinafter, referred to as the Regulations)] along with a non-refundable fee of INR 5 lakh. The application is examined and once the sponsor satisfies the eligibility criteria, it is required to complete the remaining formalities for setting up a MF. These include inter alia, executing the trust deed and investment management agreement, setting up a trustee company/board of trustees comprising two-thirds independent trustees, incorporating the asset management company (AMC), contributing to at least 40% of the net worth of the AMC and appointing a custodian. Upon satisfying these conditions, the registration certificate is issued subject to the payment of registration fees of INR 25 lakh.

#### **B. Main requirements under SEBI (Mutual Funds) Regulations, 1996:**

The following are the eligibility criteria for grant of a certificate of registration as per Regulation 7 of SEBI (Mutual Funds) Regulations, 1996 (Please see SEBI web site [www.sebi.gov.in](http://www.sebi.gov.in))

For the purpose of grant of a certificate of registration, the applicant has to fulfil the following, namely:-

- a) The sponsor should have a sound track record and general reputation of fairness and integrity in all his business transactions.

Explanation: For the purposes of this clause "sound track record" shall mean the sponsor should,-

1. Be carrying on business in financial services for a period of not less than five years; and
2. The net worth is positive in all the immediately preceding five years; and
3. The net worth in the immediately preceding year is more than the capital contribution of the sponsor in the asset management company; and
4. The sponsor has profits after providing for depreciation, interest and tax in three out of the immediately preceding five years, including the fifth year.

- b) The applicant is a fit and proper person.

- c) In the case of an existing mutual fund, such fund is in the form of a trust and the trust deed has been approved by the Board;

- d) The sponsor has contributed or contributes atleast 40% to the net worth of the asset management company;

Provided that any person who holds 40% or more of the net worth of an asset management company shall be deemed to be a sponsor and will be required to fulfil the eligibility criteria specified in these regulations.

- e) The sponsor or any of its directors or the principle officer to be employed by the mutual fund should not have been guilty of fraud or has not been convicted of an offence involving moral turpitude or has not been found guilty of any economic offence.
- f) Appointment of trustees to act as trustees for the mutual fund in accordance with the provisions of the regulations;
- g) Appointment of asset management company to manage the mutual fund and operate the scheme of such funds in accordance with the provisions of these regulations;
- h) Appointment of custodian in order to keep custody of the securities or gold and gold related instrument or other assets of the mutual fund held in terms of these regulations, and provide such other custodial services as may be authorised by the trustees

### **C. Application for Registration:**

An applicant should apply for registration in form A prescribed under Schedule I of SEBI (Mutual Funds) Regulations 1996. It may be noted here that as per the proviso to Reg. 7 (c) of the Regulations, any person who holds 40% or more of the net worth of an asset management company shall be deemed to be a sponsor and will be required to apply in Form A.

While applying, please ensure that the main objects of the memorandum of the sponsor company permit it to carry on mutual fund activities. An applicant should also submit the following additional information for the sponsor as well as for the other shareholders in the proposed asset management company.

1. A complete list of Names of the associate organizations/group companies/subsidiaries, etc. registered with SEBI in any capacity, also indicate the capacity in which they are registered and the SEBI Registration number. In case of foreign sponsors, details of registration of sponsor/any of its associate / group companies with any regulatory agency abroad You may also refer to SEBI (Mutual Funds) Regulations for the definition of 'associates', 'group' and 'control'.)
2. Whether any of the sponsor or its group/associate companies are listed in any of the recognised stock exchange(s) in India. If so, please furnish the details.
3. Whether there have been any instances of violation of or non-adherence to any securities related regulations and whether any action has been taken against you or any of your associate/group companies in this regard, by a regulatory agency in India or abroad; (please provide the following information)
  - a) Top 10 monetary penalties in case of foreign entities and all monetary penalties in case of Indian entities, imposed against the sponsor or any associate of the sponsor (for irregularities/ violations in the financial services sector or for defaults in respect of shareholders / debenture holders and depositors, by any financial regulatory body or government authority or settlement arrived with any financial regulatory body during the last five years and details thereof. Penalties awarded for economic offences may be disclosed only in case of sponsor.
  - b) Details of all cases of suspensions and cancellation of certificate of registration (for irregularities/ violations in financial services sector or for defaults in respect of shareholders, debenture holders and depositors) of the sponsor or any associate of the sponsor shall be disclosed for the last 10 years.

- c) All disclosures on penalties and action taken as per (a) and (b) above against foreign entities may be limited to the jurisdiction of the country where the principal activities (in terms of income/ revenue) of the sponsors/ associate companies are carried out or where the headquarter is situated.
4. Declaration in terms of Regulation 7(d) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 that your sponsor company or any of your directors have not been found guilty of fraud or have not been convicted of an offence involving moral turpitude or have not been found guilty of any economic offence. If there are such cases, full details should be provided.
  5. Details of registration of your company/associate/group companies, which are registered/ required to be registered with Reserve Bank of India (RBI) as a Banking company or Non-Banking Finance Company or in any other capacity.
  6. Details of disciplinary action taken by RBI/other Regulators against you or any of your group/associate companies. Please also inform us in case there is any default in repayment of deposits by you or any of your group / associate companies.
  7. Details of the RBI/ other Regulator's approval, if any required, for the purpose of sponsoring a mutual fund.
  8. Whether any of the directors or employees of your company or your group / associate companies were ever associated with any organisation as a director or an employee against whom SEBI had initiated action of suspension or cancellation of certificate of registration or initiated any other action under the provisions of SEBI Act or launched any prosecution for acts committed during their association. If so, please furnish details.
  9. The application shall be accompanied by a business plan.
  10. Undertaking from the sponsor to provide additional capital to the AMC, if required, till its operations breakeven, to protect the interest of the unitholders.

**D. Onsite Due diligence of Sponsor by SEBI**

SEBI may conduct an on-site due-diligence of the existing businesses of the sponsor to study the following:

1. Existing infrastructure for client servicing, complaints handling;
2. Track record of complaint / grievance handling; and
3. Compliance philosophy and practice.

**E. Communication by SEBI:**

1. At any stage of registration, the applicant has to provide all required information within 30 days from the date of receipt of any communication from SEBI for the said purpose, failing which the case may be considered as closed from SEBI.

2. SEBI will examine the application and a communication will be sent to you about your eligibility status. If you are found eligible, you will be required to undertake the following steps within a period of 12 months from the date of communication, failing which you will be required to submit a fresh application for registration.

**a. Incorporation of the Asset Management Company and the Trustee Company/Board of trustees:**

For this purpose, you may submit two copies of the completed Memorandum and Articles of Association of the Asset Management Company and the Trustee Company for our forwarding to the Registrar of Companies.

Please ensure that these documents contain a clause that “notwithstanding anything mentioned in these documents, only those activities will be carried out which are permitted under the SEBI (Mutual Funds) Regulations. All the provisions of the SEBI (Mutual Funds) Regulations, 1996 and the Guidelines issued from time to time shall be applicable.”

Please also indicate the address of the ROC where these companies would be incorporated.

**b. Auditor’s certificate:**

After incorporation of the AMC and the Trustee Company, please submit a certificate from a Chartered Accountant certifying that:

1. The sponsor has contributed at least 40% to the net worth of the AMC (Regulation 7 (c)).
2. The AMC has a net worth of not less than INR Fifty Crore (500 million), (the net worth should be furnished in the following format):

Particulars	Amount (INR)
Paid-up capital	
Add: Free reserves of the company	
Less: miscellaneous expenditure to the extent not written-off	
Less: accumulated losses, if any	
Less: intangible assets, if any	
Total Net worth	

**c. Filing of executed copies of Trust Deed and Investment Management Agreement.**

Please file executed copies of trust deed and Investment Management Agreement along with a check list clearly mentioning where you have incorporated the clauses of contents of the trust deed and Investment Management agreement as per third schedule and fourth schedule of SEBI (Mutual Funds) Regulations.

#### **d. Setting up of Infrastructure by the Applicant**

After complying with the above requirements, a detailed note on the infrastructure facilities available with the Asset Management Company should be sent to SEBI, providing the following specific details:

1. Details of the office premises and address.
2. Organization chart of the AMC, clearly specifying the responsibilities of various personnel.
3. Profile of the key personnel including the fund managers and equity research personnel.
4. Justification of adequacy of personnel in fund management, equity research and other operational areas considering the expected size of mutual fund. At what stage, the number of key personnel will be reviewed, should be indicated.
5. Systems support in terms of hardware and software.
6. Arrangement made for investor services.
7. Establishing the financial viability of sponsoring a Mutual Fund giving details of expected size of mutual fund over a period of time,
8. Internal systems and control procedures developed to check insider trading and front running
9. Size of funds which the AMC feels competent to manage and the expertise available with the sponsor/AMC etc.
10. Whether the compliance manual has been prepared to ensure that all provisions of SEBI (Mutual Funds) Regulations and Guidelines are complied with. (All guidelines issued to mutual funds are available on SEBI web site).
11. Submission of completed Form C and Form D, providing details of Trustee Company and AMC, as given in First Schedule of SEBI (Mutual Funds) Regulations.
12. Bio-data of the directors of the trustee company and the AMC in the prescribed format (Please refer to SEBI circular dated December 20, 2001 available on web site).
13. Bio data of key personnel in hard and soft copies (Please refer to SEBI circular dated May 7, 1997)
14. Any other information relevant for application for registration.

#### **e. Grant of Certificate of Registration**

1. Once all above requirements have been complied with and a requisite fee as per Second Schedule of Regulations has been paid, SEBI will grant certification of registration as a mutual fund. SEBI may also conduct infrastructure inspection of the applicant before grant of certificate of registration.
2. Further, it may be noted that in case no Mutual Fund scheme is launched within 12 months from the date of registration, the registration granted would be treated as cancelled.

### **What is the annual fee payable by a MF/AMC?**

A mutual fund shall pay before the 15th April each year an annual fee as specified under for every financial year from the year following the year of registration:

Average Assets under Management (AAUM) as on 31 March	Annual Fee
AAUM up to INR 10,000 crore	0.0015% of the AAUM
Part of AAUM above INR 10, 000 crore	0.0010% of the portion of AAUM in excess of INR 10,000 crore

Subject to a minimum of INR 2, 50,000 and a Maximum of INR 1, 00, 00,000.

### **What is the filing fee for an offer document?**

The filing fee for an offer document is 0.005% of the amount raised in the new fund offer or by way of private placement, as the case may be, subject to a minimum of INR 2 lakh and a maximum of INR 50 lakh.

### **What are the limitations on the fees and expenses that can be charged to a scheme?**

- A. The AMC may charge the scheme with investment and advisory fees which shall be fully disclosed in the offer document.
- B. In addition to the fees mentioned In point A, the asset management company may charge the scheme with the following recurring expenses, including:
  - a) marketing and selling expenses including agents' commission, if any;
  - b) brokerage and transaction cost;
  - c) registrar services for transfer of units sold or redeemed;
  - d) fees and expenses of trustees;
  - e) audit fees;
  - f) custodian fees;
  - g) costs related to investor communication;
  - h) costs of fund transfer from location to location;
  - i) costs of providing account statements and dividend/redemption cheques and warrants;
  - j) insurance premium paid by the fund;
  - k) winding up costs for terminating a fund or a scheme;
  - l) costs of statutory advertisements;
  - m) in case of a gold exchange traded fund scheme, recurring expenses incurred towards storage and handling of gold;
  - n) in case of a capital oriented scheme, rating fees;
  - o) in case of a real estate MF scheme, insurance premia and costs of maintenance of the real estate assets (excluding costs of development of such assets) over and

above the expenses specified in regulation 52 to the extent disclosed in the offer document;

- p) listing fees, in case of schemes listed on a recognised stock exchange;
- q) Such other costs as may be approved by the Board.

Any expense other than those specified above shall be borne by the AMC or trustee or sponsors.

C. The total expenses of the scheme excluding issue or redemption expenses, whether initially borne by the MF or by the AMC, but including the investment management and advisory fee shall be subject to the following limits:

- a) in case of a fund of funds scheme, the total expenses of the scheme including weighted average of charges levied by the underlying schemes shall not exceed 2.50% of the daily net assets of the scheme
- b) in case of an index fund scheme or exchange traded fund, the total expenses of the scheme including the investment and advisory fees shall not exceed 1.5% of the daily net assets;
- c) in case of any other scheme-
  - i. on the first INR 100 crore of the daily net assets 2.5%;
  - ii. on the next INR 300 crore of the daily net assets 2.25%;
  - iii. on the next INR 300 crore of the daily net assets 2.0%;
  - iv. on the balance of the assets 1.75%:

In respect of a scheme investing in bonds such recurring expenses shall be lesser by at least 0.25% of the daily net assets outstanding in each financial year.

In addition to the limits specified above, the following costs or expenses may be charged to the scheme, namely:

- a) brokerage and transaction costs which are incurred for the purpose of execution of trade and is included in the cost of investment, not exceeding 0.12% in case of cash market transactions and 0.05% in case of derivatives transactions;
- b) expenses not exceeding of 0.30% of daily net assets, if the new inflows from such cities as specified by the Board from time to time are at least:
  - i. 30% of gross new inflows in the scheme, or;
  - ii. 15% of the average assets under management (year to date) of the scheme, whichever is higher:

If inflows from such cities are less than the higher of sub-clause (i) or sub-clause (ii), such expenses on daily net assets of the scheme shall be charged on proportionate basis.

Expenses charged under this clause shall be utilised for distribution expenses incurred for bringing inflows from such cities.

The amount incurred as expense on account of inflows from such cities shall be credited back to the scheme in case the said inflows are redeemed within a period of one year from the date of investment.

- c) Additional expenses, incurred towards different heads mentioned under A and B above, not exceeding 0.20% of daily net assets of the scheme.

Any expenditure in excess of the limits specified above shall be borne by the AMC or by the trustee or sponsors.

#### **Is service tax included in the limit of expenses?**

- A. AMC(s) can charge Service Tax, as per applicable taxation laws, to the scheme(s) within the limits prescribed under the Regulations.
- B. MFs/AMCs may charge service tax on investment and advisory fees to the scheme in addition to the maximum limit of TER as prescribed in the Regulations.
- C. Service tax on other than investment and advisory fees, if any, shall be borne by the scheme within the maximum limit of TER as per the Regulations.
- D. Service tax on exit load, if any, shall be paid out of the exit load proceeds and exit load net of service tax, if any, shall be credited to the scheme.
- E. Service tax on brokerage and transaction cost paid for execution of trade, if any, shall be within the limit prescribed under the Regulations.

#### **Is the risk disclaimer (viz. '*Mutual Fund investments are subject to market risks, read all scheme related documents carefully*') mandatory in corporate advertisements that are a form of brand promotion?**

Mutual Funds may note that:

- i. SEBI (Mutual Funds) Regulations, 1996 defines an advertisement as all forms of communication issued by or on behalf of the asset management company/mutual fund that may influence investment decisions of any investor/prospective investors.
- ii. The Advertisement code as mentioned in the Sixth Schedule of SEBI (MFs) regulations is a principle based regulatory norm. The requirement of 'risk disclaimer' as mentioned in Clause (i) of the Advertisement Code applies to all communication falling within the definition of advertisement.
- iii. Hence, the mandate to provide risk disclaimer is as such applicable to only those communication that *may influence investment decisions of any investor/prospective investors*.
- iv. Corporate advertisements that do not solicit investments in MF / its schemes or influence investment decisions in a MF scheme, but are merely a branding exercise of a Mutual Fund (e.g. "XYZ Mutual Fund") shall not fall within the definition of advertisement and

hence may not necessarily require drawing investor's attention to the risk of investing in MFs by providing risk disclaimer as mentioned in clause (i) of the advertisement code.

- v. Also, program sponsorships i.e. announcement of "This part of program is brought to you by ABC Mutual Funds" during sponsored program on TV or radio, constitute a branding exercise and not an advertisement, thus such program sponsorships may not be necessarily accompanied with the risk disclaimer as mentioned in Clause (i) of the advertisement code.

### **What is the duration of validity of SEBI observations on SID?**

The scheme shall be launched within six months from the date of the issuance of final observations from SEBI. If the AMC intends to launch the scheme at a date later than six months, it shall refile the SID with SEBI along with filing fees.

### **What is the procedure for Change in the Controlling Interest of the Asset Management Company?**

#### **A. Requirement of Regulations**

According to Regulation 22(e) of SEBI (Mutual Funds) Regulations, 1996, no change in the controlling interest of the asset management company can be made unless:-

1. prior approval of the trustees and the Board (i.e. SEBI) is obtained;
2. a written communication about the proposed change is sent to each unitholder and an advertisement is given in one English daily newspaper having nationwide circulation and in a newspaper published in the language of the region where the Head Office of the mutual fund is situated; and
3. The unitholders are given an option to exit on the prevailing Net Asset Value without any exit load.

All the conditions prescribed above are required to be complied with. It is advised that the mutual funds should give at least 30 days time period to the unitholders to exercise the exit option.

#### **B. New Sponsors**

In case the applicant proposing to take the control of the mutual fund is not an existing mutual fund registered with SEBI, it should apply to SEBI for registration under SEBI (Mutual Funds) Regulations, 1996. The entire procedure for registration under SEBI (Mutual Funds)

Regulations, 1996 is given above under the heading, "What is the procedure for registering a mutual fund with SEBI?"

### **Undertakings by new trustees/Sponsors**

In case of new sponsors or in case of taking over of the schemes by an existing mutual fund, the undertakings on the following lines are required to be given in the interest of unitholders:

1. Taking full responsibility of the management and the administration of the schemes including the matters relating to the reconciliation of accounts (as if the schemes had been floated by the new trustees on the date of taking over).
2. Assumption of the trusteeship of the assets and liabilities of the schemes including unclaimed dividends and unclaimed redemptions.
3. Assuming all responsibilities and obligations relating to the investor grievances, if any, in respect of the schemes taken over, in accordance with and pursuant to the SEBI (Mutual Funds) Regulations.

### **C. Disclosures to Unitholders**

While seeking the approval of SEBI for change in the controlling interest of the asset management company, the mutual fund handing over the control to another person, should also file the draft letter to be sent to the unitholders.

The draft letter to the unitholders should include the following information –

1. The activities of the new sponsor and its financial performance as prescribed in the standard offer document;
2. In case of taking over of the schemes by an existing mutual fund registered with SEBI, the draft letter should also include the condensed financial information of all the schemes in the format prescribed in the standard offer document;
3. The amount of unclaimed redemption and dividend and also the procedure for claiming such amount by the unitholders.

### **D. Communication by SEBI**

While approving the change in controlling interest of the AMC, SEBI may communicate any further observations, as necessary.

### **E. Revision of Offer Documents**

The information given in the offer documents of existing schemes shall be revised and updated pursuant to the change in controlling interest of the mutual fund. Such addendum shall also be filed with SEBI, as required under the SEBI (Mutual Funds) Regulations and Guidelines.

#### **F. Other Situations**

In case of any other situation like indirect control of the asset Management Company or change in the promoters of the sponsor, etc, the mutual fund should provide full information to SEBI for advice on the further course of action.

In case of any difficulty, SEBI will guide the applicant step by step after getting application for change in the controlling interest of the asset management company. Normally, all replies are sent within 21 working days from the date of getting each communication from the applicant during the process of change in the controlling interest of the asset management company.

#### **SEBI (MUTUAL FUNDS) REGULATIONS, 1996**

**[http://www.sebi.gov.in/cms/sebi\\_data/commondocs/mutualfundupdated06may2014.pdf](http://www.sebi.gov.in/cms/sebi_data/commondocs/mutualfundupdated06may2014.pdf)**

#### **MASTER CIRCULAR FOR MUTUAL FUNDS**

**[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1412152811369.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1412152811369.pdf)**

#### **FORMATS**

**<http://www.sebi.gov.in/circulars/2010/mastercircular/formats.pdf>**