

LEGAL UPDATES

SEBI: OFFSHORE SECURITIES NOT LISTED IN INDIA MAY NOT BE ADVISED BY PORTFOLIO MANAGERS

Among other things, SEBI clarified in an Informal Guidance to a Portfolio Manager that the existing legislative framework governing portfolio managers prohibits advice or investment in offshore shares and securities that are neither listed on a recognised stock exchange(s) in India nor seek to do so.

The SEBI (Informal Guidance) Scheme, 2003, further stated that the applicant has asked for an interpretative letter seeking answers/definitive solutions to:

- (i) Whether clients of portfolio managers could facilitate investments of both their discretionary and non-discretionary portfolio management services in shares of a company going through the IPO process? ; and
- (ii) Whether portfolio managers could invest up to 25% of the assets under management of each client who uses non-discretionary portfolio manager services in offshore shares and securities?

SEBI while answering the first question stated that the *"portfolio manager" ... according to a contract with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or funds of the client, as the case may be."*

Under Section 1(2) of the SCRA, uniformly applicable across the territory of India, the term "securities" as defined under the SCRA may be interpreted to apply to securities issued, listed, or intended to be listed in India.

Additionally, SEBI asserted that under Section 21 of the Companies Act, SEBI has the authority to regulate matters relating to the issuance, transfer, and non-payment of dividends by listed companies or those companies that intend to list their securities.

Therefore, it was observed that, “...SEBI may regulate the issue and transfer of only securities of those companies incorporated in India, which are listed or intend to get listed in the recognised stock exchange(s).”