

‘Investment Advisers’ under SEBI Regulations

The Concept, Compliances, Disclosures, Audits & Exemptions

**Analysis & Compilation by
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Who are ‘Investment Advisers’?

- ✓ Investment Adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons.
- ✓ It includes any person who holds out himself as an investment adviser, by whatever name called.

What is an ‘Investment Advice’?

- ✓ Investment Advice means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products,
- ✓ It means an advice on investment portfolio containing securities or investment products,
- ✓ Advice can be written, oral or through any other means of communication for benefit of client,
- ✓ Invest Advice includes financial planning.

What is ‘Financial Planning’?

- ✓ Financial Planning shall include analysis of clients’ current financial situation, identification of their financial goals,
- ✓ It shall also include developing and recommending financial strategies to realise such goals.

Application for grant of Certificate:

On and from the commencement of SEBI (Investment Advisers) Regulations, 2013, no person shall act as an Investment Adviser or hold itself out as an Investment Adviser unless he has obtained a certificate of registration from SEBI.

Who are exempted from obtaining SEBI under Investment Advisers Regulations, 2013?

Following persons shall not be required to seek SEBI registration subject to the fulfilment of the conditions stipulated:

1. Any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;
2. Insurance Agent or Insurance Broker who offers investment advice solely in insurance products and is registered with IRDA;
3. Pension Advisor who offers investment advice solely on pension products and is registered with PFRDA;
4. Any distributor of Mutual Funds, who is a member of Self-Regulatory Organisation or is registered with an Association of Asset Management Companies of Mutual Funds, providing any investment advice to its clients incidental to its primary activity;
5. Advocate, solicitor or law firm, who provides investment advice to their clients, incidental to their legal practise;
6. Any member of ICAI, ICSI, ICWAI, Actuarial Society of India or any other professional body as may be specified by SEBI, who provides investment advice to their clients, incidental to his professional service;
7. Registered Stock Broker,
8. Registered Sub Broker,
9. Registered Portfolio Manager,
10. Registered Merchant Banker,
11. Fund Manager of Mutual Fund registered with SEBI,
12. Fund Manager of Alternative Investment Fund registered with SEBI,
13. Fund Manager of any other intermediary or entity registered with SEBI,
14. Any person who provides investment advice exclusively to clients based out of India,
15. Representative & partner of Investment Adviser which is registered under Regulations,
16. Any other person as may be specified by the Board.

Qualification and certification requirement – For Individuals, Partners & Representatives:

An individual registered as an Investment Adviser under SEBI Regulations and partners and representatives of an Investment Adviser registered under SEBI Regulations offering investment advice shall have the following minimum qualifications, at all times:

1. Professional qualification or post-graduate degree or post-graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by Central

- Govt. or any State Govt. or a recognised Foreign University or Institution or Association;
or
2. Graduate in any discipline with an experience of at least 5 years in activities relating to advice in Financial Products or Securities or Fund or Asset or Portfolio Management.

Qualification and certification requirement – For Individuals, Partners & Representatives:

An individual registered as Investment Adviser and partners and representatives of Investment Advisers registered under SEBI Regulations offering investment advice shall have, at all times, a certification on Financial Planning or Fund or Asset or Portfolio Management or Investment Advisory Services:

- (a) From NISM; or
- (b) From any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India (such certification is accredited by NISM):

Capital adequacy:

Sr. No.	Type of Business Organization	Capital Adequacy Requirement (in Rs.)
1	As Body Corporate	Net Worth of not less than Rs. 25 lacs
2	Individuals or Partnership Firms	Net Tangible Assets not less than Rs. 1 lacs

Validity of the Certificate of Registration:

The Certificate of registration granted shall be valid till it is suspended or cancelled by SEBI.

Conditions of Certificate issued by SEBI:

Certificate granted by SEBI shall be subject to the following conditions:

1. Investment Adviser shall abide by provisions of SEBI Act & Regulations;
2. Investment Adviser shall forthwith inform SEBI in writing, if any information or particulars previously submitted to SEBI are found to be false or misleading in any material particular or if there is any material change in the information already submitted,
3. Investment Adviser, not being an individual, shall include the words 'investment adviser' in its name;
4. Individuals registered as Investment Advisers shall use the term 'Investment Adviser' in all their correspondences with their clients.

General Obligations & Responsibilities:

1. Investment Adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise;
2. Investment Adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided;
3. Investment Adviser shall maintain an arms-length relationship between its activities as an Investment Adviser and other activities;
4. Investment Adviser which is also engaged in activities other than Investment Advisory Services shall ensure that its Investment Advisory Services are clearly segregated from all its other activities.
5. Investment Adviser shall ensure that in case of any conflict of interest of Investment Advisory Activities with other activities, such conflict shall be disclosed to client;
6. Investment Adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law;
7. Investment Advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of 15 days from the day of such advice;
8. Investment Advisor shall follow Know Your Client procedure as specified by SEBI;
9. Investment Adviser shall abide by the prescribed Code of Conduct;
10. Investment Adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client;
11. In case of change in control of Investment Adviser, prior SEBI approval shall be taken;
12. Investment Advisers shall furnish to SEBI information and reports as may be specified;
13. It shall be Investment Adviser's responsibility to ensure that its representatives and partners, as applicable, comply with the Certification and Qualification requirements at all times.

Risk Profiling:

Investment Adviser shall ensure that:

1. It obtains from the client, such information as is necessary for the purpose of giving investment advice,
2. It has a process for assessing the risk a client is willing and able to take,
3. Where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated,
4. Any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading,
5. Risk profile of the client is communicated to the client after risk assessment is done
6. Information provided by clients and their risk assessment is updated periodically

Sr. No.	Information to be obtained from clients for giving investment advice
1.	Age
2.	Investment Objectives – Time frame & purposes of the investment
3.	Income details
4.	Existing investments/assets
5.	Risk appetite/tolerance
6.	Liability/borrowing details

Sr. No.	Process for assessing the risk a client is willing and able to take, includes:
1.	Assessing a client's capacity for absorbing loss
2.	Identifying whether client is unwilling or unable to accept the risk of loss of capital
3.	Appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

Suitability:

Investment Adviser shall ensure that:

1. All investments on which investment advice is provided is appropriate to the risk profile of the client,
2. It has a documented process for selecting investments based on client's investment objectives and financial situation,
3. It understands the nature and risks of products or assets selected for clients,

4. It has a reasonable basis for believing that a recommendation or transaction entered into,
5. Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Disclosures to clients:

1. Investment Adviser shall disclose to a prospective client, all material information about itself including:
 - (i) Business,
 - (ii) Disciplinary history,
 - (iii) Terms and conditions on which it offers advisory services,
 - (iv) Affiliations with other intermediaries and
 - (v) Such other information as is necessary to take an informed decision.
2. Investment Adviser shall disclose to its client, any consideration by way of remuneration or compensation, received (directly or indirectly) for any distribution / execution services in respect of products / securities for which investment advice is provided;
3. Investment Adviser shall, before recommending services of stock broker / other intermediary to a client, disclose any consideration by way of remuneration / compensation, if any, received by Investment Adviser, if the client desires to avail the services of such intermediary,
4. Investment Adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice,
5. Investment Adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities,
6. Investment Adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of products / securities,
7. Investment Adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

Maintenance of Records by Investment Adviser:

Sr. No.	Maintenance of Records by Investment Adviser
1.	Know Your Client records of the client
2.	Risk profiling and risk assessment of the client
3.	Suitability assessment of the advice being provided
4.	Copies of agreements with clients, if any
5.	Investment advice provided, whether written or oral
6.	Rationale for arriving at investment advice, duly signed and dated

Maintenance of Register by Investment Adviser:

Sr. No.	Maintenance of Register / Records containing the following details:
1.	List of the clients
2.	Date of advice
3.	Nature of the advice
4.	Products/securities in which advice was rendered
5.	Fee, if any charged for such advice

All records & Registers shall be maintained either in physical or electronic form and preserved for a minimum 5 years.

Yearly Audit in respect of compliance with Investment Advisers Regulations:

Investment Adviser shall conduct yearly audit in respect of compliance with Investment Advisers Regulations from a member of ICAI or ICSI.

Appointment of Compliance Officer:

- ✓ Investment Adviser which is a Body Corporate or Partnership Firm shall appoint Compliance Officer;
- ✓ Compliance Officer shall be responsible for monitoring the compliance by Investment Adviser in respect of the requirements of SEBI Act, Regulations, Notifications, Guidelines, instructions issued by SEBI;
- ✓ Investment Adviser which is a sole proprietary shall not appoint Compliance Officer.

Redressal of client grievances:

- ✓ Investment Adviser shall redress client grievances promptly,
- ✓ Investment Adviser shall have adequate procedure for expeditious grievance redressal,
- ✓ Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of related Regulator,
- ✓ Any dispute between Investment Adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

Fee Structure for SEBI-registration:

Every applicant shall pay non-refundable application fees along with the application for grant of certificate of registration as under:

Sr. No.	Type of Business Organization	Fees (in Rs.)
1	For individuals and firms	5,000/-
2	For Body Corporate including LLPs	25,000/-

Every applicant shall pay registration fee at the time of grant or renewal of certificate by SEBI:

Sr. No.	Type of Business Organization	Fees (in Rs.)
1	For individuals and firms	10,000/-
2	For Body Corporate including LLPs	5,00,000/-

Code of Conduct for Investment Advisers

Sr. No.	Features	Particulars
1.	Honesty & fairness	Investment Adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.
2.	Diligence	Investment Adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.
3.	Capabilities	Investment Adviser shall have and employ effectively appropriate

		resources and procedures which are needed for the efficient performance of its business activities.
4.	Information about clients	Investment Adviser shall seek from its clients, information about their financial situation, investment experience & investment objectives relevant to the services to be provided and maintain confidentiality.
5.	Information to its clients	Investment Adviser shall make adequate disclosures of relevant material information while dealing with its clients.
6.	Fair & reasonable charges	Investment Adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. Investment Adviser shall ensure that fees charged to the clients are fair and reasonable.
7.	Conflicts of interest	Investment Adviser shall try to avoid conflicts of interest as far as possible and when they cannot be avoided, it shall ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.
8.	Compliance	Investment Adviser including its representative(s) shall comply with all regulatory requirements applicable to conduct of its business activities so as to promote the best interests of clients and integrity of market.
9.	Responsibility of senior management	Senior Management of a body corporate which is registered as Investment Adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

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