



advocates & solicitors

SEBI – ALTERNATE INVESTMENT FUNDS Technical Session for ICSI (THANE CHAPTER)

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Overview

- ✓ Introduction to AIFs
 - ✓ Concept
 - ✓ Benefits of Investing in an AIF
 - ✓ Regulatory Framework
- ✓ Types of AIFs
- ✓ Comparative Study (Angel Funds vs. Other Cat I Funds vs. Cat II Funds)
- ✓ Process of Fund Set-Up
- ✓ Key SEBI FAQs on AIF Regulations
- ✓ AIF in Gift City

Introduction to AIFs

- AIFs are privately pooled investment vehicles which collect funds from investors, whether Indian or foreign.
- An investment product aimed at sophisticated investor classes such as institutional investors and HNIs.
- Can be set up as a company, trust, LLP or a body corporate. Trust structure is most prevalent.
- Multiple Schemes under one AIF.
- Concept of Warehousing.
- Benefits of Investing in AIFs:
 - Diversification
 - Potential for Higher Returns
 - Access to Investment Expertise / Key Investment Team
 - Risk Mitigation
 - Liquidity Options
 - Portfolio Customization
 - Tax Efficiency

Introduction to AIFs

THE GAZETTE OF INDIA
EXTRAORDINARY
PART - III - SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, MAY 21, 2012
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 21st May, 2012

SECURITIES AND EXCHANGE BOARD OF INDIA
(ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012

LAD-NRO/GN/2012-13/04/11262. — In exercise of the powers conferred by sub-section (1) of Section 30 read with sub-section (1) of Section 11, clause (ba) and clause (c) of sub-section (2) of Section 11 and sub-section (1) and (1B) of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) the Securities and Exchange Board of India hereby, makes the following regulations, namely, —

Regulatory Framework:

- SEBI (Alternative Investment Funds) Regulations, 2012
- To note: different from the regulatory framework for other pooled investment products such as mutual funds and collective investment schemes

Types of AIFs

CAT I AIFs

- ❖ Invest in start-ups, early-stage ventures, SMEs, other areas considered socially or economically desirable by the government or regulators
- ❖ Includes venture capital funds, angel funds, special situation funds, infrastructure funds, and other funds which enjoy government incentives and concessions
- ❖ Positive spill-over effect on economy

CAT II AIFs

- ❖ Invest in unlisted companies
- ❖ These funds are those which do not fall under Cat I or Cat III AIFs
- ❖ Commonly includes private equity funds and debt funds

CAT III AIFs

- ❖ Employs diverse or complex trading strategies and may employ leverage through investment in listed or unlisted derivatives.
- ❖ Includes hedge funds and open-ended funds.

Comparative Study

Particulars	Angel Funds (Sub-category under Cat I Funds)	Other Cat I Funds	Cat II Funds
Investment Conditions	To invest in start-ups which: <ul style="list-style-type: none"> - are not promoted/ sponsored by/related to an “industrial group” whose group turnover exceed INR 300 crore - not companies with family connection with any of the angel investors investing in the company - “Angel Investor”: (a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who: (i) has early stage investment experience, or (ii) has experience as a serial entrepreneur, or (iii) is a senior management professional with at least ten years of experience; (b) a body corporate with a net worth of at least ten crore rupees; or (c) an AIF registered under these regulations or a VCF registered under the SEBI (Venture Capital Funds) Regulations, 1996. 	To invest in investee companies, venture capital undertakings, SPVs, LLPs. <ul style="list-style-type: none"> - VC funds ≥ 75% of investable funds in unlisted equity shares or equity linked instruments of a venture capital undertaking - SME funds ≥ 75% of investable funds in unlisted securities or partnership interest or companies which are SMEs or proposed to be listed on SME segment of an exchange 	To invest primarily in unlisted companies directly or through units of Cat I AIF or other Cat II AIFs
Minimum Corpus	INR 5 crore	INR 20 crore	INR 20 crore
Continuing Interest by Sponsor/ Manager	2.5% of fund corpus or INR 50 lakhs, whichever is lesser. Such interest shall not be through waiver of management fees.	2.5% of fund corpus or INR 5 crores, whichever is lesser. Such interest shall not be through waiver of management fees.	2.5% of fund corpus or INR 5 crores, whichever is lesser. Such interest shall not be through waiver of management fees.
Minimum Ticket Size	INR 25 lakhs	INR 1 crore	INR 1 crore
Tenure	Minimum tenure – 3 years Maximum tenure - 5 years	Tenure as per scheme subject to minimum tenure of 3 years. Extension of tenure up to 2 years subject to approval of 2/3 investors	Tenure as per scheme subject to minimum tenure of 3 years. Extension of tenure up to 2 years subject to approval of 2/3 investors
Listing of Units of AIF	Cannot be listed on stock exchange	May be listed on stock exchange	May be listed on stock exchange

Process of Fund Set-up

AIF Establishment

- a) Trusts – execute and register trust deed under Registration Act
- b) Companies – duly incorporate under Companies Act
- c) LLP – to be duly incorporated and LLP Agreement to be filed under the LLP Act
- d) Other body corporate – to be set up under laws of the relevant legislation

Submit application in Form A to SEBI for AIF registration

- May be done through SEBI Intermediary (SI) Portal
- Draft PPM to also be submitted through a merchant banker

Fund Closing and Deployments

Preparation of Other Fund Documents

- (a) Draft PPM (private placement memorandum) – the offer document for fund-raising
- (b) IMA (investment management agreement) to be executed by the trustee and investment manager
- (c) Draft contribution agreement to be entered by each individual investor with the trustee and investment manager

Fund-raising from Investors

- (a) After incorporating any SEBI comments on PPM, issue final PPM to investors
- (b) Execute contribution agreement with individual investors

Key SEBI FAQs on AIF Regulations

❖ **Is an AIF permitted to make an invitation to the public to subscribe to its securities?**

No. AIFs are privately pooled investment vehicles. AIFs shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called. As an eligibility criterion for registration as an AIF, the applicant is required to be prohibited by its memorandum and articles of association/ trust deed/ partnership deed from making an invitation or solicitation to the public to subscribe to its securities. [Ref. Regulation 4(b)].

❖ **Can an AIF change its category pursuant to registration?**

Yes. As per Circular No. CIR/IMD/DF/12/2013 dated 07th August, 2013, only AIFs who have not made any investments under the category in which they were registered earlier shall be allowed to make application for change in category. Such AIFs are required to make an application in Form A along with necessary supporting documents. Application fees of Rs. 1,00,000/- must be paid along with the application to SEBI. AIFs are not required to pay registration fees for such applications. If the AIF has received commitments/ raised funds prior to application for change in category, the AIF shall be required to send letters/emails to all its investors providing them the option to withdraw their commitments/ funds raised without any penalties/charges. Any fees collected from investors seeking to withdraw commitments/ funds shall be returned to them. Partial withdrawal may be allowed subject to compliance with the minimum investment amount required under the AIF Regulations. The AIF shall not make any investments till deployment of fund as per the scheme other than in liquid funds/ banks deposits until approval for change in category is granted by SEBI. On approval of the request from SEBI, the AIF is required to send a copy of the revised placement memorandum and other relevant information to all its investors. [Ref. Circular No. CIR/IMD/DF/12/2013 dated 07th August, 2013]

❖ **What is the procedure to be followed by an AIF proposing to make changes in its placement memorandum?**

At the time of submission of final placement memorandum to SEBI, any changes which have been made vis-à-vis the draft placement memorandum submitted to SEBI at the time of application shall be listed clearly in the covering letter. Further, the changes shall also be highlighted in the copy of the final placement memorandum. All AIFs shall intimate changes made in the placement memorandum to all unit holders (including investors who have provided commitment to the AIF) and SEBI once every six months on a consolidated basis. Such changes shall include, but not be limited to the following: a. Change in sponsor/manager (not including an internal restructuring within the group) b. Change in control of sponsor/manager c. Change in fee structure or hurdle rate which may result in higher fees being charged to the unit holders However, in cases of material changes significantly influencing the decision of the investor to continue to be invested in the AIF, the process mentioned in circular no. CIR/IMD/DF/14/2014 dated June 19, 2014 shall be complied with. The trustee of AIF (in case AIF is a trust)/ sponsor (in case of any other AIF) shall be responsible for overseeing the process, ensuring compliance and regularly updating SEBI on the developments. [Ref. circular no. CIR/IMD/DF/14/2014 dated June 19, 2014]

Key SEBI FAQs on AIF Regulations

❖ Whether an AIF can accept investments from joint investors?

An AIF may accept the following as joint investors for the purpose of investment of not less than one crore rupees: an investor and his/her spouse; an investor and his/her parent; an investor and his/her daughter/son

With respect to the above investors, not more than 2 persons shall act as joint-investors in an AIF. In case of any other investors acting as joint investors, for every investor, the minimum investment amount of one crore rupees shall apply. Joint investors shall mean where each of the investor contributes towards the AIF. [Ref. circular no. CIR/IMD/DF/14/2014 dated June 19, 2014]

❖ Fees payable for Application and Registration?

- Application fees of INR 1.00 Lakh
- Cat-I AIF fees: INR 5.00 Lakhs
- Cat-II AIF fees: INR 10.00 Lakhs
- Cat-III AIF fees: INR 15.00 Lakhs
- Angel Funds fees: INR 2.00 Lakhs

❖ How can the investors redress their complaints against AIFs?

SEBI has a web based centralized grievance redress system called SEBI Complaint Redress System (SCORES) at <http://scores.gov.in> where investors can lodge their complaints against AIFs. Further, in terms of the AIF Regulations, for dispute resolution, the AIF by itself or through the Manager or Sponsor, is required to lay down procedure for resolution of disputes between the investors, AIF, Manager or Sponsor through arbitration or any such mechanism as mutually decided between the investors and the AIF.

AIF in GIFT City – Key Benefits

- ❖ IFSC Authority as single window.
- ❖ Tax holiday on business income – 10 consecutive years out of 15 years.
- ❖ GST levy exemption for entities in Gift City.
- ❖ Fund managers can avail these benefits on their income. Therefore, possible to offer reduced management fee.
- ❖ Section 115UB of IT Act extended to Cat-I and II funds for pass-through status.
- ❖ Foreign / NR contributors – No PAN requirement or IT filing requirements.
- ❖ Gift City AIFs are considered NR for FEMA and therefore they may freely invest in overseas companies.
- ❖ Ability to undertake leverage without restrictions subject to disclosures.
- ❖ No threshold restrictions on investments in single portfolios or for overseas investments.

Thank You!



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