

FREQUENTLY ASKED QUESTIONS (FAQs)

SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012

Disclaimer: These FAQs are prepared with a view to guide market participants on SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"). For full particulars of laws governing the Alternative Investment Funds (AIFs), please refer to the Acts/Regulations/Guidelines/Circulars etc. appearing under the Legal Framework Section of SEBI website i.e. www.sebi.gov.in. Any queries about the AIF Regulations can be addressed to the Investment Management Department, Division of Funds I , SEBI.

1. What is an Alternate Investment Fund ("AIF")?

Alternative Investment Fund or AIF means any fund established or incorporated in India which is a privately pooled investment vehicle which collects funds from sophisticated investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors.

AIF does not include funds covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities. Further, certain exemptions from registration are provided under the AIF Regulations to family trusts set up for the benefit of 'relatives' as defined under Companies Act, 1956, employee welfare trusts or gratuity trusts set up for the benefit of employees, 'holding companies' within the meaning of Section 4 of the Companies Act, 1956 etc. [Ref. Regulation 2(1)(b)]

2. In what categories can an applicant seek registration as an AIF?

Applicants can seek registration as an AIF in one of the following categories, and in sub-categories thereof, as may be applicable: [Ref. Regulation 3(4)]

- Category I AIF:
 - Venture capital funds (Including Angel Funds)
 - SME Funds
 - Social Venture Funds
 - Infrastructure funds
- Category II AIF
- Category III AIF

3. What are Category I AIFs?

AIFs which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include

venture capital funds, SME Funds, social venture funds, infrastructure funds and such other Alternative Investment Funds as may be specified. [Ref. Regulation 3(4)(a)]

4. What are Category II AIFs?

AIFs which do not fall in Category I and III and which do not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in the SEBI (Alternative Investment Funds) Regulations, 2012. [Ref. Regulation 3(4)(b)]

Various types of funds such as real estate funds, private equity funds (PE funds), funds for distressed assets, etc. are registered as Category II AIFs.

5. What are Category III AIFs?

AIFs which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. [Ref. Regulation 3(4)(c)]

Various types of funds such as hedge funds, PIPE Funds, etc. are registered as Category III AIFs.

6. What is 'Angel Fund'?

"Angel fund" is a sub-category of Venture Capital Fund under Category I-Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of Chapter III-A of AIF Regulations.

In case of an angel fund, it shall only raise funds by way of issue of units to angel investors. "Angel investor" means any person who proposes to invest in an angel fund and satisfies one of the following conditions, namely,

(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;

('Early stage investment experience' shall mean prior experience in investing in start-up or emerging or early-stage ventures and 'serial entrepreneur' shall mean a person who has promoted or co-promoted more than one start-up venture.)

(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.

Angel funds shall accept, up to a maximum period of 3 years, an investment of not less than `25 lakh from an angel investor.

7. What is 'debt fund'?

Debt fund is an Alternative Investment Fund (AIF) which invests primarily in debt or debt securities of listed or unlisted investee companies according to the stated objectives of the Fund. [Ref. Regulation 2(1)(i)]. These funds are registered under Category II.

In this regard, it is clarified that, since Alternative Investment Fund is a privately pooled investment vehicle, the amount contributed by the investors shall not be utilised for purpose of giving loans.

8. What is Fund of Funds?

Fund of Funds, in general parlance as gathered from publicly available sources is an investment strategy of holding a portfolio of other investment funds rather than investing directly in stocks, bonds or other securities. In the context of AIFs, a Fund of Fund is an AIF which invest in another AIF.

9. In which legal forms can an AIF be set up?

An AIF under the SEBI (Alternative Investment Funds) Regulations, 2012 can be established or incorporated in the form of a trust or a company or a limited liability partnership or a body corporate. Most of the AIFs registered with SEBI are in trust form. [Ref. Regulation 2(1)(b)]

10. What is the corpus of the AIF?

“Corpus” is the total amount of funds committed by investors to the AIF by way of a written contract or any such document as on a particular date. [Ref. Regulation 2(1)(h)]

11. What is the limit specified under AIF regulations for number of investors?

No scheme of an AIF (*other than angel fund*) shall have more than 1000 investors. (*Please note that the provisions of the Companies Act, 1956 shall apply to the AIF if it is formed as a company*). In case of an angel fund, no scheme shall have more than forty-nine angel investors.

However, an AIF cannot make invitation to the public at large to subscribe its units and can raise funds from the sophisticated investors only through private placement.

12. Who is the Sponsor of the AIF?

“Sponsor” is any person(s) who set up the AIF and includes promoter in case of a company and designated partner in case of a limited liability partnership. [Ref. Regulation 2(1)(w)]

13. Can an AIF launch schemes?

Yes. An AIF may launch schemes subject to filing of placement memorandum with SEBI.

Further, it may be noted that prior to launch of scheme, an AIF is required to pay Rs. 1 lakh as scheme fees to SEBI while filing the placement memorandum. Such fee shall be paid at least 30 days prior to launch of scheme. However, payment of scheme fees shall not apply in case of launch of first scheme by the AIF (*other than angel fund*) and to angel funds.

14. What is the validity of the certificate of registration of an AIF?

The certificate of registration of an AIF shall be valid till the AIF is wound up. [Ref. Regulation 3(7)]

15. Can Venture Capital Funds registered under the repealed SEBI (Venture Capital Funds) Regulations, 1996 seek re-registration under SEBI (AIF) Regulations?

Venture Capital Funds (VCFs) registered under the repealed SEBI (Venture Capital Funds) Regulations, 1996 ("VCF Regulations") may seek re-registration under SEBI (Alternative Investment Funds) Regulations, 2012 subject to approval of two-third of their investors by value of their investment.

As against other applications for registration as Category I- VCFs who have to pay Rs. 5 lakhs as registration fees, VCFs registered under the VCF Regulations are required to pay Rs. 1,00,000 only as re-registration fees.

16. What will be the status of the Venture Capital Funds registered under SEBI (Venture Capital Funds) Regulations, 1996 after notification of AIF Regulations?

Venture Capital Funds registered under SEBI (Venture Capital Funds) Regulations, 1996 shall continue to be regulated by the said regulations till the existing fund or scheme managed by the fund is wound up and such funds shall not launch any new scheme after notification of the AIF Regulations. Further, the existing fund or scheme shall not increase the targeted corpus of the fund or scheme after notification of AIF Regulations. However, VCFs may seek re-registration under these regulations subject to approval of two-thirds of their investors by value of their investment. [Ref. Regulation 3(2)]

17. 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)]

18. 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]

19. Can an AIF launch a fund/scheme of any size?

No. Each scheme of the Alternative Investment Fund (*other than angel fund*) shall have corpus of atleast twenty crore rupees. In case of an angel fund, it shall have a corpus of at least ten crore rupees.

20. Can an AIF raise any amount of funds from any investor?

An AIF may raise funds from any sophisticated investor whether Indian, foreign or non-resident Indians, who *inter alia* undertake risk of investing in primarily unlisted or illiquid securities. However, AIF (*other than angel fund*) shall not accept from an investor, an investment of value less than one crore rupees. In case of investors who are employees or directors of the AIF or employees or directors of the Manager, the minimum value of investment shall be twenty five lakh rupees. [Ref. Regulation 10 (c)]

21. Is the sponsor/management mandated to have an interest in AIF?

In order to ensure that the interest of the Manager/Sponsor is aligned with the interest of the investors in the AIF, the AIF Regulations require that the sponsor/manager shall have a certain continuing interest in the AIF which shall not be through the waiver of management fees.

For Category I and II AIFs, such interest must be not less than two and half percent of the corpus or five crore rupees, whichever is lesser and for Category III AIFs, the interest must be not less than five percent of the corpus or ten crore rupees, whichever is lesser. For angel funds, such interest shall be not less than two and half percent of the corpus or fifty lakh rupees, whichever is lesser. *[Ref. Regulation 10 (d)]*

22. Can an AIF opt to be close-ended or open-ended, as it desires?

No. Category I and II AIFs are required to be close ended have a minimum tenure of three years. Category III AIFs may be open ended or close ended. *[Ref. Regulation 13(1) and 13 (3)]*

23. What are the investment conditions for AIFs?

The AIF Regulations provide for certain general investment conditions applicable to all AIFs as well as specific investment conditions applicable to the specific category/sub-category thereof. For the investment conditions, one may refer to Chapter III and III- A of the AIF Regulations.

24. What are the reporting requirements to SEBI for AIFs registered with SEBI?

As per circular No.CIR/IMD/DF/10/2013 dated 29th July, 2013, Category I and II AIFs and the Category III AIFs which do not undertake leverage are required to submit report to SEBI on a quarterly basis while Category III AIFs which undertake leverage are required to submit the reports on a monthly basis. The formats for such reports are provided as a part of the said circular. All AIFs shall submit the report irrespective of whether or not the AIF has started activity.

Currently, all AIFs shall send reports to SEBI by email to aifreporting@sebi.gov.in. No physical reports are required to be filed with SEBI. The reports are required to be submitted within 7 calendar days from the end of quarter/ end of month as the case maybe. *[Ref. circular No.CIR/IMD/DF/10/2013 dated 29th July, 2013]*

25. Is there a limit on the amount of leverage that can be undertaken by a Category III AIF?

Yes. As per circular No.CIR/IMD/DF/10/2013 dated 29th July, 2013, the leverage of a Category III AIF shall not exceed 2 times the NAV of the fund. [Ref. circular No.CIR/IMD/DF/10/2013 dated 29th July, 2013]

26. Where can an investor look out for information on AIF?

SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued thereunder are available on website of SEBI at:

<http://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListDept=yes&deptId=25>

The list of registered AIFs is also available on the SEBI website.

27. What kind of reports can an investor expect from an AIF?

Chapter IV of the AIF Regulations provides for general obligations, responsibilities and transparency requirements that are required to be complied by all AIFs. Chapter IV provides for specific disclosure obligations on the AIF to the investors including conflict of interest, information on fund investments, fees, various risks, valuation, etc.

Further, AIFs, in addition to what is required under the AIF Regulations, may also provide for additional disclosures to investors in the placement memorandum.

28. What is the information to be disclosed in placement memorandum in respect of fee and charges?

Every AIF shall, in its placement memorandum, add by way of an annexure, a detailed tabular example of how the fees and charges shall be applicable to the investor including the distribution waterfall. [Ref. circular no. CIR/IMD/DF/14/2014 dated June 19, 2014]

29. What is the information to be disclosed in placement memorandum in respect of information about litigations/cases?

All AIFs shall include in their placement memorandum, disciplinary history of:

(1) AIF, sponsor, manager and their Directors/partners/promoters and associates

(2) If applicant is a trust, Trustees or trustee company and its directors

Such disciplinary history shall, inter alia, include:

(1) Details of outstanding/pending and past cases (where the person has been found guilty) of litigations, criminal or civil prosecution, disputes, non-payment of statutory dues, overdues to/defaults against banks or financial institutions, contingent liabilities not provided for, proceedings initiated for economic offences or civil offences, adverse findings with respect to compliance with securities laws, penalties levied, disputed tax liabilities, etc.

(2) any disciplinary action taken by SEBI or any other regulatory authority.

In case of operational actions such as administrative warnings/deficiency letters, the same may be grouped together and summarized. However, if the investor seeks details of the summarized portion, the same shall be provided by the AIF to the investor.

Any further litigations/cases, etc. as may arise in the course of the activities of the AIF shall be appropriately incorporated in the placement memorandum and intimated to the investors. *[Ref. circular no. CIR/IMD/DF/14/2014 dated June 19, 2014]*

Vide circular no. CIR/IMD/DF/16/2014 dated July 18, 2014, it is further clarified that, with respect to disclosure of disciplinary history, the same shall be applicable for the last 5 years and where monetary penalty is involved, in cases where such penalty is greater than Rs. 5 lakhs. With respect to disputed tax liabilities, the same shall not apply to liabilities in personal capacity of an individual. Contingent liabilities shall be as disclosed in books of accounts of the entity. *[Ref. circular no. CIR/IMD/DF/16/2014 dated July 18, 2014]*

30. 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]*

31. 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:

- i. an investor and his/her spouse
- ii. an investor and his/her parent
- iii. 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]*

32. What are the requirements with respect to Compliance Test Report (CTR)?

At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the specified format.

In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.

In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.

In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible. *[Ref. circular no. CIR/IMD/DF/14/2014 dated June 19, 2014]*

33. How the tenure of any scheme of AIF be calculated?

The tenure of any scheme of the AIF shall be calculated from the date of final closing of the scheme. *[Ref. circular no. CIR/IMD/DF/7/2015 dated October 1, 2015]*

34. What is the maximum limit prescribed for Overseas Investment by Alternative Investment Funds?

Overseas investments by AIFs investments shall not exceed 25% of the investible funds of the scheme of the AIF subject to overall limit of USD 500 million (combined limit for AIFs and Venture Capital Funds registered under the SEBI (Venture Capital Funds) Regulations, 1996). [Ref. RBI Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007, SEBI circular no. CIR/IMD/DF/7/2015 dated October 1, 2015]

35. What is the time limit available for AIFs to make overseas investments?

The AIF shall have a time limit of 6 months from the date of approval from SEBI for making allocated investments in offshore venture capital undertakings. In case the applicant does not utilize the limits allocated within the stipulated period, SEBI may allocate such unutilized limit to other applicants. [Ref. SEBI circular no. CIR/IMD/DF/7/2015 dated October 1, 2015]

36. What is the procedure of obtaining registration as an AIF from SEBI?

The applicant shall make an application in Form A as provided in the SEBI (Alternative Investment Funds) Regulations, 2012 along with necessary supporting documents. Application fees of Rs. 1,00,000/- must be paid along with the application to SEBI. On receipt of approval from SEBI, Registration/re registration fee /scheme fee as applicable, may be paid. [Ref. Regulation 3(5) read with SEBI (Payment of Fees) (Amendment) Regulations, 2014]

The application in Form A shall be submitted to the below mentioned address:

Investment Management Department
Division of Funds- 1
Securities and Exchange Board of India
SEBI Bhavan, 3rd Floor A Wing,
Plot No. C4-A, 'G' Block,
Bandra-Kurla Complex,
Bandra (E), Mumbai - 400 051.

37. What is the registration fee to be paid by an AIF?

Registration fee to be paid by an AIF is as under:

Category I Alternative Investment Funds	Rs. 5,00,000
Category II Alternative Investment Funds	Rs. 10,00,000
Category III Alternative Investment Funds	Rs. 15,00,000
Angel Funds	Rs. 2,00,000

[Ref. SEBI (Payment of Fees) (Amendment) Regulations, 2014]

38. What is the procedure for winding up?

In terms of Regulation 11(2), information memorandum or placement memorandum issued by an AIF shall inter alia include information on manner of winding up of the Alternative Investment Fund or the scheme.

In terms of Regulation 29 of AIF Regulations, an Alternative Investment Fund shall be wound up:

- i. when the tenure of the Alternative Investment Fund or all schemes launched by the Alternative Investment Fund, as mentioned in the placement memorandum is over; or
- ii. if seventy five percent of the investors by value of their investment in the Alternative Investment Fund pass a resolution at a meeting of unitholders that the Alternative Investment Fund be wound up; or
- iii. In case of a trust, if it is the opinion of the trustees or the trustee company, as the case may be, that the Alternative Investment Fund be wound up in the interests of investors in the units; or
- iv. if the Board so directs in the interests of investors.

The trustees or trustee company or the Board of Directors or designated partners of the Alternative Investment Fund, as the case maybe, shall intimate the Board and investors of the circumstances leading to the winding up of the Alternative Investment Fund. On and from the date of such intimation, no further investments shall be made on behalf of the Alternative Investment Fund so wound up.

The assets shall be liquidated, and the proceeds accruing to investors in the Alternative Investment Fund shall be distributed to them after satisfying all liabilities, within one year from the date of aforesaid intimation. *[Ref. Regulation 11(2) and 29]*

39. 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.