

SEBI (AIF Second Amendment) Regulations, 2021

May 30, 2021

SEBI has amended the SEBI (Alternative Investment Funds) Regulations, 2012 vide Gazette notification dated May 5, 2021.

The SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021 essentially has the following broad modifications:

- a) Insertion of a definition of “Start-up” thereby enabling investment in start-ups by Angel Funds
- b) Widening the definition of Venture Capital Undertaking by removing the negative list for AIFs with a domestic Sponsor
- c) Providing a framework for AIFs to invest in Investee Companies and in units of other AIFs and
- d) Prescribing a “Code of Conduct” for various key personnel of AIFs.

Reg Ref	Amendment	Reason for amendment / Action points
2(1)(wa)	Inserted definition of start up	Start-up definition has now been included in the regulations as per definition of Start-up by DPIIT
2(1)(aa)	Substituted the definition of Venture Capital undertaking to remove restriction on investment in certain avenues	<p>Vide this amendment, Venture Capital Undertakings are now permitted to invest in the following sectors which were previously not open to AIFs for investment</p> <ol style="list-style-type: none"> a) NBFCs b) Gold Financing c) Activities not permitted for FDI under Industrial policy of the Govt. of India <p>However, it is to be noted that AIFs whose sponsor is a Non-Resident cannot invest in activities not permitted for FDI</p>
11(2)	Inserted a provision to include Terms of Reference of IC to be part of the Private Placement memorandum	AMC Board to ensure that Private placement memorandum is amended to include the Terms of reference of the Investment committee which is constituted for approving the decisions of the AIF in addition to the previous requirements. This would enable the investor to take an informed decision.
15(1)©	Substituted to include investment by CAT I, and II AIF in other AIFs	<p>Vide this amendment, CAT I, II and III AIFs and authorised Funds of Funds AIFs can invest in other AIFs and must ensure that they do not invest more than 25% or 10% (as the case may be) of their investible funds in an investee company indirectly through their investments in units of other AIFs. This is an ongoing compliance to be ensured by the AMC Board / Investment Committee.</p> <p>This in turn enables Managers of AIFs to create well diversified portfolios that meet their desired risk-return profile.</p>
15(1)(d)	Substituted to include investment by CAT III AIF in other AIFs	

15(1)(d)(a)	Inserted to the effect that AIFs which are authorised under the fund documents to invest in units of AIFs shall not offer their units for Subscription to other AIFs	Restriction has been imposed to the effect that an Investee AIF cannot invest in another AIF. This means that only two layers of investment in AIF is permitted.
15(1)(e)	Substituted to seek where approval from Investor holding 75% of the value of the fund not only for investment in Associates but also for investment by AIF in units of AIFs managed or sponsored by its Manager, Sponsor or associates of its Manager or Sponsor	A list of such Associate companies / Associate AIFs needs to be drawn and approved by the Board and IC in such a manner that whenever such Related party investment (RPT) happens 75% of the investors should approve the RPT.
16(1) (a)	Substituted to include investment by CAT I AIF in units of other AIFs	<p>Earlier CAT I AIF could invest in units of AIF as specified in the Regulations whereas now CAT I AIF can invest only in CAT I AIF of same sub category.</p> <p>Therefore existing AIFs may invest simultaneously in securities of investee companies and in units of other AIFs, subject to appropriate disclosures in the PPM and consent of at least two-thirds of unit holders by value of their investment in the AIF in terms of Regulation 9(2) of the AIF Regulations.</p> <p>The PPMs of the AIFs which propose to invest in units of other AIFs shall provide details of the proposed allocation of investments to units of other AIFs, fees and expenses associated with investment in units of other Funds and the process to be followed by the Manager to ensure compliance with investment conditions. The PPM shall also explicitly state whether any investments are proposed to be made in units of other AIFs managed/ sponsored by the same Manager/ Sponsor or associates of the Manager/ Sponsor.</p>
16(1) (b)	Omitted	AIFs may invest in units of other AIFs without labeling themselves as a Fund of AIFs.
17 (a)	Substituted to include investment by CAT II AIF in the units of CAT I or CAT II AIFs	Earlier CAT II AIF shall invest in any AIF as specified in the PPM however they can now invest only in CAT I or CAT II AIF as specified in the PPM.
17 (b)	Omitted	AIFs may invest in units of other AIFs without labeling themselves as a Fund of AIFs.
18 (a)	Substituted to allow Category III AIFs to invest in the units of other AIFs	Earlier Category III AIFs could not invest in Units of AIF whereas now they can invest in units of other AIFs. Category III AIFs investing in units of other AIFs may undertake leverage up to two times the value of portfolio excluding value of investment in units of AIFs.

18 (b)	Omitted	AIFs may invest in units of other AIFs without labeling themselves as a Fund of AIFs.
19F (1)	Substituted the words “venture capital undertakings” with “startups” owing to the definition of startup having been inserted.	Therefore Angel funds can now invest in Start up companies which was not allowed earlier. This is because Start-ups were not defined in the earlier regulations. Through this inclusion Angel funds can now invest in entities, (i.e.,) Private Ltd, LLPs, Partnership firms etc
19F (1)(a), 19F (1)(b),	Omitted owing to insertion of startups definition	
20 (1) to 20 (6)	Substituted to include Code of Conduct related provisions	<p>The substitution is made to enhance accountability and provide clarity in scope and form of responsibilities of the Manager / Investment Committee. Action points arising out of the amendment are:</p> <ul style="list-style-type: none"> a) Manager to designate a person who shall ensure compliance with the Code of Conduct b) Manager to create detailed and procedures internally as per the provisions of applicable laws and PPM c) AMC Board to ensure that procedures to be approved jointly by the Manager AND the trustee OR trustee company OR Board of Directors OR designated partners of AIF <p>Ongoing compliances are as under:</p> <ul style="list-style-type: none"> A) AIF, KMP of AIF, trustee, trustee company, directors of the trustee company, designated partners or directors of the AIF and Investment Committee members to abide by the Code of Conduct B) Review the procedures on a regular basis or as a result of business developments C) The Manager AND either the trustee or trustee company or the Board of Directors or the designated partners of the AIF shall ensure compliance by the AIF D) In case the IC of an AIF contains external members who are unknown to the investors, such appointment must be made only with the permission of investors holding 75% of value of investment in the said AIF E) The Manager shall be responsible for every decision of the AIF is in compliance with the policies and procedures laid down for the AIF and other internal policies of the AIF, as applicable F) Investment Committee constitution shall be subject to such conditions as specified by the AMC Board from time to time.

20 (7)	Substituted to ease out the erstwhile regulation regarding appointment of IC members	<p>The members of the Investment Committee shall be responsible for ensuring that the decisions of the Investment Committee are in compliance with the policies and procedures laid down.</p> <p>However, this shall not apply to an AIF in which each investor other than the Manager, Sponsor, employees or directors of the AIF or employees or directors of the Manager, has committed to invest not less than seventy crore rupees (or an equivalent amount in currency other than Indian rupees) and has furnished a waiver to the AIF in respect of compliance</p>
20(8) to 20(14)	Substitution only for better presentation and readability	These regulations were already forming part of earlier regulations. Consequent to the changes, the sequencing and related aspects alone has been substituted. No modification in the law.
Schedule IV	<p>Inserted the following:</p> <p>(1) Code of Conduct for AIFs (2) Code of Conduct for the Managers of AIFs and KMP of Managers and AIFs (3) Code of Conduct for members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the AIF</p>	<p>The earlier regulations did not contain a Code of Conduct for the various related parties of the AIF</p> <p>The introduction of such Code of Conduct ensures Allocation of responsibility, Clear duties are mentioned that are to be followed by each of the party. AMC Board to ensure that all these Codes are drafted and placed before the Board for approval and adherence on an ongoing basis.</p> <p>AMC Board to also ensure that Audit of AIF to include the following scope in addition to audit of books of accounts</p> <ol style="list-style-type: none"> a) policies and procedures created under regulation 20(3), b) the waiver received from investor under 20(8), c) Placement memorandum with the new information, d) the Risk management policy created, by the AIF under the new code of conduct, e) details of conflict of interest if any have arisen at various stages, f) controls in place to ensure confidentiality of information, g) controls in place for Prevention of Money Laundering Act (PMLA), h) the system adopted for dissemination of information and addressing investor complaints

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