INDIA'S MARKET POTENTIAL UNLOCKED: AN ANALYSIS OF THE SEBI ALTERNATIVE INVESTMENT FUND REGULATION 2012

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Abstract

The last decade in India has witnessed a tumultuous growth in a number of sectors ranging from infrastructure to information technology. This overall growth has led to the expansion of the Indian economy as a whole and has as such put the country in the global spotlight. India. What has made India one of the most attractive markets to invest in is not just the growth of the market but also the emergence of number of succesful start ups that have taken the world by storm. Companies such as Zomato which is all of eight years old is now competing at a global scale with publicly traded giants such as yelp.

The growth of both the capital market as well the venture capital market has brought the need for more favourable policies for investments in India which incentivises the set up of more Indian PE and VC funds. The maturity of the market coupled with the needs of investors has also brought about the need for investment vehicles that engage in more complex and rewarding investments such as hedge funds, a concept which has been almost absent in the India. This article provides an in depth analysis of the SEBI (Alternative Investment Fund Regulations) 2012 which highlights the welcome changes in investment reform. This regulation is exceedingly important given that it provide the legal framework for the establishment and functioning of PE and VC funds.

Keywords: Venture Capital, Private Equity, Investment, India, SEBI, AIF

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Introduction

In the last 10 years India has seen over $80 billion being invested through private equity and venture capital into Indian Companies.[2] The AIF market in India is one that is constantly growing and one that has enormous potential. Statistics show that Indian investors too are warming up towards AIF investments to a great extent. During 2014 AIF managers raised capital commitments worth Rs.20,457,45 crore from wealthy Indian investors, a massive increase from the Rs.11,186,36 crore in 2013, of this money that was committed by investors, a total of Rs.7,790.52 crore till was raised up from the Rs.2, 883.49 crore raised in the previous year.[3] Responding to an untapped market of over 123 AIF funds was set up in 2014 less than two and a half years.[4]

Methodology

The method of study is doctrinal. The paper has referred to statutory regulations as well as articles from various business magazines.

Legal Structure of an AIF

An AIF may be operated in multiple forms. The applicant may be registered as a:

1. company under the Companies Act, 1956[5]
2. Trust under the Indian Trusts Act, 1882, with the instrument of trust in the form of a deed registered under the provisions of the Indian Registration Act, 1908[6]
3. Limited liability partnership incorporated under the Limited liability partnership Act, 2008[7]
4. Body corporate established under the laws of the Central or state government permitted to carry on the activities of a AIF[8]

To ensure certain standards are set in place for the management and utilisation of the public's funds SEBI have set certain mandatory criteria which the applicant, sponsor and manager have to fulfil to be eligible to apply for a grant of certificate. The AIF regulations require the applicant, sponsor and manager of the AIF to be a fit and proper person. The criteria of being fit and proper person are as follows;

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[2] Reghu Balakrishnan, *Foreign investment in AIF, tax 'pass-through' to boost PE funds*, Business- Standard (April 11th 2015 13:40 pm), http://www.business-standard.com/budget/article/foreign-investment-in-aif-tax-pass-through-to-boost-pe-funds-115022800689_1.html

[3] Anirudh Laskar, *Alternative investment funds industry doubles in size in a year*, www.livemint.com (April 11th 2015 13:56 pm), http://www.livemint.com/Money/HgfK6EKjtx2XDUgktRUVVP/Alternative-investment-funds-industry-doubles-in-size-in-a-y.html

[4] SEBI permits 123 alternative investment funds to operate in India, The Hindu (April 11th 2015) http://www.thehindubusinessline.com/markets/sebi-permits-123-alternative-investment-funds-to-operate-in-india/article6651625.ece

[5] Regulation 4 (a), SEBI(Alternative Investment Funds)Regulations, 2012

[6] Regulation 4 (c), SEBI(Alternative Investment Funds)Regulations, 2012

[7] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (d)

[8] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (e)

1. Integrity, reputation and character[9]
2. Absence of convictions and restraint orders[10]
3. Competence including financial solvency and net worth.[11]

The AIF regulations mandate that the manager and the key investment team of the AIF fund has adequate experience.[12] It must be pointed out that the regulations are ambiguous as to what adequate experience refers to and his hence open to interpretation. The regulations mandate that at least one key personal must have a prior experience of at least five years in either advising or managing a pools of capital funds or in being a portfolio manager in the business of transacting securities or other financial assets.[13] While considering the grant of a certificate to the applicant SEBI (the Board) also considers the availability of resources which includes manpower[14] and infrastructure as well as the applicant's investment strategy, target investors, proposed corpus and tenure of the scheme.[15] If the Board is satisfied that all the conditions have been fulfilled the applicant will be issued a certificate of registration after payment of a registration fee.[16] The regulations also allow for the Board to grant the in principle to the applicant with the exception of that a trust and a limited liability partnership.[17] An AIF that has received in principle approval from the Board may only accept commitments from investors but is prohibited from accepting monies until it is registered.[18]

The certificate will be revoked in the event the AIF does not comply with the provisions of the Securities and Exchange Board of India Act, 1992 and the regulations,[19] and if the AIF carries on any activities other than those permitted in the regulations.[20]

Investment & Capital Parameters

An AIF refers to any fund established or incorporated within the territory of India. It may be any investment vehicle which pools investments by selling units to investors either from India or countries other than India.[21] An AIF does not include any fund covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999.[22]With regard to capital structure, no scheme of an AIF shall have a corpus of less than twenty five crore rupees[23] and

[9] SEBI (Intermediaries) Regulations, 2008, Schedule II (a)
[10] SEBI (Intermediaries) Regulations, 2008, Schedule II (b),
[11] SEBI (Intermediaries) Regulations, 2008, Schedule II (c),
[12] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (e),
[13] ibid
[14] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (h),
[15] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (i),
[16]SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 4 (2),
[17] SEBI(Alternative Investment Funds) (Amendment) Regulations, 2013, Regulation 6 (4),
[18] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 6 (5),
[19] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 7 (1) (a),
[20] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 7 (1) (b),
[21] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 10 (a),
[22] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 2 (b)(ii),
[23] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 10 (b),

shall not accept an investment of less than one crore from each individual investor. However in an effort to provide flexibility and incentive to work in an AIF, the minimum investment value for an employee or director is only twenty five lakh rupees. [24] No scheme of the AIF can have more than one thousand investors.[25] Units of AIFs cannot be listed on a stock exchange unless they are close ended[26] and only after the final closing of the scheme.[27] With regard to what AIFs may invest into, regulation 15 of AIF Regulations, 2012 allow for AIFs to invest into securities of companies incorporated either in India or outside India subject to RBI guidelines.[28] Realising that there are a number of Indian entrepreneurs who have set up offices overseas but have back end operation offices in India, SEBI has allowed investments of up to 25% of investible funds into offshore venture capital undertakings which have an Indian connection, an increase of 15% from the 10%. This move will not only improve prospects for funds to make higher returns but will also bring in of non-debt creating foreign capital resources, technology up gradation, skill enhancement, new employment into India.[29]

The un-invested portion of the investable funds may be invested into;

1. Liquid mutual funds
2. Bank deposits
3. Commercial papers
4. Certificates of deposits
5. Treasury bills
6. CBLOs

These funds however may only be invested in the above schemes until they are invested in the securities mentioned in the placement memorandum.[30]

AIFs have been divided into three categories, category I, category II and category III. Each category has certain conditions and has separate requirements with regard to how they can utilise investable funds.

Classification of AIFs

Category I

Category I AIFs are those funds whose investments result in positive spillover effects on the economy, for which certain incentives or concessions might be considered by SEBI or Government of India or other regulators in India.[31] Category I AIF can invest in sectors or areas

[24] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 10 (c),
[25] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 10 (f),
[26] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 14 (1),
[27] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 14 (2),
[28] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 15 (1)(a),
[29] Consultative Paper on Guidelines on Overseas Investments and Other Issues/Clarifications for AIFs/VCFs, CIR/IMD/DF1/ /2015
[30] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 15 (1)(f),
[31] http://www.sebi.gov.in/sebiweb/home/document_detail.jsp?link=http://www.sebi.gov.in/cms/sebi_data/docfiles/23767_t.html

which the government or regulators consider as socially or economically desirable and relevant for the country and have a developmental focus rather than pure business motive. The various forms in which category I AIFs may operate in are:

a. *Venture Capital Funds,* which invests primarily in unlisted securities of start-ups, emerging or early stage unlisted Indian companies engaged in the business of providing services, production or manufacture of articles, technology or intellectual property rights-based activities or in a new business model, and does not make any investments in any Indian investee company that is a non-banking finance company, gold finance company or company carrying on activities not permitted by the industrial policy of the Government of India or by the SEBI in consultation with the Government of India[32]
b. *Angel Funds,* a sub-category of Venture Capital Funds, which invests in venture capital undertakings which have been incorporated within 3 years from the date of investment, have a turnover of less than 25 Lacks Rupees and are not promoted or sponsored by or related to an industrial group whose group turnover exceeds 300 Crores Rupees. Investments by Angel Funds in any venture capital undertaking cannot be less than 50 Lacks Rupees and more than 5 Crores Rupees and they cannot invest more than 25% of their total investments under all its schemes in one capital undertaking. Investments by an Angel Fund are required to be locked in for 3 years.[33]
c. *SME Fund,* which invests primarily in securities of investee companies that are small and medium sized enterprises, or securities of those small and medium enterprises that are listed or proposed to be listed on an exchange for SMEs. Where, at least 75% of the investible funds shall be invested in unlisted securities or partnership interest of venture capital undertakings or investee companies which are SMEs or in companies listed or proposed to be listed on SME exchange or SME segment of an exchange.[34]
d. *Social Venture Fund,* which invest in securities or units of social ventures.[35]Social ventures refer to any trust, society or company which is incorporated for the sole purpose of tackling social welfare problems.[36] Social venture funds generally receive lower returns.[37] Social venture funds must invest at least seventy five percent of its investable funds in unlisted funds or in a partnership interest of a social venture.[38] They may also provide grants to such social ventures provided adequate disclosure is provided to investors.[39]
e. *Infrastructure Fund,* which invests primarily of its investible funds in unlisted securities, partnership interests, or listed debt or securitized debt instruments of investee companies or special purposes vehicles engaged in or formed for the purpose of operating, developing or holding infrastructure projects.[40]

[32] http://www.iclg.co.uk/practice-areas/alternative-investment-funds/alternative-investment-funds-2014/india
[33] http://www.iclg.co.uk/practice-areas/alternative-investment-funds/alternative-investment-funds-2014/india
[34] SEBI (Alternative Investment Funds) Regulations 2012,Regulation 16(3)(a),
[35] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 2 (v),
[36] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 2 (u),
[37] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 2 (v),
[38] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 16(4)(a),
[39] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 16(5)(c),
[40] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 16(5),

Category I AIF are close-ended and must follow investment restrictions as prescribed for each category. It shall have a minimum tenure of 3 years. Category I AIFs must not engage in borrow funds or leverage its position except for temporary funding requirements for not more than 30 days, on not more than 4 occasions in a year and not more than of 10% of the corpus.[41] The manager or sponsor for a Category I AIF shall have a continuing interest in the AIF of not less than 2.5% of the initial corpus or Rs.5 crore whichever is lower and such interest shall not be through the waiver of management fees.[42]

As per regulation 16(2) at least two-thirds of the investible funds shall be invested in unlisted equity shares or equity linked instruments of a venture capital undertaking or in a SME fund, whereas the not more than one-third of the investible funds shall be invested in:

(i) subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed;
(ii) debt or debt instrument of a venture capital undertaking in which the fund has already made an investment by way of equity or contribution towards partnership interest;
(iii) preferential allotment, including through qualified institutional placement, of equity shares or equity linked instruments of a listed company subject to lock in period of one year;
(iv) the equity shares or equity linked instruments of a financially weak company or a sick industrial company whose shares are listed, where a financially weak company means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than fifty percent but less than hundred percent of its net worth as at the beginning of the previous financial year.
(v) special purpose vehicles which are created by the fund for the purpose of facilitating or promoting investment in accordance with these regulations[43]

Moreover, Category I AIFs which are Venture Capital Funds have been accorded pass-through status under the Income Tax Act, 1961**[44]**. Accordingly, income earned from investments by such AIFs in investee companies is attributed to the investors directly and taxable in their hands.[45]

Category II

Category II AIFs are funds which use investible funds to invest in unlisted investee companies.[46]Investee companies refer to any body corporate, limited liability partnership or special purpose vehicle in which an AIF invested money.[47] Category II AIFs include private

[41] SEBI (Alternative Investment Funds) Regulations 2012, Regulation 16(1)(c),
[42]http://www.sebi.gov.in/sebiweb/home/document_detail.jsp?link=http://www.sebi.gov.in/cms/sebi_data/docfiles/23767_t.html
[43] SEBI (Alternative Investment Funds) Regulation 2012, Regulation 16(2),
[44] Income Tax Act, 196, Section 10(23FB), 1
[45] SEBI(Alternative Investment Funds) Regulations 2012, Regulation 3(4)(a),
[46]SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 17 (a),
[47] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 2 (p),

equity funds and debt funds which do not get any incentives or concessions from the government and do not undertake leverage or borrowing other than to meet day-today operational requirements.[48]

Category III

Category III AIFs are funds which employ complex trading strategies. These funds are high risk high reward funds such as hedge funds and other funds which aim to make a short term profit.[49] These funds are usually open ended funds which receive no incentives from the government. Category III AIFs invest primarily in unlisted or listed companies, complex derivatives and other structured products;[50] however it may not invest more than ten percent of the investable funds in one investee company.[51]These funds are allowed to trade on leverage with proper disclosure to investors regarding

1. The total leverage employed
2. The level of leverage arising from borrowing of cash
3. The level of leverage arising from the position held in derivatives or any complex product
4. The main source of leverage[52]

The leverage of the fund cannot at any time exceed two times that of the net asset value. Leverage of the AIF is calculated as the ratio of the exposure to the net asset value of the fund.[53] In the event leverage parameters are breached the AIF must send a report to the custodian on the same day and inform the same to all of its clients before 10:00 am on the next working day. It is duty bound to ensure that the leverage limits are brought within the prescribed limits by the end of the next working day from when it was breached. [54]

Given the complex nature of investments that may be undertaken by these AIFs the Board has mandated that all such funds which employ leverage must have in place a comprehensive risk management framework along with an independent risk management function.

AIFs may not change the category it is originally registered as unless it hasn't invested any of the funds raised.[55] However an AIF may change its category if it has raised funds or received commitments without investing them prior to changing the category it is originally registered as, and must send letters to its investors providing them with an option to withdraw their funds

[48] *Sebi issues guidelines forx change in category of AIF*, The Economic Times http://articles.economictimes.indiatimes.com/2013-08-08/news/41202057_1_pooled-in-investment-vehicles-category-ii-aifs-aif-regulations (april 17th 2015)
[49] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 3 (1)(c),
[50] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 18 (a),
[51] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 15 (1)(d),
[52] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 18 (b),
[53] SEBI Circular CIR/IMD/DF/10/2013 Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs), July 29 2013, Regulation 3.4 (i),
[54] SEBI Circular CIR/IMD/DF/10/2013 Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs), July 29 2013, Regulation 3.4 (iii)(a),
[55] SEBI CIR/IMD/DF/12/2013 August 07, 2013, Regulation 2 (2.1)

without imposing any penalties.[56] During the period between which an AIF is changing its category and approval regarding its change is granted by SEBI, it is not allowed make any investment except for that in liquid funds and bank deposits.[57] If granted approval by SEBI to change its originally registered category the AIF must send its revised placement memorandum to its investors.[58]

Placement Memorandum

AIFs raise money through private placement by the issue of a document known as a placement memorandum.[59] A placement memorandum is a document which performs similar functions as that of a prospectus with respect to a public limited company. It contains all the material information pertaining to the AIF, senior managers as well the key investment team. It also contains information regarding the tenure of schemes and condition or limitations on redemption. The key purpose of a placement memorandum however is to disclose and state the AIF's investment strategy and investment methodology[60], this allows for investors to be aware of what and how their money is being utilised. It also facilitates transparency of operations and is reduces the odds of AIFs misappropriating the corpus and at the same time provides confidence to investors. To protect the interest of investors regulation 9 (2) of the AIF Regulations, 2012 states that the fund strategy of an AIF cannot be substantially changed without the consent of two third of the unit holders consent.[61]

In the case of category III AIFs the placement memorandum must disclose the possibility of suspension of redemption of funds in certain extraordinary circumstance. In the interest of disclosure, the Board mandates that the placement memorandum must contain any disciplinary history related to the AIF, any conflict of interests, the AIFs affiliation to intermediaries and information related to key service providers. Apart from the containing fee structures of the AIF including investor fees the placement memorandum must contain information pertaining to the mode of winding up of the AIF as well as information pertaining to its risk management tools and the parameters employed and all other information that may be required for an investor to make a decision on whether or not to invest in the AIF.[62] The placement memorandum must be filled with the Board thirty days before launching any scheme.[63]

Regulatory Gap

The SEBI (Alternative Investment Fund) Regulations, 2012 requires all AIFs with a corpus in excess of five hundred crores to appoint a custodian to ensure the safekeeping of the securities,

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56 SEBI CIR/IMD/DF/12/2013 August 07, 2013, Regulation 2 (2.3)
57 SEBI CIR/IMD/DF/12/2013 August 07, 2013, Regulation 2 (2.4)
58 SEBI CIR/IMD/DF/12/2013 August 07, 2013, Regulation 2 (2.5)
59 SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 11 (1)
60 SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 9 (1)
61 SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 9 (1)
62 SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 11 (2)
63 SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 12 (2)

in the case of category III AIFs the regulations require a custodian regardless of the amount of the corpus. [64] The appointment of a custodian is symbolic of the length SEBI are going to ensure the safety of investor's funds, it also speaks to the fact that SEBI have created a double layer of security to ensure that an AIFs funds are being utilised for the purpose for which it was raised. The mandatory appointment of a custodian will go a long way in increasing investor confidence. The AIF regulations also ensure transparency of changes made by the management to the extent in that any material change in the management must be notified to the investors.

Disclosure Requirement

Transparency of affairs and full disclosure in AIFs has been assured as per the AIF Regulations, 2012. The disclosure of any financial, risk management, portfolio, and transactional information, information regarding portfolio as well as transactional information with respect to the fund must be disclosed to investors periodically.[65] The regulations also stipulate that there must be disclosure of any legal action[66] being undertaken however it is vague as to whether this includes legal action being taken against the managers of the AIF as well or whether it pertains only to the AIF as a body. Information regarding the investee company too must be disclosed with regard to change in control of the manager or sponsor.[67] Over and above the disclosures required category I and Category II AIFs must submit a an annual report within 180 days before the end of the year which includes the following;

1. Financial information of the investee company
2. How material risks are being managed which include
    a) Concentration and foreign exchange risk at fund level
    b) Leverage risk at fund and investee company levels
    c) Any change in the exit environment at the fund and investee company level
    d) Any change in the business strategy of the investee company
    e) Reputation risk of the investee company
    f) Governance risks and extra financial risks[68]

Role of the Manager

Regulation 24 of the AIF Regulations, 2012 imposes obligations to be undertaken by the manager of an AIF. The manager of an AIF is obliged to address all complaints put forth by investors.[69] The manager must disclose to investors if any conflict of interest arises and must ensure that regulations are implemented in the AIF so as to mitigate conflicts of interest

[64] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 20 (1)(2),
[65] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 22 (a)
[66] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 22 (c)
[67] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 22 (f)
[68] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 22 (g),
[69]SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 24 (a)

throughout the scope of the business.[70] It is pertinent to note that SEBI have not issued any guidelines or clarifications regarding what might be considered as a conflict of interest and hence the implementing of rules within an AIF will be subject to interpretation. The manager of a category III AIF has certain specific duties as outlined by SEBI due to the high risk nature of the fund. The duties are as follows;

1. the manager must allow for a certain amount of liquidity in the fund so as to meet redemption obligations and other liabilities.[71]
2. Maintain and implement a liquidity management policy and ensure that the liquidity of the various assets owned by the AIF is consistent with the liquidity profile of the scheme while making investments.[72]

The manager not only has an obligation to the investors of the AIF but also the board. The manager has the following duties towards the Board, which are as follows;

1. To furnish any information requested with regard to any matter relating to the working of the AIF[73]
2. Maintain all documents as required by the Board.[74] The documents to be maintained are the following[75];
    a) Records describing the assets under the scheme/fund
    b) Records highlighting valuation policies and practices
    c) Records which state the AIFs investment strategy
    d) Particulars of investors and their contribution
    e) Documents which state the rationale for investments made
3. To produce on inspection documents, books, statements and accounts as the authority may require for the purpose of inspection[76]
4. To cooperate, assist and facilitate the authority in the inspection[77]

Winding up of an AIF

An AIF may be wound up if the tenure of the scheme is over[78], if the trustees of the AIF feel it is prudent to wind up the AIF[79] or if seventy five percent of the investors by value of their investment fund pass a resolution to do so.[80] or if the Board directs the AIF to wind up.[81] The procedure of winding up of an AIF is dependent on its legal structure. For instance a AIF incorporated as a limited liability partnership will be wound up as per the provisions of the

[70] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 21 (f)
[71] SEBI Circular CIR/IMD/DF/10/2013, Regulation 3 (3.3)(i)
[72] SEBI Circular CIR/IMD/DF/10/2013, Regulation 3 (3.3) (ii)
[73] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 26 (1)
[74] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 24 (c)
[75] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 27 (1)
[76] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 32 (1)
[77] SEBI(Alternative Investment Funds)Regulations, 2012, Regulation 32 (2)
[78] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (1) (a)
[79] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (1) (b)
[80] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (1) (a)
[81] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (1) (a)

Limited Liability Act, 2008, likewise a AIF incorporated as a company will be wound up as per the provisions of the Companies Act, 2013. The board of directors or trustees as the case may be are under obligation to provide an explanation to the Board and its investors regarding reasons for the winding up. Within a year of intimation to the Board of the winding up all assets of the AIF must be liquidated and the proceeds of which must be distributed to the investors accordingly. [82] Further the regulations prohibit any further investments being made from the date of notification to the Board.[83]

Powers of SEBI

The Board has been given the necessary powers of oversight through the AIF Regulations to ensure that fair and transparent practices are followed by AIFs. Regulation 30 provides the Board suo motu powers to inspect documents, books of accounts and any records in possession of an AIF.[84] The power of inspection whether on the basis of a complaint from any person or suo motu is done with the purpose of allowing the Board to ensure the books of accounts and other records of the AIF are being maintained in the prescribed manner[85], further, inspection is done so as to ensure that the AIF is not contravening any provision of the Act of regulations.[86] As previously stated complaints regarding the AIF may be made by clients, investors or any other person and such complaints are grounds for inspection by the Board.[87] The inspection may be carried out by any person appointed by the Board and may be done by providing the AIF with notice to do so within a period of thirty days.[88] The regulations however in an effort to instil more power to SEBI have also provided for the person appointed by the Board to inspect the affairs of an AIF without providing notice to the same if it is felt necessary in the interest of investors.[89]

The Board is authorised to issue directions against an AIF after inspection which include;

1. preventing the AIF from issuing any further schemes[90]
2. prohibiting the disposal of any property belonging to the AIF[91]
3. Ordering the concerned person of the AIF to refund money to an investor with or without interest[92]
4. Prohibiting any person in the AIF from operating in the capital market for a certain duration[93]

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[82] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (7)
[83] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 29 (6)
[84] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 30
[85] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 30 (a)
[86] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 30 (c)
[87] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 30 (b)
[88] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 31 (1)
[89] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 31 (2)
[90] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 34 (a)
[91] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 34 (b)
[92] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 34 (d)
[93] SEBI (Alterative Investment Funds) Regulations, 2012, Regulation 34 (e)

If an AIF contravenes any of the contraventions of the Regulations or the Act, does not cooperate with an inspection of the Board, intentionally provides the Board with incorrect or misleading information or fails to address complaints of the investors the Board may;

1. Suspend or cancel the AIF's registration certificate[94]
2. Prohibit the AIF from entering into ant fresh contract or from launching any further schemes[95]
3. Debar the manager from engaging or being employed with any other registered AIF for a period specified in the order[96]
4. Debar an office of the AIF from engaging in any activities for a time specified in the order[97]

Conclusion

A consolidated regulation for investment vehicles is just what the doctor ordered for a young economy that is at such a critical juncture. The Indian market has seen a blaze of Venture capital deals, from the Accel Partners investment in Flipkart to the Helion Venture Capital funding of Taxi For Sure. The increase of capital has also seen a number an equal increase in M&A deals, one the largest being the Flipkart acquisition of Myntra for Rs.2000 crore The regulations have also effectively created amuch needed market for hedge funds in India which is a welcome move given the growing market for investors who are looking for high risk high reward investments. With the necessary corporate governance principles being mandated side by side with the freedom to invest in a variety of securities, the regulations have created an ideal investment market which has seen to be profitable not just for investment funds but for companies both young and established as well.

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1. SEBI (Alternative Investment Fund) Regulations, 2012
2. SEBI (Intermediaries) Regulations, 2008
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