

**CATEGORIES OF ALTERNATIVE INVESTMENT FUND ('AIF')
AND
REGISTRATION PROCESS**

This Article outlines the criteria and process for registration of Alternative Investment Fund with the regulator of securities market, Securities and Exchange Board of India (“SEBI”) pursuant to the provisions of SEBI (Alternative Investment Fund) Regulations, 2012, as amended from time to time.

INTRODUCTION

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

Among other things, AIF helps in reducing volatility that is commonly associated with traditional investments as their performances are not dependent on the ups and downs of a stock market, they help in diversification in terms of markets strategies and investment styles, etc.

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, employee welfare trusts or gratuity trusts set up for the benefit of employees, holding companies, etc.

CATEGORIES OF AIF

The AIF Regulations provide the following categories:

- a. Category I AIF:** These AIF invests 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.

These funds are generally perceived to have positive spillover effects on economy and for which SEBI or Government of India or other regulators in India might consider providing incentives or concessions

- b. Category II AIF:** These are a private equity funds or debt funds for which no specific incentives or concessions are given by the Government or any other regulator. The funds of this category neither fall in category I nor category III and does not undertake leverage or borrowing activities other than to meet day-to-day operational requirements.

Private equity funds: AIF which invests primarily in equity or equity linked instruments or partnership interests of investee companies according to the stated objective of the fund

Debt Fund: AIF which invests primarily in debt securities of listed or unlisted investee companies or in securitized debt instruments as per the stated objectives of the Fund.

- c. **Category III AIF:** AIF which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. AIF such as hedge funds or funds which trade with a view to make short term returns or such other funds which are open ended and for which no specific incentives or concessions are given by the Government or any other regulator.

Hedge Fund: AIF which employs diverse or complex trading strategies and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives

Some of the registered renowned AIF in different category are as follows:

1. Category I AIF

- IL&FS Infrastructure Investment Trust
- L & T Infra Investment Partners

2. Category II AIF

- Aditya Birla Sun Life AIF Trust – II
- ICICI Prudential Debt Fund

3. Category III AIF

- IIFL Alternative Opportunities Fund
- Abakkus Growth Fund

An AIF which has been granted registration under a particular category cannot change its category subsequent to registration, except with the approval of SEBI.

ELIGIBILITY CRITERIA

The parameters applicable for a company are as follows:

1. The MOA permits to carry on the activities of an AIF;
2. The Company is prohibited by its MOA or AOA from making an invitation to the public to subscribe to its securities
3. The applicant, Sponsor and Manager are **fit and proper persons based on the criteria specified by SEBI**¹

Manager: means any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund.

Sponsor: means any person or persons who set up the Alternative Investment Fund and includes promoter in case of a company and designated partner in case of a limited liability partnership

*The determination of **Fit and Proper Criteria** includes the following considerations:*

- (a) *the competence and capability in terms of infrastructure and manpower requirements;*
- (b) *the financial soundness, which includes meeting the net worth requirements.*
- (c) *integrity, honesty, ethical behaviour, reputation, fairness and character of the person*
- (d) *criminal complaint or FIR filed for cognizable offence against the person by SEBI and the same is pending*
- (e) *charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending*
- (f) *An order of restraint, prohibition or debarment has been passed against such person by SEBI or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force*

¹ Schedule II of SEBI (Intermediaries) Regulations, 2008

- (g) The recovery proceedings have been initiated by SEBI against such person and are pending*
- (h) An order of conviction has been passed against such person by a court for any offence involving moral turpitude*
- (i) Any winding up proceedings have been initiated or an order for winding up has been passed against such person*
- (j) such person has been categorized as a wilful defaulter*
- (k) such person has been declared a fugitive economic offender*

However, the above list is inclusive in nature and SEBI may take any other consideration for determining the criteria.

4. The key investment team of the Manager of AIF has:

- (a) adequate experience, with at least one key personnel having not less than five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling and dealing of securities or other financial assets; and
- (b) at least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute

The requirements prescribed in (a) and (b) above may be fulfilled by same person

- 5. the Manager or Sponsor has the necessary infrastructure and manpower to effectively discharge its activities
- 6. Disclosure at the time of registration regarding investment objective, the targeted investors, proposed corpus, investment style or strategy and proposed tenure of the fund or scheme
- 7. Information on the refusal of the registration to the company, any entity established by the Sponsor or manager

REGISTRATION PROCESS

- 1. The applicant shall ensure that all the eligibility criteria are duly met.
- 2. The Board of Director of the applicant shall approve the proposed registration of the Company as AIF.
- 3. The application seeking the registration of proposed AIF shall be made in the Form A as prescribed by SEBI and shall be accompanied by a non-refundable application fee (in original and online mode)

4. Once the application is filed and all the conditions are duly met, the applicant receives the reply within 21 working days.
5. If SEBI is satisfied that the applicant fulfills the requirements prescribed under the regulations, shall approve the application and inform the applicant of the same
6. On receipt of approval from SEBI, the applicant must pay registration fee (depending upon the category) to SEBI by way of bank draft in favour of “The Securities and Exchange Board of India”, payable at Mumbai
7. On receipt of registration fees, SEBI will grant the applicant the certificate of registration as an Alternative Investment Fund

POST- REGISTRATION COMPLIANCE

1. Once registered, the AIF must comply with the reporting requirements as specified by SEBI from time to time.
2. The AIF must regularly check the SEBI website for any updation/ circulars/ guidelines issued from SEBI from time to time with respect to the AIF activity.
3. The AIF must intimate to SEBI any material change in the details already furnished to SEBI within a reasonable period of time.

INVESTMENT IN AIF

The following conditions shall be adhered while undertaking investment in any category of AIF:

1. The AIF may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units;
2. The corpus of each scheme of AIF shall be of atleast INR 20 crore;
3. Minimum investment value per investor shall be INR 1 crore. However, such value shall be reduced to INR 25 Lac where the investor is:
 - Employee of AIF
 - Director of AIF
 - Employee of Manager
 - Director of Manager

Note: The applicability of minimum investment value of INR 1 crore or INR 25 Lac, as the case may be shall not be applicable for accredited investor².

² accredited investor” means any person who is granted a certificate of accreditation by an accreditation agency who, (i) in case of an individual, Hindu Undivided Family, family trust or sole proprietorship has: (A) annual income of at least two crore rupees; or (B) net worth of at least seven crore fifty lakh rupees, out of which not less than three crores seventy-five lakh rupees is in the form of financial assets; or

4. The Manager or Sponsor shall have a continuing interest in the AIF of not less than 2.5% of the corpus or INR 5 crore, whichever is lower, in the form of investment in the AIF and such interest shall not be through the waiver of management fees. However, for Category III AIF, the continuing interest shall be not less than 5% of the corpus or INR 10 crore, whichever is lower;
5. The Manager or Sponsor shall disclose their investment in the AIF to the investors of the AIF;
6. The scheme of the AIF shall have more than 1,000 investors;
7. The fund shall not solicit or collect funds except by way of private placement.

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(C) annual income of at least one crore rupees and minimum net worth of five crore rupees, out of which not less than two crore fifty lakh rupees is in the form of financial assets.

(ii) in case of a body corporate, has net worth of at least fifty crore rupees;

(iii) in case of a trust other than family trust, has net worth of at least fifty crore rupees;

(iv) in case of a partnership firm set up under the Indian Partnership Act, 1932, each partner independently meets the eligibility criteria for accreditation:

Provided that the Central Government and the State Governments, developmental agencies set up under the aegis of the Central Government or the State Governments, funds set up by the Central Government or the State Governments, qualified institutional buyers as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Category I foreign portfolio investors, sovereign wealth funds and multilateral agencies and any other entity as may be specified by the Board from time to time, shall deemed to be an accredited investor and may not be required to obtain a certificate of accreditation.