



SEBI AIF Regulations – An Overview

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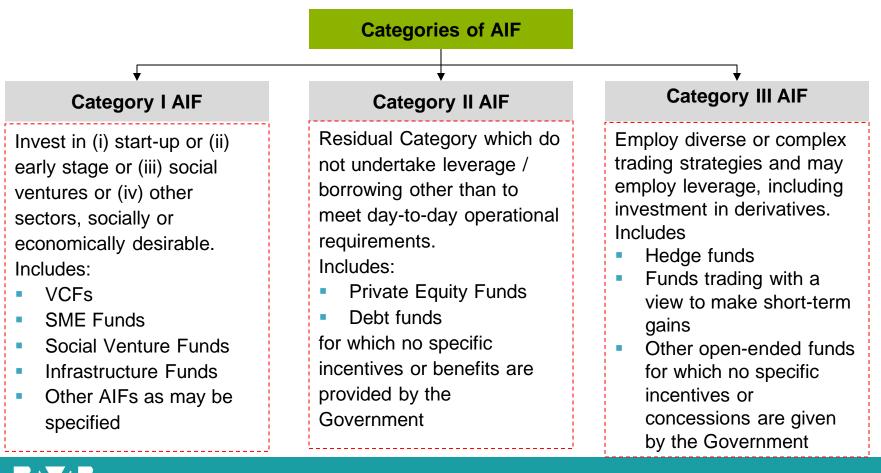






Categories of AIFs

The SEBI (AIF) Regulations were notified on May 21, 2012



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AIF Regulations – Key features

- AIFs defined as privately pooled investment vehicles constituted as trusts, companies, LLPs or as a body corporate; family trusts, holding companies, ESOP trusts etc not to be considered as AIFs
- AIF to be established by a sponsor and managed by a fund manager; sponsor and fund manager of an AIF can be the same person
- Key investment team of the fund manager to have adequate experience; fund manager to have necessary infrastructure and manpower to discharge its activities
- Minimum corpus of AIFs Rs 20 crores; minimum ticket size Rs 1 crore for investors and Rs 25 lakhs for employees and directors of manager / sponsor
- Permitted to raise monies from overseas; however, no corresponding change under Indian exchange control regulations
- > Category I and II AIFs to be close-ended
- Separate investment conditions specified for each category of AIFs
- FVCI investment permitted <u>only</u> in Category I VCFs





Category III AIFs

- Sponsor commitment 5 percent of corpus or Rs 10 crores, whichever is less; double the sponsor commitment prescribed for Category I and II AIFs
- > Permitted to be open-ended or close-ended
- Investment in a single investee company capped at 10 percent of corpus vis-à-vis 20 percent in case of Category I and II AIFs
- Investment conditions:
 - May invest in listed or unlisted securities or derivatives or complex and structured products
 - May engage leverage or borrow funds, subject to a maximum limit, as specified by SEBI; no limit prescribed by SEBI till date
- SEBI may issue directions regarding operational standards, conduct of business rules, prudential requirements, restrictions on redemption and conflicts of interest; no such directions issued by SEBI till date
- Mandatorily required to appoint a custodian
- NAV calculation to be independent of fund management function; to be disclosed to investors on quarterly basis by close-ended funds and monthly by open-ended funds
- Quarterly reports to investors containing prescribed information within 60 days from the end of the relevant quarter





AIFs – Tax considerations

- Dividend distribution tax may apply to distributions by AIFs formed as companies
- Winding up of company AIFs can be time consuming
- Budget 2013 has accorded pass through status only to Category I AIFs that qualify as VCFs as is defined in the SEBI AIF Regulations, albeit, subject to the following conditions:
 - (i) The units of or shares in the AIF should not be listed on any recognized stock exchange.
 - (ii) At least 2/3rd of its investible funds should be invested in unlisted equity shares or equity linked instruments of venture capital undertakings; and
 - (iii) The AIF should not invest in any associated company.
- > However, pass through status for other AIFs constituted as trusts may be achievable
- Budget 2013 has provided that shares issued by a closely held Indian company, at a premium, to Category I AIFs that qualify as VCFs as is defined in the SEBI AIF Regulations <u>not</u> to be taxable tax in the hands of the Indian investee company. No carve out for other types of Category I AIFs as well as Category II and Category III AIFs
- Additional tax compliance burden for AIFs not accorded pass through status

