

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 16th September, 2013

SECURITIES AND EXCHANGE BOARD OF INDIA

(ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2013

No. LAD-NRO/GN/2013-14/24/6573.- In exercise of the powers conferred by sub-section (1) of section 30 read with sub-section (1) of section 11, clause (ba) and clause (c) of sub-section (2) of section 11 and sub-section (1) and (1B) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, namely,–

1. These regulations may be called the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2013.
2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, -

I. in regulation 2, in sub-regulation (1), in clause (z), after the words "a new business model", the words and symbols "and shall include an angel fund as defined under Chapter III-A" shall be inserted.

II. In regulation 3, in sub-regulation (1), after the third proviso, the following proviso shall be inserted, namely,-

"Provided further that such existing funds, which do not propose to accept any fresh commitments after commencement of these regulations shall not be required to obtain registration under these regulations subject to submission of information on their activities to the Board in the manner as may be specified."

III. in regulation 6, after sub-regulation (3), the following sub-regulations shall be inserted, namely,-

"(4) The Board may, on being satisfied that the applicant complies with the provisions of regulation 4 except those of clause (c) or clause (d) thereof, as the case may be, grant an in-principle approval to the applicant:

Provided that the applicant shall comply with clause (c) or clause (d) of regulation 4, as the case may be, within six months from the date of grant of in-principle approval and upon compliance with the same, the Board may grant a certificate of registration under sub-regulation (2).

(5) An Alternative Investment Fund that has been granted in-principle approval may accept commitments from investors but shall not accept any monies till it is granted registration under sub-regulation (2) of this regulation."

IV. in regulation 10,

- (i) in clause (f), for the symbol ";" the symbol ":" shall be substituted;
- (ii) after clause (f), the following proviso shall be inserted, namely,-
"Provided that the provisions of the Companies Act, 1956 shall apply to the Alternative Investment Fund, if it is formed as a company."

V. in regulations 15, the word "corpus", wherever appearing, shall be substituted by the words "investible funds";

VI. in regulation 16,

- (i) the word "corpus", wherever appearing, shall be substituted by the words "investible funds";

in sub-regulation (4), clause (b), for the symbol "." the symbol ":" shall be substituted;

- (ii) in sub-regulation (4), after clause (b), the following provisos shall be inserted, namely,-

"Provided that the amount of grant that may be accepted by the fund from any person shall not be less than twenty-five lakh rupees:

Provided further that no profits or gains shall accrue to the provider of such grants."

VII. in regulations 17, the word "corpus", wherever appearing, shall be substituted by the words "investible funds";

VIII. in regulation 18, in clause (b), the words and symbol "Fund of Category II" shall be substituted by the words and symbol "Fund of Category III".

IX. After chapter III, the following chapter III-A shall be inserted, namely,-

**"CHAPTER III -A
ANGEL FUNDS**

Definitions.

19A. For the purposes of this Chapter, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,-

- (1) "angel fund" means 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 this Chapter.
- (2) "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;
Explanation: For the purpose of this clause, '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 Alternative Investment Fund registered under these regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.

(3) "company with family connection" means:

- a. if the angel investor is an individual,
 - i. any company which is promoted by such an individual or his relative; or
 - ii. any company where the individual or his relative is a director; or
 - iii. any company where the person or his relative has control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

Explanation I: For the purpose of this clause, "relative" means a person as defined under section 6 of the Companies Act, 1956 (1 of 1956).

Explanation II: For the purpose of this clause, "control" shall have the same meaning as assigned to it under sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- b. if the angel investor is a body corporate,
 - i. any company which is a subsidiary or a holding company of the investor; or
 - ii. any company which is part of the same group or under the same management of the investor; or

Explanation: For the purpose of this clause, "part of the same group" and "under the same management" shall have the same meaning as assigned to it under regulation 23 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

- iii. any company where the body corporate or its directors/partners have control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

Explanation: For the purpose of this clause, "control" shall have the same meaning as assigned to it under sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Applicability.

19B. (1) The provisions of this Chapter shall apply to angel funds and schemes launched by such angel funds.

(2) All other provisions of these regulations, except clauses (a), (b), (c), (d) and (f) of regulation 10, regulation 12, regulation 14, clauses (a), (c) and (e) of sub-regulation (1) of regulation 15, clause (b) of sub-regulation (1) of regulation 16 and sub-regulation (2) of regulation 16, and the guidelines and circulars issued under these regulations, unless the context otherwise requires or repugnant to the provisions of this Chapter, shall apply to angel funds, their sponsors and managers and angel investors.

Registration of angel funds.

19C. (1) An applicant may apply for registration as an angel fund in accordance with the provisions of Chapter II of these Regulations.

(2) An Alternative Investment Fund already registered under these regulations, which has not made any investments, may apply for conversion of its category into an angel fund under the provisions of this Chapter and the provisions of Chapter II shall apply as they apply to a fresh registration.

Investment in angel funds.

19D. (1) Angel funds shall only raise funds by way of issue of units to angel investors.

(2) An angel fund shall have a corpus of at least ten crore rupees.

(3) Angel funds shall accept, up to a maximum period of three years, an investment of not less than twenty five lakh rupees from an angel investor.

(4) Angel fund shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called.

Schemes.

19E. (1) The angel fund may launch schemes subject to filing of a scheme memorandum at least ten working days prior to launch of the scheme with the Board:

Provided that payment of scheme fees shall not apply to schemes launched by angel funds.

(2) Such scheme memorandum shall contain all material information about the investments proposed under such scheme.

(3) The Board may communicate its comments, if any, to the applicant prior to launch of the Scheme and the applicant shall incorporate the comments in the scheme memorandum prior to launch of the scheme.

(4) No scheme of the angel fund shall have more than forty-nine angel investors.

Investment by Angel Funds.

19F. (1) Angel funds shall invest only in venture capital undertakings which:

- (a) have been incorporated during the preceding three years from the date of such investment;
- (b) have a turnover of less than twenty five crore rupees;
- (c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds three hundred crore rupees; and

Explanation I: For the purpose of this clause, "industrial group" shall include a group of body corporates with the same promoter(s)/promoter group, a parent company and its subsidiaries, a group of body corporates in which the same person/ group of persons exercise control, and a group of body corporates comprised of associates/subsidiaries/holding companies.

Explanation II: For the purpose of this clause, "group turnover" shall mean combined total revenue of the industrial group.

- (d) are not companies with family connection with any of the angel investors who are investing in the company.

- (2) Investment by an angel fund in any venture capital undertaking shall not be less than fifty lakh rupees and shall not exceed five crore rupees.
- (3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of three years.
- (4) Angel funds shall not invest in associates.
- (5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.

Obligations of Sponsors and Managers of Angel Fund.

- 19G.** (1) The sponsor shall ensure that the angel investors satisfy the conditions specified in sub-regulation (2) of regulation 19A.
- (2) The manager or sponsor shall have a continuing interest in the angel fund of not less than two and half percent of the corpus or fifty lakh rupees, whichever is lesser, and such interest shall not be through the waiver of management fees.
 - (3) The manager of the angel fund shall obtain an undertaking from every angel investor proposing to make investment in a venture capital undertaking, confirming his approval for such an investment, prior to making such an investment.

Prohibition of Listing.

19H. Units of angel funds shall not be listed on any recognised stock exchange."

X. in the First Schedule, in Form A,

- (i) in clause (2), in sub-clause (III), the words "duly registered" shall be substituted by the words "duly filed".

(ii) in clause (3), the words, symbols and number "sub-regulation (w) of regulation 2" shall be substituted by the words, symbols and number "clause (w) of sub-regulation (1) of regulation 2".

XI. in the Second Schedule, in Part A,

(i) the words "registration fee" shall be substituted by the words "Registration fee for Alternative Investment Funds other than Angel Funds"

(ii) the following clause shall be inserted, namely,-

"Registration fees for Angel Funds: ₹ 2,00,000"

(iii) the words "scheme fee" shall be substituted by the words "scheme fee for Alternative Investment Funds other than Angel Funds".

U. K. SINHA

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

1. The Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 were published in the Gazette of India on 21st May, 2012 vide No. LAD-NRO/GN/2012-13/04/11262.