



भारतीय प्रतिभूति और विनिमय बोर्ड  
Securities and Exchange Board of India

CIRCULAR

CIR/IMD/DF/7/2015

October 1, 2015

To

All Alternative Investment Funds (AIFs)

All Venture Capital Funds (VCFs) registered under SEBI (Venture Capital Funds) Regulations, 1996

Dear Sir / Madam,

**Sub: Guidelines on overseas investments and other issues/clarifications for AIFs/VCFs**

1. SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") were notified on May 21, 2012 repealing and replacing the erstwhile SEBI (Venture Capital Funds) Regulations, 1996. As on August 31, 2015, there are 165 Alternative Investments Funds (AIFs) registered with SEBI.

2. In this regard, it is specified as under:

**A. Overseas Investment by Venture Capital Funds (VCFs) registered under SEBI (Venture Capital Funds) Regulations, 1996 (*now repealed*)**

- a. VCFs registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 are permitted to invest in Offshore Venture Capital Undertakings which have an Indian connection upto 10% of the investible funds of a VCF in terms of the SEBI circular no. SEBI/VCF/Cir no.1/98645/2007 dated August 09, 2007.
- b. SEBI has received several representations from the industry that there has been, in recent times, an increased interest of Indian entrepreneurs outside India. Many Indian entrepreneurs have been setting up their headquarters outside India with back end operations and/ or research and developments being undertaken in India. Therefore, there is a need to allow higher overseas investment by VCFs beyond the existing 10% limit.
- c. The representations also state that such investments would provide opportunities to the funds to generate better returns globally, getting exposure to the international markets practices, etc.
- d. As such investments are required to have an Indian connection, It is anticipated that such investments will generate indirect benefits to India through bringing in resources, technology upgradation, skill enhancement, new employment, spill-overs, etc.



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- e. In view of the above, in partial modification of the circular no. SEBI/VCF/Cir no.1/98645/2007 dated August 09, 2007, it is stated as under:
- i. VCFs are, from the date of this circular, permitted to invest in Offshore Venture Capital Undertakings which have an Indian connection upto 25% of the investible funds of the VCF.
  - ii. VCFs shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments.
  - iii. VCFs shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route.
  - iv. VCFs shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/Joint venture/undertaking investment abroad by NBFCs, where more than 50% of the funds of the VCF has been contributed by a single NBFC.
  - v. The VCFs desirous of making investments in offshore venture capital undertakings shall submit their proposal for investment (in the attached format at Annexure) to SEBI for its prior approval.

**B. Overseas Investment by Alternative Investment Funds**

- a. Under Regulation 15(1)(a) of AIF Regulations, "*Alternative Investment Fund may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.*"
- b. In this regard, Reserve Bank of India (RBI) vide its A.P.(DIR Series) Circular No.48 dated December 09, 2014 has permitted an Alternative Investment Fund (AIF), registered with SEBI, to invest overseas in terms of the provisions issued under the A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively.
- c. In accordance with the aforesaid RBI circular, it is stated as under:
  - i. AIFs may invest in equity and equity linked instruments only of off-shore venture capital undertakings, subject to overall limit of USD 500 million (combined limit for AIFs and Venture Capital Funds registered under the SEBI (Venture Capital Funds) Regulations, 1996).



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- ii. AIFs desirous of making investments in offshore venture capital undertakings shall submit their proposal for investment (in the attached format at Annexure) to SEBI for prior approval. It is clarified that no separate permission from RBI is necessary in this regard.
- iii. For the purpose of such investment, it is clarified that “Offshore Venture Capital Undertakings” means a foreign company whose shares are not listed on any of the recognized stock exchange in India or abroad.
- iv. Investments would be made only in those companies which have an Indian connection (e.g. company which has a front office overseas, while back office operations are in India).
- v. Such investments shall not exceed 25% of the investible funds of the scheme of the AIF.
- vi. The allocation of investment limits would be done on ‘first come-first serve’ basis, depending on the availability in the overall limit of USD 500 million.
- vii. In case an AIF who is allocated certain investment limit, wishes to apply for allocation of further investment limit, the fresh application shall be dealt with on the basis of the date of its receipt and no preference shall be granted to it in fresh allocation of investment limit.
- viii. The AIF shall have a time limit of 6 months from the date of approval from SEBI for making allocated investments in offshore venture capital undertakings. In case the applicant does not utilize the limits allocated within the stipulated period, SEBI may allocate such unutilized limit to other applicants.
- ix. These investments would be subject to Notification No. FEMA120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004] including amendments thereof and related directions issued by RBI from time to time.
- x. AIFs shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments.
- xi. AIFs shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route.



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- xii. AIFs shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/Joint Venture /undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF has been contributed by a single NBFC.

**C. Other issues/clarifications:**

- a. It is clarified that from the date of this circular, the tenure of any scheme of the AIF shall be calculated from the date of final closing of the scheme.
- b. All managers shall:
  - i. organise, operate and manage the AIFs and its schemes in the interest of unitholders of the AIF/scheme.
  - ii. carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI.
  - iii. ensure that the placement memorandum is provided to the investors prior to providing commitment or making the investment in the AIF and ensure that an appropriate acknowledgement is received from the investor for such receipt.
  - iv. ensure scheme-wise segregation of bank accounts and securities accounts.
  - v. not make any exaggerated statement, whether oral or written, either about their qualifications or capability to render investment management services or their achievements.
- c. The AIF, manager, trustee and sponsor shall:
  - i. act in the interest of unitholders of the AIF/scheme and not take any action which is prejudicial to the interest of the unitholders and not place the interest of the sponsor/manager/trustee of the AIF or any of their associates above the interest of the unitholders of the scheme/AIF.
  - ii. maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment.



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- iii. not offer any assured returns to any prospective investors/unitholders.
3. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.
4. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Alternative Investment Funds".

Yours faithfully,

**Barnali Mukherjee**  
**Chief General Manager**  
**Investment Management Department**  
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**Annexure**

**Proposal for Overseas Investment by Alternative Investment Funds**

To  
Securities and Exchange Board of India  
Mumbai

Name of Alternative Investment Fund (AIF)/Venture Capital Fund (VCF)	
Category of the AIF	
Registration number and date	
Name of the scheme	
Amount proposed to be invested in Offshore Venture Capital Undertaking - in USD	
Total Investible corpus of the scheme -in USD	
Name and Address of the branch of the bank through which Foreign Currency Transaction are proposed to made	
Indian connection of the offshore VCU	

**Declarations to be attached with the application duly signed, dated and authorised:**

1. The manager has exercised due diligence with respect to the investment decision. *(Declaration to be provided by manager)*
2. The Trustee is satisfied that the proposed investment in offshore venture capital undertaking is consistent with the investment objective of the scheme/fund *(Declaration to be provided by trustee. In case the AIF is not a Trust, sponsor shall provide such declaration).*
3. The AIF/VCF shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments. *(Declaration to be provided by manager)*
4. The AIF/VCF shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route. *(Declaration to be provided by manager)*
5. The AIF/VCF shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/Joint venture /undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF/VCF has been contributed by a single NBFC. *(Declaration to be provided by manager)*

*(Declarations to be provided by the manager/trustee/sponsor as applicable)*

**Name:**  
**Place:**

**Signature:**  
**Date:**