

November 4th, 2019

To,

**Investment Management Department,**

**Division of Funds I,**

Securities and Exchange Board of India ("SEBI")

SEBI Bhavan,

Plot No.C4 - A, 'G' Block

Bandra Kurla Complex, Bandra (East),

Mumbai - 400 051

**Kind attention:** Shri Naveen Sharma

**Sub.: Request for interpretive letter under SEBI (Informal Guidance) Scheme, 2003 in connection with Securities Exchange Board of India (Alternative Investment Funds) Regulations, 2012 by LV Angel Fund**

Dear Sir

**I. Background**

- a. LV Angel Fund (the "**Applicant**" / "**Trust**") is a trust registered with the Securities and Exchange Board of India ("**SEBI**") as a Category I Alternative Investment Fund – Venture Capital Fund – Angel Fund ("**Angel Fund**") under the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**") (registration number IN/AIF1/18-19/0585 dated September 06, 2018).
- b. Milestone Trusteeship Services Private Limited (the "**Trustee**") acts as the trustee of the Applicant. Lets Venture Advisors LLP (the "**Investment Manager**") is the investment manager to the Applicant and all the schemes launched thereunder.
- c. The Applicant while operating as an Angel Fund has come across certain operational issues on which they desire SEBI's guidance.
- d. Therefore, the Applicant being an Angel Fund (i.e. intermediary) registered with SEBI, makes this request for an interpretive letter under SEBI (Informal Guidance) Scheme, 2003 ("**Informal Guidance Scheme**")

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## II. Guidance Sought

### A. *Net worth criteria for “angel investors” who are body corporates*

#### a. Relevant provision of the AIF Regulations

Regulation 19A(2) of the AIF Regulations read as follows:

“(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;

(b) a body corporate with a net worth of at least ten crore rupees.

.....”

b. Hence, the net worth criteria for an “angel investor” eligible to invest in an Angel Fund as stipulated under regulation 19A(2) of the AIF Regulations is as follows:

i. an individual investor must have a minimum net worth equal to or more than net tangible assets of at least Rs. 2,00,00,000 (Indian Rupees Two Crores only) excluding the value of his principal residence;

ii. a body corporate must have a net worth of at least Rs. 10,00,00,000 (Indian Rupees Ten Crores only).

c. We have had individual investors indicate to us that they wish to utilize a limited liability partnership or “LLP” [being a body corporate as specified under section 2.(d) of the Limited Liability Partnership Act, 2008 (“LLP Act”)] set-up by them to make the investment in the Applicant. We are given to understand that this is for the purpose of succession and estate planning. They have represented to us that all the partners of the LLP individually fulfil the conditions to qualify as “angel investors” [including without limitation the net worth criteria of Rs. 2,00,00,000 (Indian Rupees

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Two Crores only) excluding the value of their principal residence as stipulated for individuals].

- d. **Given the context above, whether it may be interpreted that a LLP, the partners of which qualify as “angel investors“ in their individual capacity, is an eligible “angel investor” even if the LLP itself does not meet the minimum net worth criteria of at least Rs. 10,00,00,000 (Indian Rupees Ten Crores only) prescribed for body corporates (including LLPs)?**

**B. Eligible investments that may be made by Angel Funds**

- a. Relevant provision of the AIF Regulations

Regulation 19F(1) of the AIF Regulations reads as follows:

*“(1) Angel funds shall invest in venture capital undertakings which:*

*(a) complies with the criteria regarding the age of the venture capital undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force;*

*(b) have a turnover of less than twenty five crore rupees;*

*.....”*

- b. We believe that the intent behind Regulation 19F(1) was to permit Angel Funds to invest in “startups“ as defined under the relevant policies/notifications promulgated by the Department for Promotion of Industry and Internal Trade (“**DPIT**”) [formerly the Department of Industrial Policy and Promotion (“**DIPP**”)] that also meet with certain other requirements that have been stipulated under the AIF Regulations. We gauge this intent from the minutes of the board meeting of SEBI held on November 23, 2016 as well as the board memorandum circulated in that regard wherein the SEBI Board noted the following:

*“...AIPAC had submitted its report to SEBI with various recommendations including certain recommendations relating to Angel Funds. Considering the recommendations in the report and public comments thereon, the SEBI Board has approved following*

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amendments to SEBI (Alternative Investment Funds) Regulations, 2012 with respect to 'Angel Funds':

ii) The definition of start-up for Angel Funds investments be similar to definition of DIPP as given in their start-up policy. Accordingly, Angel Funds will be allowed to invest in start-ups incorporated within five years, which was earlier 3 years.  
... “

However, Regulation 19F(1)(b) was not amended at the time since as per the then applicable policy of DPIIT (the erstwhile DIPP), for an entity to be considered a “startup“, one of the conditions was that the “turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs. 25 crore“, therefore, Regulation 19F(1)(b) was in sync with the prevalent DIPP policy.

- c. However, the DPIIT has since amended the definition of a “startup” and as per paragraph 1(a) of notification no. G.S.R. 127(E) dated February 19, 2019 issued by the DPIIT, Ministry of Commerce and Industry, the definition of a “startup” reads as follows:

“An entity shall be considered as a startup:

- a. Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
  - b. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees.
  - c. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.”
- d. **Given the context above, would an Angel Fund be able to invest in an entity whose turnover has exceeded Rs. 25,00,00,000 (Indian Rupees Twenty-Five Crores only) but is less than Rs. 100,00,00,000 (Indian Rupees One Hundred Crores only), which qualifies as per the definition of a “startup” as per the prevalent policy of the DPIIT?**

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**C. Investment in a prospective investee (not being a non-banking financial company) which may, pursuant to its primary objective, have exposure to a non-banking financial company**

- a. Regulation 2(1)(z)(aa)(ii) of the AIF Regulations reads as follows:  
“(aa) “venture capital undertaking” means a domestic company:  
(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:  
(1) non-banking financial companies;  
(2) gold financing;  
(3) activities not permitted under industrial policy of Government of India;  
(4) any other activity which may be specified by the Board in consultation with Government of India from time to time;”
- b. We refer to the definition of a venture capital undertaking as provided under regulation 2(1)(z)(aa). The definition of a “venture capital undertaking” specifies that it does not include non-banking financial companies (“NBFCs”). However, we have come across various situations where the proposed investee entity (“**Proposed Investee(s)**”) is not an NBFC, is often a service based company, however, in pursuance of its primary objective of providing a service (for example a technology based service), it has invested in an NBFC or it may wish to set-up a subsidiary which may qualify as an NBFC. Thus, the activities of the Proposed Investee(s), *inter alia*, would comprise of being the holding company of an NBFC.
- c. **Given the context above, whether an Angel Fund can make an investment in such Prospective Investee, which is not an NBFC, and meets with the other criteria required for an Angel Fund to make an investment, however, has an exposure to an NBFC, by virtue of being an investor or the holding company of an NBFC?**

**D. Investors consenting to co-invest with certain investors**

- a. Regulation 19G(3) of the AIF Regulations reads as follows:  
  
“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.”

- b. We have encountered certain investors who have specifically approached us stating that they wish to waive their right to approve/disapprove an investment pursuant to Regulation 19G(3) of the AIF Regulations. Often these investors were part of angel groups who used to invest in a portfolio entity along with other persons, and have now shifted to the Angel Fund framework. They state that as long as a certain investor agrees to participate in an investment, i.e. a “lead investor”, they want the Applicant to assume that they consent to the said investment. This is a fairly common model amongst angel groups, i.e., for investors belonging to the angel group to participate automatically in such investments that a “lead investor” is participating in. They view the requirement to provide an undertaking to participate in every investment as cumbersome and a hassle, and further, they contend that waiver of a statutory right is permissible under law, and that, they have requested us to contractually provide that they waive their right under Regulation 19G(3) of the AIF Regulations, and agree to invest in all investments made by the “lead investor”.
- c. **Given the context above, whether investors of an Angel Fund can agree to waive their right under Regulation 19G (3) of the AIF Regulations, and agree that their consent to participate in certain investments be deemed in accordance agreed upon contractual provisions, especially in light of the model described above?**

**E. Fees**

- a. As per the requirements prescribed under the Informal Guidance Scheme, we attach herewith a demand draft for Rs. 25,000 (Indian Rupees Twenty-Five Thousand only) in favour of the “**Securities and Exchange Board of India**” payable at Mumbai.

**F. Confidentiality**

- a. We waive the option to request for confidential treatment of this application for an interpretative letter under paragraph 11 of the Informal Guidance Scheme.

We request you to kindly issue an interpretative letter under the provisions of paragraph 4 of the Scheme. In the event that you require any clarifications or further information in this regard, we request you to kindly contact us or our legal advisors (who are duly authorised to represent us in this matter):

**Lets Venture Advisors LLP**

**Name:** Mr. Sanjay Kumar Jha

**Address:** SNC House, 2nd floor, No 7 Residency Road, Bengaluru – 560025

**E-mail:** sanjay@letsventure.com

**Phone:** +91-9845623179

**IC Universal Legal, Advocates and Solicitors**

**Name:** Mr. Tejesh Chitlangi

**Address:** 209, Hubtown Solaris, Prof. N.S. Phadke Marg, Off Western Express Highway, Andheri (East), Mumbai- 400069

**E-mail:** tejesh.chitlangi@icul.in

**Phone:** +91 22 6184 9900

Yours sincerely,

**For and on behalf of the Applicant, LV Angel Fund**

**Investment Manager: Lets Venture Advisors LLP**

  
(Authorized signatory)



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**From:**  
**Sent:** 06/08/2020 13:18  
**To:**  
**Cc:**  
**Subject:** Re: Application for interpretive letter under SEBI (Informal Guidance) Scheme 2003 by LV Angel Fund

Dear  
As discussed over the phone, we wish to withdraw the query number C  
*"C. Investment in a prospective investee (not being a non-banking financial company) which may, pursuant to its primary objective, have exposure to a non-banking financial company  
Whether an Angel Fund can make an investment in such Prospective Investee, which is not an NBFC, and meets with the other criteria required for an Angel Fund to make an investment, however, has an exposure to an NBFC, by virtue of being an investor or the holding company of an NBFC?"*

Since the previous guidance responses by you provide the clarity that we can invest in Companies that have a NBFC subsidiary / have an investment in a NBFC.

Thanks in advance.

Regards,  
  
etsVenture  
Ph : +