

Brief update on SEBI Circular on Specific Due Diligence of Investors and Investments of AIFs



❖ SEBI Circular on Specific Due Diligence of Investors and Investments of AIFs – October 8, 2024

Corresponding effect on AIF's and compliances applicable

- **For every scheme having an investor or investors belonging to the same group[^], who contribute(s) 50% or more of the Corpus**
 - ✓ Necessary due diligence as per the implementation standards formulated by Standard Setting Forum for AIFs (SFA) prior to getting benefits as QB/QIB.
- **Manager/Sponsor Regulated by RBI or Investor Regulated by RBI who contributes 25% or more of the Corpus or is Associate of Manager/Sponsor**
 - ✓ Necessary Due Diligence as per the SFA standards and Manager to ensure that no investment would lead to the RBI regulated lender/entity acquiring or holding an interest /exposure in the investee company indirectly which it can't hold directly.
- **In case of the above two scenarios, the either of the following shall be applicable**
 - ✓ **Proposed Investment** – AIF shall make the investment as per SFA Standards. If DD checks of SFA are not satisfied, then exclude the investor or don't make the investment.
 - ✓ **Existing Investments** – if they don't satisfy the DD checks then details to be reported to the custodian on or before **April 7, 2025**. if they do satisfy the DD Checks then manager shall submit an undertaking to this effect to the custodian on or before April 7, 2025.
- **In case of 50% or more of the Corpus by Investors who are citizens / beneficial owners from Neighboring Countries**
 - ✓ Necessary DD as per SFA standards prior to making any investments. Report details of its investment, which would result in the scheme holding 10% or more of equity / equity linked securities to its custodian within 30 days of investment, in SFA format. **Existing investments meeting this criteria to be reported on or before April 07, 2025.**

[^] (same group shall mean 'related parties' and 'relatives' as per SEBI (LODR) Regulations, 2015)

Key Highlights of the SEBI Circular

- SEBI Circular is issued in accordance with Regulation 20(20) of the AIF Regulations, mandates that AIFs must conduct due diligence on their investors and investments to prevent circumvention of various regulatory frameworks.
- These include provisions related to Qualified Institutional Buyers (QIBs), Qualified Buyers (QBs) and regulations set by the Reserve Bank of India (RBI) concerning stressed assets.
- The circular specifies that AIFs with investors' contributing 50% or more to a scheme's corpus must adhere to implementation standards set by the Standard Setting Forum for AIFs (SFA) before availing benefits for QIBs or QBs.
- AIFs must ensure that no investments indirectly allow RBI regulated entities to acquire interests they cannot hold directly.
- The circular also outlines due diligence checks for existing investments, particularly those from countries sharing land borders with India.
- Custodians are responsible for compiling and reporting investments details to SEBI, emphasizing the necessity of compliance with circular provisions.

Source: https://www.sebi.gov.in/legal/circulars/oct-2024/specific-due-diligence-of-investors-and-investments-of-aifs_87434.html

❖ **Implementation standards for specific due diligence of investors and investments of AIFs to prevent facilitation of circumvention through AIFs**
– Published by PE VC CFO Association in pursuant to SEBI Circular on Specific Due Diligence of Investors and Investments of AIFs dated October 8, 2024 - October 9, 2024

S.No	Key Highlights of the Standards	Due Diligence Checks to be measured	Corresponding effect on AIF's Checklist and compliances applicable
1.	Investors availing benefits designated for QIBs/QBs through AIFs	<ol style="list-style-type: none"> 1. Manager to check whether an Investor or investors of the same group, who contribute 50% or more corpus, is /are - <ul style="list-style-type: none"> - QIBs/QBs themselves, or - Entities established, owned or controlled by the Government (Central or State) or the Government of a foreign country, including central banks and sovereign wealth funds. - In case of AIF or fund set up outside India or in IFSCA, manager to check whether the above conditions are met on look through basis. 2. On fulfilling of the above conditions, the QIBs / QBs can avail the benefits as QIB / QB. 	<i>The Corresponding effect of the same shall be duly incorporated in the checklist w.r.t. QIBs/QBs investors of AIF's.</i>
2.	RBI regulated lenders/entities ever-greening their stressed loans/assets through AIFs –	<p>Checks to be carried out by AIF/manager/ their KMPs before making investment-</p> <ul style="list-style-type: none"> • To identify investors of the scheme who are lenders/entities regulated by RBI ('regulated investor') • To collect details of financial lenders/creditors/investors (regulated by RBI) of the proposed investee company • In case of regulated investor of the scheme is a lender or investor of the proposed investee company, manager to collect details of the financial credit/loan/investment from the books of such regulated investor. • Post examining information collected from the regulated investor, manager to check if the regulated investor would be in breach of any prohibition or limit or prudential norms with respect to Income Recognition, Asset Classification and Provisioning and Restructuring of stressed assets/loans under specific RBI circulars 	<i>The Corresponding effect of the same shall be duly incorporated in the checklist w.r.t. RBI Regulated Investors/lenders</i>

Source:

https://d3i08qenunr1m7.cloudfront.net/Implementation_standards_for_specific_due_diligence_of_investors_and_investments_of_AI_Fs_9a8281864b.pdf

3.	Investment from countries sharing land border with India through AIFs	<p>Following checks to be ensured, , if the proposed investment would result in the scheme holding 10 percent or more of equity/equity-linked securities issued by the company (on a fully-diluted basis)</p> <ul style="list-style-type: none"> • to collect information on country of investors of the scheme and their beneficial owner • To check if the 50% or more of the corpus of the scheme is contributed by investors, who themselves or their beneficial owners, are citizen of/are from/are situated in a country which shares land border with India ('LBC'). • In case the above mentioned is true, the manager of the AIF to report a set of information to the <u>custodian (as mentioned in the implementation standards), within 30 days of the said investment scheme.</u> • In case of AIFs where, 50% or more of the Corpus by Investors who are citizens / beneficial owners from Neighboring Countries, shall report details of their existing investments where the scheme holds 10 percent or more of equity/equity-linked securities issued by an investee company (on a fully-diluted basis), <u>to their custodians on or before April 07, 2025 in the format specified in the implementation standard. (*for ease of reference the link for the implementation standard mentioned in the source)</u> 	<p><i>The Corresponding effect of the same shall be duly incorporated in the checklist w.r.t. investors of AIF's that are from the countries where India shared its land borders.</i></p>
4.	Proposed investments not meeting the due-diligence checks	<ul style="list-style-type: none"> • Investment not to be done in case the proposed investment scheme does not satisfy the due diligence checks as per the implementation standards. or • In case the investor/investors of same group are excluded from the said investment, subject to necessary disclosures in the PPM for exclusion of investors. 	<p><i>The Corresponding effect of the same shall be duly incorporated in the checklist.</i></p>

Source:

https://d3i08qenunr1m7.cloudfront.net/Implementation_standards_for_specific_due_diligence_of_investors_and_investments_of_AI_Fs_9a8281864b.pdf