

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
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SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION

Mumbai, the 5th May, 2021

**SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE
INVESTMENT FUNDS) (SECOND AMENDMENT) REGULATIONS, 2021**

No. SEBI/LAD-NRO/GN/2021/21.— 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 further 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) (Second Amendment) Regulations, 2021.
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 sub-regulation (1) of regulation 2,

- i. after clause (w) and before clause (x), the following clause shall be inserted, namely, –

“(wa) “startup” means a private limited company or a limited liability partnership which fulfills the criteria for startup as specified by the Department of Promotion of Industry and Internal Trade, Ministry of

Commerce and Industry, Government of India, vide notification no. G.S.R. 127(E) dated February 19, 2019 or such other policy of the Central Government issued in this regard from time to time;”

- ii. clause (aa) shall be substituted with the following, namely, –
“(aa) “venture capital undertaking” means a domestic company which is not listed on a recognised stock exchange at the time of making investments;”

II In sub-regulation (2) of regulation 11, after the words and symbol “*key service providers,*” and before the words “*conflict of interest*”, the words and symbol “*terms of reference of the committee constituted for approving the decisions of the Alternative Investment Fund,*” shall be inserted.

III In sub-regulation (1) of regulation 15, –

- i. clause (c) shall be substituted with the following, namely, –
“(c) Category I and II of Alternative Investment Funds shall invest not more than twenty five per cent of the investable funds in an Investee Company directly or through investment in the units of other Alternative Investment Funds;”
- ii. clause (d) shall be substituted with the following, namely, –
“(d) Category III of Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company directly or through investment in units of other Alternative Investment Funds;”
- iii. after clause (d) and before clause (e), the following clause shall be inserted, namely, –
“(da) Alternative Investment Funds which are authorised under the fund documents to invest in units of Alternative Investment Funds shall not offer their units for subscription to other Alternative Investment Funds;”
- iv. clause (e) shall be substituted with the following, namely, –

“(e) Alternative Investment Fund shall not invest except with the approval of seventy five percent of investors by value of their investment in the Alternative Investment Fund in -

(a) associates; or

(b) units of Alternative Investment Funds managed or sponsored by its Manager, Sponsor or associates of its Manager or Sponsor;”

IV In sub-regulation (1) of regulation 16,

i. clause (a) shall be substituted with the following clause, namely, –

“(a) Category I Alternative Investment Fund shall invest in investee companies, venture capital undertakings, special purpose vehicles, limited liability partnerships or in units of other Category I Alternative Investment Funds of the same sub category;”

ii. Clause (b) shall be omitted.

V In regulation 17,

i. clause (a) shall be substituted with the following clause, namely, –

“(a) Category II Alternative Investment Funds shall invest in investee companies or in the units of Category I or other Category II Alternative Investment Funds as may be disclosed in the placement memorandum;

Explanation.– Category II Alternative Investment Fund shall invest primarily in unlisted companies directly or through investment in units of other Alternative Investment Funds;”

ii. clause (b) shall be omitted.

VI In regulation 18,

i. clause (a) shall be substituted with the following clause, namely, –

“(a) Category III Alternative Investment Funds may invest in securities of listed or unlisted investee companies, derivatives, units of other Alternative Investment Funds or complex or structured products;”

ii. clause (b) shall be omitted.

VII sub-regulation (1) of regulation 19F,

i. the words “venture capital undertakings” shall be substituted with the word “startups”.

ii. clauses (a) and (b) shall be omitted.

VIII Regulation 20 shall be substituted with the following, namely, –

“20 (1) Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case may be, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the Fourth Schedule.

Explanation.– For the purpose of this sub-regulation, ‘key management personnel’ shall have the meaning as specified by the Board from time to time.

(2) The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule.

(3) All Alternative Investment Funds shall have detailed policies and procedures, as approved jointly by the Manager and the trustee or trustee company or Board of Directors or designated partners of the Alternative Investment Fund, as the case may be, to ensure that all the decisions of the Alternative Investment Fund are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.

(4) All Alternative Investment Funds shall review the policies and procedures laid down in terms of sub regulation (3) of this regulation, other internal policies, if any, and their implementation, on a regular basis or as a result of business developments, to ensure their continued appropriateness.

(5) The Manager shall be responsible for every decision of the Alternative Investment Fund, including ensuring that the decisions are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.

(6) The Manager shall be responsible for ensuring that every decision of the Alternative Investment Fund is in compliance with the policies and procedures laid down for the Alternative Investment Fund in terms of sub regulation (3) of this regulation and other internal policies of the Alternative Investment Fund, as applicable.

(7) The Manager may constitute an Investment Committee (by whatever name called), to approve the decisions of the Alternative Investment Fund and such constitution shall be subject to such conditions as specified by the Board from time to time.

(8) The members of the Investment Committee shall be responsible for ensuring that the decisions of the Investment Committee are in compliance with the policies and procedures laid down in terms of sub regulation (3) of this regulation:

Provided that sub-regulation (8) of this regulation shall not apply to an Alternative Investment Fund in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager, has committed to invest not less than seventy crore rupees (or an equivalent amount in currency other than Indian rupees) and has furnished a waiver to the Alternative Investment Fund in respect of compliance with the said sub-regulation, in the manner as may be specified by the Board.

(9) The members of the Investment Committee shall abide by the Code of Conduct applicable to them as specified in Fourth Schedule.

(10) The external members of the Investment Committee whose names are not disclosed in the placement memorandum or in the agreement made with the investor or any other fund document at the time of on-boarding investors shall be appointed to the Investment Committee only with the consent of at least seventy five percent of the investors by the value of their investment in the Alternative Investment Fund or scheme.

(11) The Sponsor or Manager of the Alternative Investment Fund shall appoint a custodian registered with the Board for safekeeping of the securities if the corpus of the Alternative Investment Fund is more than five hundred crore rupees:

Provided that the Sponsor or Manager of a Category III Alternative Investment Fund shall appoint such a custodian, irrespective of the size of the corpus of the Alternative Investment Fund:

Provided further that the custodian appointed by Category III Alternative Investment Fund shall keep the custody of the securities and goods received in delivery against the physical settlement of commodity derivatives.

(12) All Alternative Investment Funds shall inform the Board in case of any change in the Sponsor, Manager or designated partners or any other material change from the information provided by the Alternative Investment Fund at the time of application for registration.

(13) In case of change in control of the Alternative Investment Fund, Sponsor or Manager, prior approval from the Board shall be taken by the Alternative Investment Fund.

(14) The books of accounts of the Alternative Investment Fund shall be audited annually by a qualified auditor.”

“Fourth Schedule

SEBI (Alternative Investment Funds) Regulations, 2012

[Regulation 20(1) and 20(9)]

(1) Code of Conduct for Alternative Investment Funds

An Alternative Investment Fund shall:

- (a) carry out its business activities and invest in accordance with the investment objectives stated in the placement memorandum and other fund documents.*
- (b) be operated and managed in the interest of all investors and not only in the interest of the sponsor, manager, directors or partners of the sponsor and manager or a select class of investors.*
- (c) ensure the dissemination of adequate, accurate, explicit and timely information in accordance with these Regulations to all investors.*
- (d) ensure the dissemination of any other information as agreed with the investors.*
- (e) ensure that an effective risk management process and appropriate internal controls are in place.*
- (f) have written policies and procedures to identify, monitor and appropriately mitigate any potential conflict of interest through-out the scope of its business.*
- (g) not use any unethical means to sell, market or induce any investor to buy its units.*
- (h) have written policies and procedures to comply with anti-money laundering laws.*

(2) Code of Conduct for the Managers of Alternative Investment Funds and key management personnel of Managers and Alternative Investment Funds

Every Manager of Alternative Investment Funds and key management personnel of the manager and Alternative Investment Funds shall:

- (a) abide by the Act, Rules, Regulations, Guidelines and Circulars as applicable to Alternative Investment Funds at all times;*

- (b) maintain integrity, highest ethical and professional standards in all its dealings;*
- (c) ensure proper care and exercise due diligence and independent professional judgment in all its decisions;*
- (d) act in a fiduciary capacity towards investors of the Alternative Investment Fund and ensure that decisions are taken in the interest of the investors;*
- (e) abide by the policies of the Alternative Investment Fund to identify, monitor and appropriately mitigate any potential conflict of interest throughout the scope of its business;*
- (f) not make any misleading or inaccurate statement, whether oral or written, either about their qualifications or capability to render investment management services or their achievements;*
- (g) record in writing, the investment, divestment and other key decisions, together with appropriate justification for such decisions;*
- (h) provide appropriate and well considered inputs, which are not misleading, as required by the valuer to carry out appropriate valuation of the portfolio;*
- (i) not enter into arrangements for sale or purchase of securities, where there is no effective change in beneficial interest or where the transfer of beneficial interest is only between parties who are acting in concert or collusion, other than for bona fide and legally valid reasons;*
- (j) abide by confidentiality agreements with the investors and not make improper use of the details of personal investments and/or other information of investors;*
- (k) not offer or accept any inducement in connection with the affairs of or business of managing the funds of investors;*
- (l) document all relevant correspondence and understanding during a deal with counterparties as per the records of the Alternative Investment Fund, if they have committed to the transactions on behalf of Alternative Investment Fund;*
- (m) maintain ethical standards of conduct and deal fairly and honestly with investee companies at all times; and*
- (n) maintain confidentiality of information received from investee companies and companies seeking investments from Alternative Investment*

Fund, unless explicit confirmation is received that such information is not subject to any non-disclosure agreement.

(3) Code of Conduct for members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund

Members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund shall:

- (a) maintain integrity and the highest ethical and professional standards of conduct;*
- (b) ensure proper care and exercise due diligence and independent professional judgment in carrying out their roles;*
- (c) disclose details of any conflict of interest relating to any/all decisions in a timely manner to the Manager of the Alternative Investment Fund, adhere with the policies and procedures of the Alternative Investment Fund with respect to any conflict of interest and wherever necessary, recuse themselves from the decision making process;*
- (d) maintain confidentiality of information received regarding the Alternative Investment Fund, its investors and investee companies; unless explicit confirmation is received that such information is not subject to any non-disclosure agreement.*
- (e) not indulge in any unethical practice or professional misconduct or any act, whether by omission or commission, which tantamount to gross negligence or fraud.*

Sd/-

AJAY TYAGI

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 May 21, 2012 vide No. SEBI/LAD-NRO/GN/2012-13/04/11262.
2. The Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 were subsequently amended on, –
 - (1) 16th September, 2013 by Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/24/6573.
 - (2) 23rd May, 2014 by Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014 vide No. LAD-NRO/GN/2014-15/03/1089.
 - (3) 26th September, 2014 by Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 vide No. LAD-NRO/GN/2014-15/11/1576.
 - (4) 14th August, 2015 by Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/011.
 - (5) 4th January, 2017 by Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2016 vide No. SEBI/LAD/NRO/GN/2016-17/026.
 - (6) 6th March, 2017 by Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/037.
 - (7) 1st June, 2018 by Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2018 vide No. SEBI/LAD/NRO/GN/2018/19.
 - (8) 10th May, 2019 by Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2019 vide No. SEBI/LAD/NRO/GN/2019/16.
 - (9) On 17 April, 2020 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020 vide No. SEBI/LAD-NRO/GN/2020/10.
 - (10) 19th October, 2020 by the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2020 vide No. SEBI/LAD/NRO/GN/2020/37.

(11) 8th January, 2021 by the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2021 vide No. SEBI/LAD/NRO/GN/2021/01.
