

Implementation standards for specific due diligence of investors and investments of AIFs to prevent facilitation of circumvention through AIFs

October 09, 2024

- I. With reference to SEBI circular no. SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/135 dated October 08, 2024 on 'Specific due diligence of investors and investments of AIFs' (hereinafter referred as SEBI circular)¹, the implementation standards to be adopted by AIF industry, as formulated by the Standard Setting Forum for AIFs ('SFA'), are given below.

A. Investors availing benefits designated for QIBs through AIFs -

For schemes of AIFs that fall within the ambit of para 3.2.1 of the SEBI circular, the following due-diligence checks shall be carried out by the AIF/manager/their KMPs before the scheme availing any benefit as a QIB under any SEBI Regulations-

- A.1. The manager shall check whether an investor or investors of the same group, who contribute(s) 50 percent or more to the corpus of the scheme, is/are –

- (i) QIBs themselves or,
- (ii) Entities established, owned or controlled by the Central Government or a State Government or the Government of a foreign country, including central banks and sovereign wealth funds.

In case such investor(s) contributing 50 percent or more of the corpus is an AIF or a fund set up outside India or in International Financial Services Centres in India, the manager shall check whether the aforesaid condition is met on a look through basis.

- A.2. If the conditions at para A.1. are met, the scheme may avail benefits as a QIB, provided that, the manager of the AIF independently verifies and provides an appropriate confirmation in this regard to Stock Exchange, Lead Manager or Merchant Banker or any other concerned authority, as the case may be, before availing benefits as QIB.

B. Investors availing benefits designated for Qualified Buyers (QBs) through AIFs -

For schemes of AIFs that fall within the ambit of para 4.2.1 of the SEBI circular, the following due-diligence checks shall be carried out by the AIF/manager/their KMPs before making any investments in Security Receipts (SRs) issued by an ARCs or availing benefits designated for QBs under SARFAESI Act, 2002 -

- B.1. The manager shall check whether an investor or investors of the same group, who contribute(s) 50 percent or more to the corpus of the scheme, is/are –

- i. QBs themselves; or,
- ii. Entities established, owned or controlled by the Central Government or a State Government or the Government of a foreign country, including central banks and sovereign wealth funds.

¹ Upon update to SEBI Master Circular for AIFs for FY24-25, the said reference to circular to be read as reference to corresponding chapter in the updated Master Circular for AIFs

In case the investor(s) contributing 50 percent or more of the corpus is an AIF or a fund set up outside India or in International Financial Services Centres in India, the manager shall check whether the aforesaid condition is met on a look through basis.

- B.2. If the conditions at para B.1. are met, the scheme may make investments in SRs issued by an ARC or avail benefits designated for QBs under SARFAESI Act, 2002.

C. RBI regulated lenders/entities ever-greening their stressed loans/assets through AIFs –

For schemes of AIFs that fall within the ambit of para 5.1.1 of the SEBI circular, the following due-diligence checks shall be carried out by the AIF/manager/their KMPs, before making an investment -

- C.1. The manager shall identify investors of the scheme who are lenders/entities regulated by RBI ('regulated investor') or investors that are funds having contribution from lenders regulated by RBI.
- C.2. The manager shall collect details of financial lenders/creditors/investors (regulated by RBI) of the proposed investee company, along with details of its outstanding financial obligations.
- C.3. If the regulated investor of the scheme is a lender or investor of the proposed investee company, the manager shall collect details of the financial credit/loan/investment from the books of such regulated investor.
- C.4. Upon examining the information collected from regulated investor as above, the manager shall check whether 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 following circulars/directions, in case the regulated investor were to directly lend to/invest in proposed investee company –
- a. RBI's Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances;
 - b. Master Circular - Income Recognition, Asset Classification, Provisioning and Other Related Matters - UCBs; and,
 - c. Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023.
- C.5. If the answer to the due diligence check at stated at para C.4 is 'No', then the scheme may proceed with the investment opportunity, after the manager obtains a confirmation from Chief Compliance Officer or a person of the rank of Chair of the Audit Committee or Chairman of the Board or Executive Director of the regulated investor that:
- a. there is no restriction on the regulated investor to lend to or invest in the investee company directly, and
 - b. if such investment in the proposed investee company through the scheme of AIF, would have required the regulated investor to make any disclosure in terms of circulars provided at para C.4 above, had it been a direct exposure, the necessary

disclosures shall be made to this effect as per the applicable timelines in terms of circulars provided at para C.4 above.

D. Investment from countries sharing land border with India through AIFs -

For schemes of AIFs that fall within ambit of para 8.2.1 of the SEBI circular, 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), the following due-diligence checks shall be carried out -

- D.1. The manager shall collect information on country of investors of the scheme and their beneficial owners.
- D.2. The manager shall check whether 50 percent or more of the corpus of the scheme is contributed by investors, who themselves or their beneficial owners, are citizens of/are from/are situated in a country which shares land border with India ('LBC').
- D.3. If yes, the manager of AIF shall report the following information to custodian, within 30 days of the said investment of the scheme:

Particulars		Information submitted by the AIF
Name of AIF		
Registration no. of AIF		
Name of scheme		
Total commitment received by the scheme (INR Cr.)		
Total no. of investors from Land Bordering Countries (LBCs)		
Total commitment of investors from LBCs (INR Cr.)		
Total value of equity/equity linked instruments issued (post investment) by investee company (INR Cr.)		
Value of equity/equity linked instruments acquired by scheme of AIF in investee company (INR Cr.)		
Type of security/instrument of investee company acquired by the scheme		
Percentage of equity holding of scheme in investee company, on a fully diluted basis		
<i>Details of LBC investor or investors having LBC beneficial owner –</i>		
Name of investor	Country of the LBC investor/beneficial owner	Contribution in the investment

- D.4. In reference to para 8.2.3 of the SEBI circular, schemes of AIFs falling under the ambit of provisions at para 8.2.1. of the SEBI circular, 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), to their custodians on or before April 07, 2025, as per the format at para D.3 above.

II. Proposed investments not meeting the due-diligence checks –

In case a proposed investment of a scheme does not satisfy the due -diligence checks for making investment as given at para A, B and C above, then either the proposed investment shall not be made; or such investor or investors of same group as referred in referred in para 3.2.1, 4.2.1 and 5.1.1 of the SEBI circular shall be excluded from the said investment, subject to necessary disclosure in the PPM for exclusion of investors.
