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India

Alternative Investment Funds

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This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in India. For a full list of jurisdictional Q&As visit **legal500.com/guides**

India: Alternative Investment Funds

1. What are the principal legal structures used for Alternative Investment Funds?

An Alternative Investment Fund ("**AIF**") in India may be structured as a trust, company, limited liability partnership ("**LLP**") or a body corporate, depending on commercial, regulatory and tax considerations. At present, trusts, LLPs and companies are commonly used structures for AIFs, in that order of preference. In the Union Budget 2024 speech, the Finance Minister had referred to the introduction of variable capital companies ("**VCC**"). Policy level talks are ongoing for introduction of a VCC structure in the International Financial Services Centre ("**IFSC**") at Gujarat International Finance Tec-City ("**GIFT**").

AIFs established in mainland India are regulated by the Securities and Exchange Board of India ("**SEBI**") and required to seek registration under the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**"). The AIF Regulations require an AIF to have an investment manager and a sponsor, which could be the same entity as well. The AIF Regulations do not envisage an AIF to have a self-managed structure.

In contrast, AIFs set up in IFSC fall under the purview of the International Financial Services Centres Authority ("**IFSCA**") and are governed by the IFSCA (Fund Management) Regulations, 2025 ("**FM Regulations**"). IFSCA requires a fund management entity ("**FME**") to obtain registration prior to launching an AIF equivalent scheme in GIFT IFSC. FMEs (other than Registered FME (Retail)) in IFSC may be structured as a company, LLP, or a branch thereof (only in cases where the FME is registered or regulated by a financial sector regulator for conducting similar activities).

2. Does a structure provide limited liability to the investors? If so, how is this achieved?

Yes, generally all structures of AIF in India limit the liability of investors to the amount of undrawn capital commitment except in specified circumstances such as default, giveback and tax indemnity or such other exceptions as may be provided in the fund documents. Typically, the manager ensures that where a liability is attributable to specific investor(s), it is not allocated to other investors. SEBI also requires *inter-alia* the managers to ensure ring-fencing of schemes under their management to protect investors from cross-scheme liabilities.

3. Is there a market preference and/or most preferred structure? Does it depend on asset class or investment strategy?

In India, a private trust is the most preferred legal form for setting up an AIF. As per data available for the period ending 15 August 2025, more than 97% of the AIFs registered with SEBI have been set up in the form of a private trust. The choice of legal form was historically (pre-2015) influenced by a more favourable tax framework available for determinate trusts in India as compared to other structures, until a tax pass-through status was granted in 2015 to all Category I AIFs and Category II AIFs irrespective of their legal form. In present times, the choice of legal form for Category I AIFs and Category II AIFs depends more on fund-level variables (number, nature and preference of investors including feeder structures, single scheme or multi-scheme) than portfolio-level variables (asset class or investment strategy). In the context of Category III AIFs, tax considerations and portfolio-level variables such as investment strategy may also play a vital role in determining legal form.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

Yes, the AIF Regulations distinguish between open-ended and closed-ended AIFs, whereby the latter is expected to have a defined life but the former can be evergreen structures. There are other parameters for distinguishing between different types of AIFs under the AIF Regulations, including by way of fund strategy and assets-under-management ("**AUM**"). There could be overlapping factors applicable to an AIF, e.g. it can be an open-ended AIF which is also a large value fund for accredited investors (AUM criteria).

Broadly, there are three categories of AIFs as follows:

a. one dedicated category, i.e., Category I for funds with positive spillover effects, where incentives are given and consequently investment restrictions are placed such as venture capital funds (including angel funds), social venture funds, infrastructure funds etc. These funds have to be closed-ended.
b. another category, i.e., Category II for funds which are unleveraged and neutral in their externalities where there are minimal incentives and restrictions. These funds have to be closed-ended.
c. third category, i.e., Category III for funds including hedge funds that are considered to have negative externalities such as systemic risk through leverage, and accordingly, may be regulated for liabilities and leverage. These funds may be closed-ended or open-ended.

Any AIF in which each investor (except the manager, sponsor, their employees, directors or partners) is accredited as per the accreditation requirements prescribed by SEBI and invests not less than INR 70 crores (~USD 8 million) is classified as a large value fund for accredited investors ("**LVF**"). LVFs have been granted certain relaxations from compliances and are not subject to the same regulatory oversight as other AIFs. In a recent consultation paper,[1] SEBI has also proposed the option of AIF schemes consisting of only accredited investors, with a lighter-touch regulatory framework than a regular AIF ("**AI AIF**").

AIFs in IFSC are classified differently where the category of the FME determines the scheme that can be launched by such FME. Categories of FMEs are Authorised, Registered (Non-Retail) and Registered (Retail). The alternative investment fund schemes under the FM Regulations are as follows:

a. Venture Capital Scheme: This refers to the schemes filed as venture capital funds under Category I AIF and are close-ended. All categories of FME can launch this scheme.
b. Restricted Scheme: This broadly entails schemes akin to the three categories of AIFs described under AIF Regulations above. Only Restricted Schemes filed as Category III AIFs can be open-ended. A Registered FME (Non-Retail) or a Registered FME (Retail) can launch these schemes.

Separately, Authorised FMEs which are set up by a Single Family (as defined by IFSCA) are permitted to launch Family Investment Funds (pooling money only from a Single Family) which could launch different investment vehicles taking form of a Category I AIF, Category II AIF or Category III AIF depending on the strategy.

Footnote(s):

[1] SEBI Consultation Paper on 'Introduction of a Separate Type of AIF scheme for only Accredited Investors' dated August 08, 2025 (accessible here).

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investors of an Alternative Investment Fund?

All AIFs are required to disclose the conditions on redemptions in their private placement memorandum. Typically, close-ended AIFs do not allow redemptions until the end of the fund's tenure in the normal course.

Open-ended AIFs are subject to redemption norms prescribed by SEBI which require the manager to have a liquidity management policy in place and ensure adequate liquidity in the scheme to meet redemption obligations. Suspension of redemptions is only allowed in exceptional circumstances or if required by law, and such possibility of suspension is required to be disclosed to the investors in the fund documents. During suspension periods, managers are prohibited from accepting new subscriptions.

The liquidity offered by the manager primarily depends on the nature of underlying investments. Since investments by Category I and II AIFs are mostly in unlisted securities, the liquidity offered by these AIFs to their investors is lower than an open-ended Category III AIF that generally invests predominantly in listed securities.

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

Managers ensure that investors are fully informed of the inherent illiquidity risks that an AIF carries by nature of its investments. Mitigation tools include staggered capital calls, which align capital deployment with deal flow, active portfolio management to ensure diversification and in case of investments in unlisted securities, robust exit rights in investment agreements with portfolio companies, including provisions such as drag-along rights, IPO clauses, and defined exit timelines.

For open-ended AIFs, liquidity risk is more acute due to investor redemption rights. Managers typically implement redemption locks or gating mechanisms to limit sudden outflows, ensuring redemption is subject to fund liquidity. Making temporary investments in liquid assets allows managers to deal with idle cash while ensuring a liquidity buffer.

SEBI has introduced a dissolution period for AIFs holding unliquidated investments at the end of their defined term. This period can be as long as the original term of the fund and is intended for orderly liquidation of assets as these AIFs cannot make any new investments during dissolution period. This additional term allows managers time for value realization from illiquid assets.

7. Are there any restrictions on transfers of investors' interests?

Restrictions on transfer of investors' interests are provided in the fund documents. Managers typically require the investors to seek prior consent from them for any transfers (even in case of transfer to affiliates) because managers are required to carry out relevant KYC/AML checks on all investors before onboarding them. All AIFs are required to issue units in dematerialised form and SEBI has directed the depositories to establish systems to ensure that transfer takes place only upon receipt of the necessary approval. The fund documents may also prescribe eligibility requirements for the transferee such as compliance with KYC norms, minimum capital commitment requirement, etc.

Additional conditions for transfer may be prescribed by depositories from time to time. For example, a depository in India requires consent of the company to be taken for any transfer of shares. Such restriction will apply for AIFs set up as a company even in the unlikely scenario that the fund documents do not impose any transfer restrictions.

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

AIF Regulations generally restrict Category I AIFs (except certain sub-categories) and Category II AIFs from investing more than 25% of their investable funds (as defined in the AIF Regulations to essentially mean corpus minus estimated expenditure) in a single investee company, whether directly or through investments in units of other AIFs. Category III AIFs cannot invest more than 10% of investable funds in an investee company, directly or through investments in units of other AIFs, or in case of investments by Category III AIFs into listed equity of an investee company, Category III AIFs may calculate the investment limit of 10% on either investable funds or NAV of the scheme subject to attendant conditions.

There are further allocation restrictions on type of instruments for different sub-categories of Category I AIF as well as for Category II AIFs. Category III AIFs are permitted to employ leverage subject to specified thresholds.

SEBI limits overseas investments by AIFs to 25% of the investable funds of the scheme of AIF in certain specified eligible investments.

AIFs in IFSC are not subject to the same diversification norms but at least 80% of the corpus of Venture Capital Schemes shall be invested in companies which are not older than 10 years from incorporation (directly or through investment into other schemes) and open-ended Restricted Schemes can invest only up to 25% of corpus in unlisted securities.

AIFs are also required to achieve the prescribed minimum corpus to hold the first close within 12 months from the date their offer document is taken on record by SEBI or IFSCA, as applicable.

9. What is the local tax treatment of (a) resident, (b) non-resident, (c) pension fund and (d) sovereign wealth fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax status or preference of investors or the tax treatment of the target investments primarily dictate the structure of the Alternative Investment Fund?

Yes, the taxation framework is one of the factors in determining the structure of AIF. Category I and II AIFs enjoy a pass-through tax status under the Income Tax Act, 1961 ("**ITA**"), meaning income from investments (other than business income) is taxable in the hands of the investors in the same manner as it would be taxed if they had invested directly while in case of Category III AIFs, the taxation framework depends on the legal form of the AIF. Category III AIFs structured as determinate trusts may be able to rely on a pass-through status generally accorded to determinate trusts under the ITA. Income distributable to investors by a Category I AIF or Category II AIF would be subject to applicable withholding taxes by the fund.

10. What rights do investors typically have and what restrictions are investors typically subject

to with respect to the management or operations of the Alternative Investment Fund?

The management and day-to-day operations of AIFs are generally handled by the manager. Investors typically have limited involvement in decision-making, confined to matters requiring their consent under law, participation in a Limited Partners Advisory Committee ("**LPAC**"), or other governance matters.

Some of the matters that require consent of the investors include extension of tenure, winding up of the fund, investment by the fund in associates and any material alteration to fund strategy. The matters referred to an LPAC generally relate to conflict of interest matters, creation of reserves, overview of adherence with valuation policy, etc. Rights granted to investors through side letters are discussed in detail in the following sections (*please see paragraph 5*).

SEBI restricts managers from granting investors a right that constitutes control on decision making of the AIF except where such investor is appointed to an investment committee and assumes fiduciary responsibility and legal accountability.

11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

Customization may come at a small cost for investors. SEBI allows large value fund for accredited investors to be more customized than other AIFs. Further, if AI AIFs are introduced (as mentioned earlier), then there will be other customizations available for these AIFs as well. However, each of these structures require the investors to obtain accreditation from a recognized accreditation agency and keep renewing it every 2-3 years. Further, SEBI has recently introduced Co-Investment Vehicles only for co-investment by accredited investors of the main AIF scheme, which are structured as separate schemes of the main AIF. CIVs will be single asset schemes, separately created for each co-investment and may even be a fund-of-one subject to the conditions prescribed by SEBI.

12. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

SEBI does not require managers of the AIFs to be licensed for the limited activity of managing the AIF itself. However, SEBI requires investment managers of AIFs who wish to offer co-investment opportunities to their investors through the portfolio management route to be registered as Co-Investment Portfolio Managers.

While AIF managers are not required to be licensed for their fund management activities, they are regulated and governed by the AIF Regulations and are required to submit declarations and undertakings at the time of application to SEBI for AIF registration undertaking compliance with applicable law.

IFSCA requires the manager to seek registration as an FME to undertake the activity of a fund manager of an AIF in IFSC, under one of these categories- Authorised, Registered (Non-Retail) or Registered (Retail).

13. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Yes. AIFs are required to registered with SEBI. Upon the trust, company or LLP being set up, the application for registration is submitted online on the SEBI Intermediary portal in the prescribed form along with the attachments which include declarations, undertakings, the private placement memorandum and KYC documents of entities in the AIF structure and contemporaneously submitted physically.

In IFSC, a licensed FME is required to submit an application to IFSCA in the prescribed form along with the attachments which include declarations, undertakings, the private placement memorandum and KYC documents of entities in the AIF structure. Venture Capital Schemes and Restricted Schemes are filed under the green channel whereby the schemes shall be open for subscription by investors immediately upon communication from IFSCA that the placement memorandum has been taken on record. No separate license is required for AIFs in IFSC.

14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

The requirement for managers to be domiciled in India is not expressly written in the AIF Regulations, but it is an expectation set by SEBI. In all cases, SEBI requires the manager or sponsor to have necessary infrastructure for carrying out the activities of an AIF and provide the details in the application.

The FM Regulations expressly state that an FME shall be set up in IFSC. Further, IFSCA requires the key managerial personnel of the FME to be based out of IFSC and the proposal on the portfolio construction of the fund to be initiated by a person based in the FME office in IFSC. IFSCA regularly conducts inspections to ensure compliance with these requirements.

Recently, IFSCA approved the "plug and play model" in IFSC enabling global fund managers to launch AIFs without establishing a physical presence in IFSC and a framework for such third-party fund management has been released.

15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

The AIF Regulations provide that the key investment team comprising partners, directors, or employees of the manager, have at least one member holding the relevant certification of National Institute of Securities Market and one member have professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking, where both criteria may be met by the same individual. Sponsor is required to hold a continuing interest in the AIF (which is separately quantified for different categories and sub-categories of AIFs) and show sufficient networth at the time of application for maintaining such interest.

An FME in IFSC shall satisfy networth requirement, appoint the key managerial personnel based out IFSC, and have necessary infrastructure commensurate to the size of its operations in IFSC. The FME is also required to contribute to the AIF unless specifically exempted under the FM Regulations.

16. What service providers are required by applicable law and regulation?

For AIFs structured as trusts, a trustee is appointed by the settlor. The trustee then appropriately delegates its powers and duties to the manager under the investment management agreement.

Documentation for the AIF involves a legal advisor and tax advisor, and the application is filed with SEBI through a Merchant Banker, unless exempted.

Upon being registered, the key appointments include a Custodian for safekeeping of securities (this requirement is based on AUM for AIFs in IFSC), a Registrar & Transfer Agent for collection of stamp duty and handling issuance of dematerialised units, a qualified auditor and an independent valuer.

Additionally, the manager may outsource its non-core functions to service providers such as administrators, accountants and distributors.

17. Are local resident directors / trustees required?

AIF set up as a trust is required to have trustees domiciled in India and for a trust in IFSC, the trustee company should be based out of IFSC. For AIFs in the form of companies and LLPs, at least one director and designated partner respectively is required to be a resident of India.

18. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

If the manager or sponsor of an AIF regulated by SEBI is owned or controlled by a person resident outside India; or is not owned and not controlled by resident Indian citizens, the investments by such AIF in India shall be treated as indirect foreign investment, meaning that the investment will be subject to the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment.

Managers often constitute an investment committee to approve decisions of the AIF. Presently, SEBI only allows resident Indian citizens to be external members (not being employees, directors or partners of the manager) on such committees.

19. What are the common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

In India, the accountability and liability for all aspects of an AIF's management rest squarely with the manager. The regulatory framework makes the manager the central fiduciary, responsible for ensuring that the AIF is run in compliance with law, fund documents, and in the best interest of its investors. The functions range from making disclosures, ensuring transparency, adhering to investments restrictions to timely compliances and fulfilling legal obligations. Violation of the law is viewed strictly and may even result in the manager and / or its key personnel being banned from the securities market in addition to monetary penalties. Both SEBI and IFSCA prescribe a code of conduct for managers, and any breach of this code can result in monetary penalties imposed by the respective regulator.

SEBI has also established a centralised web-based complaint redressal facilitation platform, SCORES, where investors can escalate their complaints to SEBI if the manager does not respond to their concerns or such concerns remain unanswered.

20. What is the typical level of management fee paid? Does it vary by asset type?

Close-ended funds typically charge management fees between 1% – 2.5% annually on their committed or invested capital, or a combination thereof, with a step-down in either the rate or the basis of computing management fees after the commitment period, particularly common in private equity funds. The quantum and methodology varies, based on the investment strategy, fund size, size of an investor's commitment or its strategic value to the fund.

Accounting for lower costs of setting up and sourcing deals, continuation / secondary funds typically charge management fees on invested capital and sometimes offer lower rates to investors in common with the previous fund. On the other hand, given that fund-of-fund ("**FOF**") investors must bear two layers of management fees, the fee at the FOF level tends to be lower than the fee charged at the master fund, and composite caps are considered for investors' comfort.

The AIF Regulations proscribe adjusting the management fees against the sponsor / manager's skin-in-the-game contribution. The AIF Regulations also mandate disclosure to investors of fees charged to portfolio companies or earned by affiliates.

We discuss typical fee discounts availed by investors, including reductions based on commitment size, in *paragraph 22* below.

21. Is a performance fee or carried interest typical? If so, does it commonly include a "high water mark", "hurdle", "water-fall", "preferred return" or other condition? If so, please explain.

With respect to distributions upon realization of unlisted securities, it is commonplace for carried interest, typically with full catch-up, to be allocated to the manager and other eligible recipients, after the capital and an IRR-based hurdle or preferred return thereon is distributed to investors. Depending on the investment strategy, waterfalls may differ – for instance, AIFs making debt or real estate investments have a 'regular income' waterfall that periodically distributes yields towards preferred return and carried interest (with or without catch-up) before the capital is distributed through a separate waterfall upon exit. Some AIFs may distribute proceeds in multiple tiers, with the carried interest proportionately increasing with an increase in the hurdle rate. In most cases, while carried interest is distributed after providing returns to investors, distributions against the sponsor's skin-in-the-game contribution is typically returned at the same time other investors.

Open-ended funds making liquid investment in listed securities, typically provide performance fee to recipients on appreciation in net asset value of units which is paid after a hurdle and where negotiated, a high water mark is crossed.

Until November 2024, managers exercised discretion in determining the ratio of inter-se distribution of investors, i.e., whether to distribute proceeds in the proportion of investors' commitments, contributions or invested capital to ensure that beneficial economics are passed down to the last dollar distributed. However, the status quo has since changed, and managers are required to make distributions pro rata to investors' commitments. The jury is still out on amendments in light of industry pushback for reinstating flexibility to the manager.

22. Are fee discounts / fee rebates or other economic benefits for initial investors typical in raising assets for new fund launches?

Early bird discounts / rebates on management fees are commercially negotiated based on criteria such as fund size, investment strategy, investor's ticket size and / or strategic importance, with AIFs having new managers or AIFs making early-stage investments needing to employ deal sweeteners like fee discounts more often during fund-raising than their experienced / late-stage counterparts.

23. Are management fee "break-points" offered based on investment size?

Yes, while investors with higher ticket sizes are commonly subject to lower management fee, ticket size may not be the only criteria. There may be further management fee-breakpoints based on how the investor was introduced to the AIF. If the manager pays referral fees to the referrer, such fees may be charged to the investor (with appropriate disclosures) as a surcharge on the management fees.

24. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

AIFs typically adopt first loss programs or a 'priority distribution model' to incentivize institutional participation or as deal sweeteners useful for emerging managers. Such structures are characterised by the manager / sponsor / certain investors, i.e., the 'junior' class compensating the 'senior' investor class for losses on the portfolio but providing the senior class a preference when distributing profits towards capital and hurdle. Starting December 2024 however, all investors of AIFs must be granted rights pro rata to their commitment, and only the manager / sponsor / government or government-backed institutions / development financial institutions shall be permitted to share losses more than pro rata to their commitment in the AIF.

In another development, India's central bank subsequently directed banks and non-banking financial companies holding junior class units in AIFs to deduct amounts to the extent invested in the AIF from its core and supplementary capital, effectively reducing available capital.

25. What are the typical terms of a seeding / acceleration program?

As part of 'sponsor solutions', seed investors seek preferential terms of investment in the AIF such as lower fees, a portion of carried interest, first-look rights (i.e., access to investment notes), along with control / ownership of the manager / sponsor entities. Seed investors may also contribute towards the skin-in-the-game sponsor contribution. This is especially commonplace in real estate funds, where developers participate in sponsor-JVs, and experienced investment teams manage the AIFs' investments.

Regulatory concerns for seed or anchor investors include (i) ensuring that they fulfil their fiduciary obligations as shareholders in the manager / sponsor towards all investors of the AIF vis-à-vis their own interest in the AIF, and (ii) identifying potential conflicts of interest such as deal-allocation upon the exercise of first-look rights and timing of exits when making co-investments alongside the AIF. On one hand, managers tend to make sponsorship agreements with seed investors airtight to avoid triggering a potential change in control or a breach in providing the skin-in-the-game contribution, and seed investors on the other hand, negotiate for strict 'key person' events linked to carried interest to keep the manager tied in.

Alternatively, if seed investors do not seek a degree of control on the manager (now explicitly prohibited as a side letter right post December 2024 (*please see paragraph 5*)), then first-look / information rights, co-investment, most favoured nation and LPAC participation, among rights, may also be offered through side letters.

26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?

Given that the AIF Regulations were released 13 years ago, the Indian market is optimally placed to see an increase in secondary and continuation funds, since the last set of 'venture capital funds' under the erstwhile fund regulations and first-generation funds under the current fund regulations are approaching liquidation and a growth in the number of funds with such strategies may be expected. Continuation funds are expected to either lower the rate of management fees or charge it on invested capital only, given that the commitment period may not utilised for deployment of capital in the same manner as the primary fund. Similarly, conflict considerations become critical while designing continuation funds.

Since the minimum ticket size per investor has not seen an increase since the AIF Regulations were first released, interest in AIF investments has been on the rise, notably from family offices. The 'family investment fund' regime in GIFT has also tilted the scales in favour of offshore investments through such fund structures, instead of the traditional route whereunder investments per individual were limited to USD 250,000 per financial year. There is also an uptick in interest from family offices in deal-sourcing and managerial participation for sharing of carried interest, which calls for a thorough identification of potential conflicts of interest and their mitigation.

The government's budget announcements for 2025-26 included allocation of new capital in socially / economically beneficial sectors such as affordable housing, and the increased participation of governmental institutions may be expected. However, the manner of deployment of this capital may hinge on regulatory developments on side letter restrictions (*please see paragraph 5*), since government-backed institutions typically require extensive differential rights to be provided and the application of the side letter norms to such institutional investors has not yet been carved out.

Finally, there are no legal norms regulating management fees, incentive/performance fees or carried interest in a different way between primary and secondary funds.

27. What restrictions are there on marketing Alternative Investment Funds?

Units of Indian AIFs are to be strictly privately placed, through a templatised private placement memorandum containing *inter alia* mandated disclaimers, risk factors, conflict disclosures. AIFs can onboard up to 1000 investors.

SEBI requires AIFs and their managers, as regulated entities, to ensure that distributors, as their agents, comply with certain high-level principles such as ensuring that placements are made privately, are not induced or made by unethical means.

Distributors marketing GIFT AIFs in India or foreign jurisdictions must comply with a code of conduct including an advertisement code prescribed by IFSCA.

28. Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

SEBI has indicated that the date on which the AIF is first marketed should be considered the date of the AIF's launch. Considering this, along with the restriction on entities from acting as AIFs without registering with SEBI under the AIF Regulations, marketing the fund before receiving registration may not be seen favourably by SEBI, although there have been no adverse findings in this regard. AIF applicants may seek commitments from potential investors before incorporation / establishment with 'in-principle' approvals from SEBI.

Managers with existing AIFs may be able to pre-market upcoming funds to existing and new investors by highlighting the performance of their existing AIFs. However, marketing documents that demonstrate the performance of existing AIFs must be accompanied by an industry benchmarking report generated by a designated benchmarking agency, as is mandated by SEBI to ensure that investors have a common and fair metric for comparing performances. New managers conducting soft marketing on a no-name basis / soft interest letters with 'no-offer' disclaimers to gauge market interest must tread carefully.

29. Can Alternative Investment Funds be marketed to retail investors?

While the regulatory intent of AIF regime was to remain light touch to allow sophisticated investors with financial wherewithal to negotiate terms of their investments, the AIF Regulations do not restrict AIFs from being marketed to retail investors subject to the prohibition on public offer. Certain types of AIFs, however, require investors to fulfil specific criteria thus limiting its investor base – for instance, only angel investors having sufficient net worth can invest in 'angel funds', and LVFs can only be subscribed to by accredited investors with valid accreditation certificates.

Subject to these exceptions, while retail investors can be onboarded by an AIF, the AIF must ensure that its units are privately placed.

30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?

Retail participation in AIFs is allowed, but retail marketing is not permitted. Please see our response under *paragraph 29*.

31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?

Besides minimum ticket sizes and permissible jurisdictions of residence, SEBI does not prescribe investor-specific qualifications, except for certain types of AIFs such as angel funds, LVFs and corporate debt market development funds. While the minimum ticket size for most AIFs per investor is INR 1 crore (~USD 114,000), some exceptions include special situation funds requiring a minimum investment of INR 10 crores (~USD 1.14 million), and social impact funds requiring a minimum investment of INR 2 lakhs (~USD 2,300). Should investors be validly 'accredited', no minimum ticket size applies to their investment in an AIF, except when investing in an LVF where the minimum investment is INR 70 crores (~USD 8 million).

Corporate debt market development funds are unique as its subscription is limited to asset management companies (typically managing mutual funds) and specific debt-oriented mutual funds. Further, AIFs can only accept investments from foreign investors who reside in jurisdictions permitted by SEBI from time to time.

AIFs, including funds in GIFT, must undertake know-your-client and anti-money laundering compliances before onboarding investors, which typically include identifying and verifying the identity of investors and their beneficial owners (persons either (i) owning interest of at least 10% or 15%, depending on legal form of the investor, or (ii) controlling decisions of the investor), and periodically update their records. Notably, government / government-related investors are often exempt from some of the aforesaid restrictions.

32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?

While relevant regulators of pension funds and insurance companies prescribe norms to be followed when investing in AIFs, the AIFs themselves are not restricted from marketing to government entities, pension funds, insurance companies, etc.

33. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

In line with *paragraph 27*, SEBI views referrers/distributors/placement agents of AIF units as ‘agents’ of the AIF, making it the manager’s obligation to ensure compliance with private placement norms. Separately, SEBI-registered intermediaries such as ‘investment advisers’ also often include AIFs in the product universe that they advise clients to invest in. In all such cases, managers comply with their obligation, *inter alia*, by capturing the names of recipients and distributors/adviser on each copy of the memorandum prior to circulation stating that the memorandum constitutes a limited offer / solicitation only to its recipient.

Distributors marketing GIFT funds in jurisdictions other than GIFT are exempt from registration, in which case the GIFT fund must ensure that the distributor can and will comply with an IFSCA-prescribed ‘code of conduct’. A GIFT fund intending to operate an office abroad for, *inter alia*, marketing such fund must notify the GIFT regulator in advance.

34. Is the use of “side letters” restricted?

No, the use of side letters is not restricted, but was recently regulated. Starting December 2024, SEBI mandated rights of all investors in an AIF (except for LVFs) to be *pari-passu* in all aspects, and any existing differential rights resulting in an investor controlling decisions of the AIF or affecting their economic / non-economic rights of other investors to be terminated. Upon SEBI’s instruction, the industry association released a positive list of rights on which differential treatment may be provided to investors. A list of these rights has been provided in our response under *paragraph 36*.

Given as existing differential rights conflicting with the standards must be terminated, the industry has made representations to allow alt-negotiated rights to be grandfathered.

Even before December 2024, managers were restricted from providing differential rights in relation to preferential exit from fund, contribution to indemnification, giveback and drawdown per SEBI’s template private placement memorandum.

35. Are there any disclosure requirements with respect to side letters?

While disclosure of available side letter rights in the private placement memorandum was commonplace owing to the template memorandum, the new side letter standards require disclosure of available side letter rights along with the eligibility criteria for investors who may seek such right.

36. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

As of date, permissible differential terms include fund expenses, management fees, hurdle rate, carried interest, co-investment rights, reporting and / or information obligations, most favoured nation, representations and warranties. Typical rights missing from this list, as it stands today, are the right to transfer interest within the group / to LPs (in case of an FOF), manner of distributions (no in-specie), limits on reinvestments.

Besides these, if any rights elaborate on the terms of the memorandum / contribution agreement with investors or have been provided to an investor for complying with laws applicable to such investor, such rights shall not be deemed 'differential'.

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