

## IC Legal Note on Obligations/Liability of Sponsor under SEBI AIF Regulations

“**Sponsor**” under SEBI AIF Regulations is defined as any person or persons who set up the Alternative Investment Fund. ‘Sponsor’ is required to adhere with following key requirements under the AIF Regulations:

- i. The Sponsor shall have a continuing interest in the Fund (lesser of 2.5% of the corpus or 5 cr in case of Category I & II and lesser of 5% of corpus or 10 cr in case of Category III).
- ii. With respect to the AIF Application, SEBI may require the Sponsor to appear before it and make a personal representation.
- iii. Any co-investment by the Sponsor shall not be on more favourable terms than those offered to the AIF.
- iv. In case of change in control of the Sponsor, prior approval of SEBI shall need to be taken by the AIF.
- v. In case of any conflict of interest:
  - a) The Sponsor of the AIF shall act in a fiduciary capacity towards its investors and shall disclose to the investors, all conflicts of interests as and when they arise or seem likely to arise.
  - b) The Sponsor of the AIF shall abide by high level principles on avoidance of conflicts of interest with associated persons, as may be specified by SEBI from time to time.
- vi. The Sponsor or the Investment Manager shall be required to maintain following records for a period of five years after the winding up of the AIF describing:
  - a) the assets under the scheme/fund;
  - b) valuation policies and practices;
  - c) investment strategies;
  - d) particulars of investors and their contribution; and
  - e) rationale for investments made.
- vii. SEBI may at any time call for any information from the Sponsor with respect to any matter relating to the activity of the AIF or for the assessment of systemic risk or prevention of fraud.
- viii. Under Chapter V of the AIF Regulations, in case of an inspection by SEBI on its own or due to some complaint, the officers, investment manager and any other concerned relevant person/s of AIF may be required to provide information to SEBI, assist with SEBI during inspection. In case of adverse finding, sanctions may be imposed by SEBI (as listed down under Regulation 34) against the person concerned viz.

- prohibition of the person concerned from disposing of any of the properties of the fund or scheme acquired in violation of the regulations;
  - requiring the person connected to dispose of the assets of the fund or scheme requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme;
  - prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period.
- ix. At end of financial year, the manager of an AIF shall prepare a compliance test report (CTR) on compliance with AIF Regulations and circulars issued thereunder. The CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR.
- x. In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible.

#### Some Mitigating factors

- The Indian Trusts Act levy obligations on the trustee of the AIF.
- Furthermore, the key Fund Documents like the IMA (between Trustee and the Investment Manager), Contribution Agreement (between Trustee, Investment Manager and the Contributor) do not have Sponsor as the party. Hence the Sponsor, not being a party to the Fund documents may escape the contractual liability, otherwise typically applicable on the Investment Manager and the Trustee.

Hence, it can be seen that the SEBI AIF Regulations specify certain obligations to be fulfilled by the entity/individual named as Sponsor (as listed earlier) but there are certain factors which mitigate individual Sponsor's liability/risks under Law and Fund Documents (as also stated above).