

# Analytical Speaking



## SEBI introduces 'Angel Funds'

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## Note

***“Angel investors bring both experience and capital to new ventures. SEBI will prescribe requirements for angel investor pools by which they can be recognised as Category I AIF venture capital funds”***

- Union Budget Speech for 2013-14 of P. Chidambaram (Hon'ble Finance Minister)

In a country like India, having a strong base for new ventures to set up their business was always the need of the hour. And this need would have been met only with the help of Angel Investors. Having known this, the Finance Minister quoted the above statement. Furthermore, pursuant with the budget speech 2012-13, SEBI amended the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012<sup>1</sup> (***“2012 Regulation”***), which now will be known as ***Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2013<sup>2</sup> (“Regulation”***).

### NEED OF ANGEL INVESTORS IN INDIA

It is not surprising if an entrepreneur of a newly formed company says, ***“I am finding it difficult to obtain loans from banks, financial institutions, etc”***. This is mainly because, in India the procedure and criteria to obtain loan through traditional sources like banks are too complicated. The problem doesn't end here, even if the funds are obtained from the banks or FI's, the entrepreneur is not capable or has enough experience enough to deploy these funds in an appropriate manner.

And, it's here where the importance of having Angel investors come into picture. An Angel investor is not an investor with golden wings who only provides funds to the new ventures; but with their knowledge and experience, they tend to contribute in deploying those funds in a manner profitable to the company.

### APPLICABLE PROVISIONS UNDER THE REGULATIONS

An altogether new Chapter has been inserted in the Regulation known as **CHAPTER III –A: ANGEL FUNDS**, provisions whereof shall be applicable to angel funds and schemes launched by such angel funds. Furthermore, some provisions of 2012 Regulation still remain applicable to Angel Funds, their sponsors and managers and angel investors and some are exempted.

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<sup>1</sup> [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1337601524196.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1337601524196.pdf)

<sup>2</sup> [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1379324597638.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1379324597638.pdf)



## Note

### Angel Fund & Angel Investors defined

As per Regulation 19A (1) of the Regulation:

*“angel fund” means a sub-category of Venture Capital Fund under Category I- Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of this Chapter.”*

As per Regulation 19A (2) of the Regulation:

*“angel investor” means any person who proposes to invest in an angel fund and satisfies one of the following conditions, namely,*

- (a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who:
 
  - (i) has early stage investment experience<sup>3</sup>, or*
  - (ii) has experience as a serial entrepreneur<sup>4</sup>, or*
  - (iii) is a senior management professional with at least ten years of experience;**

*(b) a body corporate with a net worth of at least ten crore rupees; or*

*(c) an Alternative Investment Fund registered under these regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.*

### Comparative Analysis of Angel Funds and other AIFs from regulatory point of view

Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
<b>Registration</b>	<p><b>Regulation 19C</b> In accordance with provisions of Chapter II of 2012 Regulations</p> <p>An already registered AIF which has not made any investment, may apply for conversion of its category into an Angel Fund.</p>	<p><b>Regulation 3</b> In accordance with provisions of Chapter II of 2012 Regulations as Category I, Category II or Category III AIFs.</p>	<p>If the context otherwise requires or repugnant to the provisions of Chapter III-A</p>

<sup>3</sup> shall mean prior experience in investing in start-up or emerging or early-stage ventures

<sup>4</sup> shall mean a person who has promoted or co-promoted more than one start-up venture



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Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
<b>Registration Fees</b>	` 2,00,000	` 5,00,000	
<b>Investments in Angel Fund and AIFs</b>	<b>Regulation 19D</b> By way of issue of units only to the angel investors	<b>Regulation 10</b> By way of issue of units to any investor whether Indian, foreign or non-resident Indians	Clauses (a), (b), (c), (d) and (f) of Regulation 10
	Corpus of atleast rupees 10 crores	Corpus of atleast rupees 20 crores	
	Minimum investment of twenty five lakh rupees for investors	Minimum investment of one crore rupees for investors  In case of Employees or directors of AIF or Manager, minimum shall be twenty five lakh rupees.	
	Funds to be accepted for a maximum period of three years.	<b>Regulation 13</b> Category I and II AIFs (close ended) or schemes launched by such funds shall have a minimum tenure of three years.  Category III AIF may be open ended or close ended  Extension of tenure of close ended AIF permitted upto 2 years subject to approval of two thirds of unit holders by value of their investment in	If the context otherwise requires or repugnant to the provisions of Chapter III-A



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Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
		AIF.	
	<p><b>Regulation 19 D (4)</b> Funds to be raised through private placement by issue of information memorandum or placement memorandum.</p>	<p><b>Regulation 10 (g)</b> The fund shall not solicit or collect funds except by way of private placement.</p> <p><b>Regulation 11</b> Alternative Investment Fund shall raise funds through private placement by issue of Information memorandum or placement memorandum, by whatever name called</p>	If the context otherwise requires or repugnant to the provisions of Chapter III-A
<b>Filing of Scheme Memorandum with SEBI</b>	<p><b>Regulation 19E</b> Atleast 10 working days prior to launch of the Scheme</p>	<p><b>Regulation 12</b> Atleast 30 days prior to launch of the Scheme.</p>	Regulation 12 not applicable
<b>Scheme Fees</b>	Nil	Rupees 1,00,000	
<b>Maximum number of investors in a Scheme</b>	<p><b>Regulation 19 E (4)</b> 49 angel investors</p>	<p><b>Regulation 10 (f)</b> 1000 investors.</p> <p>Provided that the provisions of the Companies Act, 1956 shall apply to the AIF, if it is formed as a Company</p>	Regulation 10 (f) not applicable



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Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
Investments by Angel Funds and AIFs	<p><b>Regulation 19 F (1)</b></p> <p>Investments permitted only in Venture Capital Undertakings which:</p> <p>a) have been incorporated during the preceding <b>3 years</b> from the date of such investment;</p> <p>b) have a turnover of less than <b>25 crore</b> rupees;</p> <p>c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds <b>300 crore</b> rupees; and</p> <p>d) are not companies with family connection with any of the angel investors who are investing in the company</p>	<p>Subject to</p> <p><b>Regulation 15</b> - General Investment Conditions;</p> <p><b>Regulation 16</b> - Conditions for Category I AIFs</p> <p><b>Regulation 17</b> - Conditions for Category II AIFs</p> <p><b>Regulation 18</b> - Conditions for Category III AIFs</p>	<p>Regulation 15 (1) (a), (c) &amp; (e)</p> <p>Regulation 16 (1) (b)</p> <p>Regulation 16 (2)</p>
Limit on investment.	<p><b>Regulation 19 F (2)</b></p> <p>Investment in any venture capital undertaking shall not be less than <b>50 lakh</b> rupees and shall not exceed <b>5 crore</b> rupees.</p> <p><b>Regulation 19 F (5)</b></p> <p>Investment in one Venture Capital undertaking to not exceed 25% of the total investments under all its</p>	<p><b>Regulation 15 (1) (c)</b></p> <p>Category I and II AIFs shall not invest more than 25% of the investible funds in one Investee Company;</p> <p><b>Regulation 15 (d)</b></p> <p>Category III AIFs shall not invest more than 10% of the investible funds in one Investee Company</p>	<p>Regulation 15 (1) (c) &amp;</p> <p>Regulation 16 (2)</p>



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Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
	<p>schemes.</p> <p>The compliance of the same is to be ensured at the end of the tenure.</p>	<p><b>Regulation 16 (2) -</b> Additional investment conditions applicable to Venture Capital Funds</p>	
<p><b>Lock in requirements</b></p>	<p><b>Regulation 19 F (3)</b></p> <p>Investment in the Venture Capital undertaking shall be locked-in for a period of <b>three</b> years.</p>	<p><b>Regulation 16 (2) (b) (iii)</b></p> <p>Investments by Category I AIFs in preferential allotment, including through qualified institutional placement, of equity shares or equity linked instruments of a listed company is subject to lock in period of <b>one</b> year</p> <p><b>Regulation 16 (2) (d) and (3) (c) and Regulation 17 (f)<sup>5</sup></b></p> <p>Investments in companies listed on SME Exchange or SME segment of an exchange is subject to lock in period of <b>one</b> year</p>	<p>Regulation 16 (2)</p>

<sup>5</sup> Applicable to Venture Capital Funds, SME funds and Category II AIFs respectively.



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Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
		from the date of investment. <sup>6</sup>	
<b>Investment in associates</b>	<b>Regulation 19 F (4)</b> Not permitted	<b>Regulation 15 (1) (e)</b> Permitted with the approval of seventy five percent of investors by value of their investment in the AIF.	Regulation 15 (1) (e) not applicable
<b>Requirement of continuing interest by Sponsor or Manager</b>	<b>Regulation 19 G</b> The manager or sponsor shall have a continuing interest of atleast 2.5% of the corpus or rupees fifty lakh whichever is lesser.	<b>Regulation 10 (d)</b> The manager or sponsor shall have a continuing interest of atleast 2.5% of the corpus or rupees five crore whichever is lower.  In case of Category III AIF the continuing interest shall be atleast 5 % of the corpus or ten crore rupees, whichever is lower.	Regulation 10 (d) is not applicable
<b>Listing of units</b>	<b>Regulation 19 G</b> Units of angel funds shall not be listed on any recognized stock exchange.	<b>Regulation 14</b> Units of close ended AIF may be listed on stock exchange subject to a minimum tradeable lot of rupees 1 crore.	Regulation 14 is not applicable

<sup>6</sup> In order to be exempt from regulation 3 and 3A of SEBI (Prohibition of Insider Trading) Regulations, 1992





## Note

Parameters	Regulations applicable only to Angel Fund	2012 Regulations applicable to other registered AIFs	Non-Applicability 2012 Regulations to Angel Fund
		Listing shall be permitted only after final close of the fund or scheme.	

### Conflict with Companies Act, 2013 and Companies Act, 1956

The Regulations limit the number of angel investors to 49 as Angel Funds are allowed to raise funds only through private placement. Under section 42 of Companies Act, 2013 private placement can be done to a maximum of 50. The draft rules issued allow companies to make private placement to a maximum of 200 persons in a financial year. Formerly, 2012 Regulations was extremely liberal in defining 1000 investors per scheme as the limit for private placement. However, the Regulations have inserted a proviso to the effect that where the AIF is formed as a Company, the provisions of the Companies Act, 1956 shall apply. The Regulations seem to have relied on section 67(3) of Companies Act, 1956 and accordingly specifies limit of 49 angel investors for each scheme of Angel Fund as per Regulation 19E (4).

### Conflict between maximum period of investment and minimum lock in period

While Regulation 19D (3) restricts angel funds from accepting investments from angel investors for a period beyond 3 years, Regulation 19F (3) specify a minimum lock in requirements of investment made by an angel fund in the Venture Capital undertaking for a period of 3 years. Not sure how the angel funds will address this twin requirement. The 2012 Regulations, on the contrary, specify that Category I and II AIFs or schemes launched by such funds shall have a minimum tenure of three years. If angel fund is a sub-category of Venture Capital Fund under Category I AIF, there should not such disconnect in drafting of investment period requirement by SEBI.

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