

FAQs on Specific Due Diligence of investors & investments of AIFs

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Background

Following the findings under its thematic investigation in 40+ cases, SEBI had raised concerns relating to evergreening of loans¹, circumvention of FEMA norms, availing benefits available to QIBs and other concerns on regulatory arbitrage by Alternative Investment Funds ('AIFs') in its [Consultation Paper](#) issued in January, 2024.

To curb this circumvention, SEBI via [SEBI \(Alternative Investment Funds\) \(Second Amendment\) Regulations, 2024](#) amended regulation 20 of the [SEBI \(Alternative Investment Funds\) Regulations, 2012](#) (AIF Regulations) dealing with general obligations thereby requiring every a. AIF, b. investment manager of the AIF, c. KMP of the AIF, and d. KMP of the investment manager, to exercise specific Due Diligence with respect to their investors and investments.

On October 08, SEBI rolled out the [circular](#) (SEBI Circular) specifying the list of laws, thresholds, conditions and reporting requirements for carrying out the due-diligence process. In fact the SEBI circular stated the areas wherein the structure of AIF had been abused and used to circumvent extant financial sector regulations. These included the AIF structures to facilitate circumvent the regulatory provisions and avail benefits of being categorized as a QIB under SEBI ICDR Regulations and other SEBI regulations, being categorized as a Qualified Buyer under the SARFAESI Act, prudential norms specified by RBI and downstream investment in from countries sharing land borders with India under the FEMA (Non-Debt) Rules. Standards Setting Forum for AIFs (SFA) thereafter rolled out the [Implementing Standards](#) for conducting specific due-diligence of investors and investments of the AIFs.

Read our detailed analysis on the due-diligence requirement [here](#). Read our article on the RBI Circulars [here](#) (December Circular) and [here](#) (March Circular)

We have analyzed and collated questions on the various nuances and impact of the amended provisions, along with immediate actionable for the AIFs for better understanding.

¹ RBI in its [Circular](#) dated 19th December, 2023 directed to stop making investment giving rise to evergreening of loans (December Circular). Some relaxation was granted in this regard vide [Circular](#) dated March 27, 2024 (March Circular)

Background.....	1
I. Applicability.....	4
1. Which category of AIFs are required to exercise specific Due Diligence (DD)?.....	4
2. What is the scope and objective of the specific DD?.....	4
3. When are the AIFs required to conduct the specific due-diligence?.....	5
4. What will be the effective date for checking the sanctity of the investors and investment of the AIF?.....	6
II. Investors availing benefits designated for QIBs under SEBI ICDR.....	6
5. Whether AIF is considered as a Qualified Institutional Buyer (QIB)?.....	6
6. What are the benefits to QIBs under SEBI ICDR?.....	7
7. What is the intent behind carrying out DD by AIFs availing benefits of QIB?.....	7
8. What is the meaning of the term ‘investors from the same group’?.....	7
9. For the purpose of identification of ‘investors under the same group’ whether unlisted entities being the investors in the AIF also need to refer to the definition of related parties as provided under Listing Regulations?.....	8
10. What happens if the investors belonging to the same group have not contributed more than 50% of the corpus to a particular scheme?.....	9
11. When shall the DD be conducted?.....	9
12. What are the checkpoints for due-diligence as laid down by SFA?.....	9
13. Whether the DD is required to be conducted for every investor and investment made by the AIF as on October 8, 2024?.....	9
14. Is there a prescribed timeline for completion of due-diligence?.....	10
15. How will the AIF collate and verify if investors belong to the same group?.....	10
16. Whether the contribution made by multiple investors belonging to the same group is required to be aggregated for the purposes of determining the aforesaid limits?.....	10
17. What happens if the investor contributing more than 50% corpus of the AIF scheme is a fund established outside India or a fund established in IFSC?.....	10
18. If an investor subsequently acquires 50% of the corpus of the scheme, whether the AIF will have to consider it as a ‘contribution’ and carry out DD again?.....	10
19. In case of non-fulfillment of the DD requirement, what are the options available to the AIF?.....	11
20. When can the AIF scheme avail the benefits of QIBs for investments made in future?.....	11
21. Is DD required each time a scheme intends to take the benefits designated for QIBs?.....	11
22. What will be the impact on existing investments not meeting the requirement?.....	11
23. What are the reporting requirements for AIFs in this regard?.....	11
24. For existing investments, whether details are to be provided for each investment of the AIF scheme?.....	12
III. Investors availing benefits designated for QBs under SARFAESI Act.....	12
25. Whether an AIF is considered as a Qualified Buyers (QBs)?.....	12
26. What are the benefits to QBs under SARFAESI Act?.....	13
27. When shall the DD be conducted?.....	13
28. What are the checkpoints for due-diligence as laid down by SFA?.....	13
29. What are the other compliance requirements in this regard?.....	13

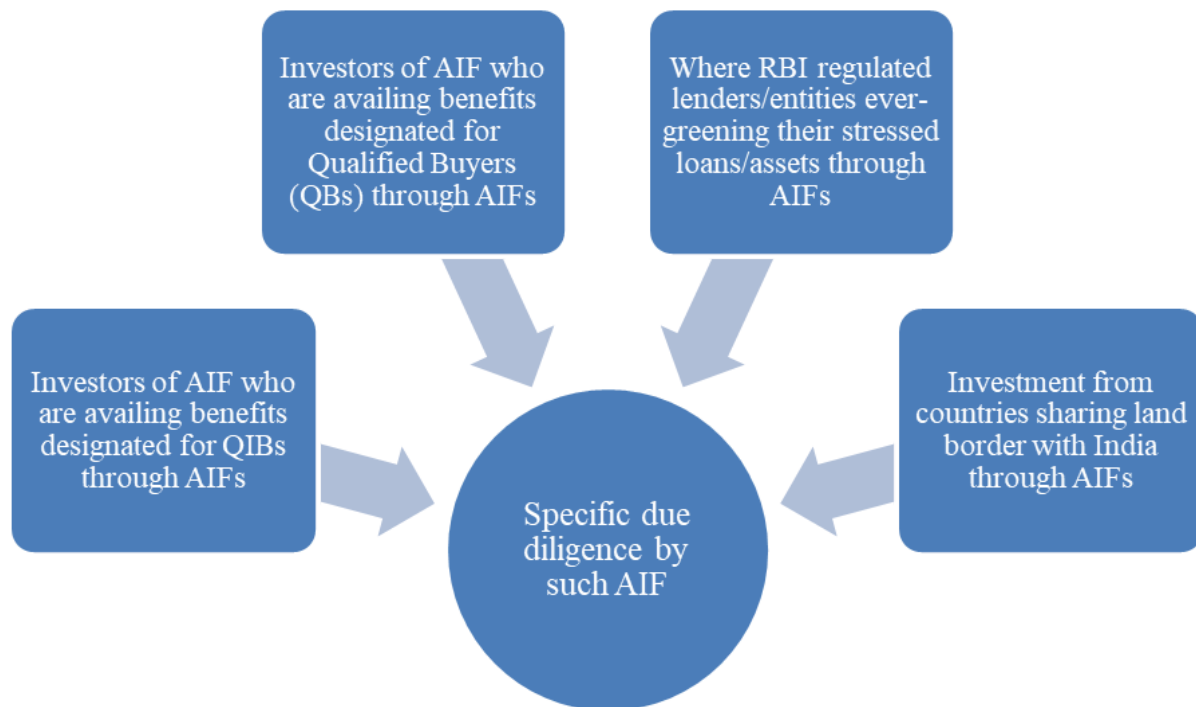
IV. RBI regulated lenders/ entities ever-greening their stressed loans/assets through AIFs.....	13
30. What are the pre-conditions for conducting DD?.....	13
31. Which entities are considered as RBI regulated entities/ lenders?.....	14
32. Is the contribution made by multiple investors belonging to the same group clubbed together for the purposes of determining the limit of 25% contribution to the corpus of the scheme of AIFs?.....	14
33. What happens if the investor is a fund established outside India or a fund established in IFSC?..	14
34. What is the actionable on part of AIF, if an investment made leads to the investor (being RBI regulated entity) acquiring or holding interest/exposure in the investee company which otherwise is not permissible by RBI?.....	14
35. What are the checkpoints for due-diligence for RBI-regulated entities?.....	14
36. Whether the DD is required to be carried out even where the RBI-regulated entities have complied with the RBI Circulars dated December 19, 2023 and March 27, 2024?.....	15
37. What are the other compliance requirements in this regard?.....	15
V. Investment from countries sharing land border with India through AIFs.....	16
38. When does the requirement of DD become applicable?.....	16
39. How will the AIF carry out the DD?.....	16
40. If investors are from more than one country that shares a land border with India, should their contributions be calculated individually or combined based on their country of origin, and how should this be handled if their collective contribution meets the threshold prescribed for DD?.....	16
41. Whether the scheme needs to report all its investment to its custodian where such investors hold 50% or more of the corpus of the scheme?.....	16
42. What are the reporting requirements for AIFs in this regard?.....	17
43. What details are reported in the format?.....	17
VI. Responsibility of DD.....	17
44. Who is charged with the responsibility for conducting the DD?.....	17
45. Whether the AIF should consider amending the contribution agreements and/ or investor charter to indicate and ensure compliance with this requirement?.....	17
46. Whether non-compliance with the requirement to conduct due-diligence on AIF/ IM/ KMP of AIF is required to be reported to SEBI?.....	18
47. Can the DD process be outsourced to a third party?.....	18
VII. Timeline for DD.....	18
48. When is the DD required to be carried out for prospective investments?.....	18
49. When is the DD required to be carried out for existing investments?.....	19
VIII. Reporting requirements.....	19
50. What is the timeline for completion of due-diligence for the existing investor/ investments as on the date of this notification?.....	19
51. What are reporting requirements if the outcome of DD for existing investments is not satisfactory?	19
52. What are reporting requirements if the outcome of DD for existing investments is satisfactory?..	19

I. Applicability

1. Which category of AIFs are required to exercise specific Due Diligence (DD)?

According to Reg 20(20) of the AIF Regulations which deals with general obligations, AIFs are required to exercise specific DD, with respect to their investors and investments, to prevent facilitation of circumvention of such laws, as specified in the SEBI Circular.

According to the SEBI Circular, the following categories of AIFs will be required to conduct specific DD:



2. What is the scope and objective of the specific DD?

The scope and objective of the specific DD requirement are to address regulatory concerns and ensure that AIFs are not used as vehicles for investors to circumvent legal restrictions or take undue advantage of certain regulatory benefits.

SEBI raised concerns about practices such as loan evergreening, circumvention of FEMA norms, and regulatory arbitrage by AIFs in its Consultation Paper issued in January 2024². In response, the proposal to mandate DD for investors and their investments was approved during the SEBI Board meeting on March 15, 2024. Consequently, sub-regulation (20) under Regulation 20 of the AIF Regulations was introduced, and SEBI subsequently issued a circular to enforce this requirement.

² Read our detailed analysis [here](#)

Scope of the DD:

The DD applies to AIFs that are utilized by investors to leverage benefits under the following regulations:

Regulations	Purpose
SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations)	Ensuring that investors are not improperly taking advantage of benefits or relaxations granted to Qualified Institutional Buyers (QIBs).
SARFAESI Act, 2002	Preventing misuse of benefits provided to entities designated as Qualified Buyers (QBs).
RBI Prudential Norms	Regulating how AIFs deal with Income Recognition, Asset Classification, and restructuring of stressed assets.
FEMA (Non-Debt Instruments) Rules, 2019	Ensuring compliance with the rule that restricts investment from countries sharing land borders with India, as per Rule 6 and Press Note 3 (FDI Policy 2020).

Objective of the DD:

The primary objective is to prevent investors from exploiting AIFs to access regulatory benefits that they would otherwise be ineligible for under the laws mentioned. This ensures that AIFs do not serve as loopholes for regulatory circumvention and uphold the integrity of the financial and regulatory systems.

3. When are the AIFs required to conduct the specific due-diligence?

The table below indicates in brief the applicability of requirement of DD for every scheme of AIF³:

S.no	Objective intended to be achieved by investors through investments in AIF scheme	Applicability of requirement of DD for every scheme of AIF
1.	Availing benefits designated for QIBs through AIFs	If an investor, or investors belonging to the same group, contribute(s) 50% or more to the corpus of the scheme.
2.	Availing benefits designated for Qualified Buyers (QBs) through AIFs	If an investor, or investors belonging to the same group, contribute(s) 50% or more to the corpus of the scheme.

³ Read our detailed note [here](#).

S.no	Objective intended to be achieved by investors through investments in AIF scheme	Applicability of requirement of DD for every scheme of AIF
3.	RBI regulated lenders/entities ever-greening their stressed loans/assets through AIFs	(a) whose manager or sponsor is an entity regulated by RBI; or, (b) that has investor(s) regulated by RBI who: (i) individually or along with investors of the same group contribute(s) 25% or more to the corpus of the scheme; or (ii) is an associate of the manager/ sponsor of the AIF; (iii) has majority or veto power [by itself, or through its representatives/ nominees] in voting over decisions of the investment committee set up by the manager to approve investment decisions of the scheme. Note: where investor is an AIF or fund set up in IFSC or outside India, criteria check to be carried out on a look through basis.
4.	Investment from countries sharing land border with India through AIFs	Where 50% or more of the corpus of the scheme is contributed by investors (a) who are citizens of/are from/are situated in a country which shares land border with India; or (b) whose beneficial owners, as determined in terms of Rule 9 (3) of the PMLA (Maintenance of Records) Rules, 2005, are citizens of/are from/are situated in a country which shares a land border with India.

4. What will be the effective date for checking the sanctity of the investors and investment of the AIF?

As per clause 7 of the SEBI Circular, AIFs are required to carry out DD for their existing investment as on the date of the circular, i.e. 8th October, 2024. Further, given the intent of the said SEBI Circular, the DD is needed to be carried out so as to prevent the facilitation of circumvention of applicable laws. Accordingly, the investors as on the date of the circular need to undergo the DD so as to verify the permissibility for any new investments made thereafter. Furthermore, in case of changes in the findings w.r.t to the investors of the AIF in question, DD will again be required prior to making of investments.

II. Investors availing benefits designated for QIBs under SEBI ICDR

5. Whether AIF is considered as a Qualified Institutional Buyer (QIB)?

As per Reg. 2(1)(ss)(i) [SEBI \(Issue of Capital and Disclosure Requirements\) Regulations, 2018](#), “qualified institutional buyer” *inter-alia* means, a venture capital fund, alternative investment fund and foreign venture capital investor registered with the SEBI. Hence, AIFs are expressly classified as QIBs.

6. What are the benefits to QIBs under SEBI ICDR?

QIBs have the following benefits under SEBI ICDR:

Reg. No.	Particulars
32	Allocation in net offer category in IPO <ul style="list-style-type: none"> • upto 50% where issue is covered under Reg. 6 (1) • atleast 75% where issue is covered under Reg. 6 (2)
129	Allocation in net offer category in FPO <ul style="list-style-type: none"> • upto 50% where issue is covered under Reg. 103 (1) • atleast 75% where issue is covered under Reg. 103 (2)
179	Eligible to apply in Qualified Institutions Placement
253	Allocation in net offer category in SME IPO <ul style="list-style-type: none"> • upto 50% where issue is made through book building
Para 10 of Schedule XIII	Eligible to apply as Anchor Investor (application of a value of at least Rs. 10 crore in a public issue on the main board made through the book building process or an application for a value of at least Rs. 2 crore in case of a public issue on the SME). Anchor investors are eligible to bid one day before the issue opening date.

7. What is the intent behind carrying out DD by AIFs availing benefits of QIB?

Some of the schemes of AIFs are so concentrically held that the AIF is nothing but a group entity or a single/limited investor. With the QIB tag, these AIFs get preferential treatment in IPOs⁴. Therefore, the requirement of DD has been mandated where the investors belonging to the same group have contributed more than 50% of the corpus to a particular scheme, in order to prevent AIFs from facilitating investors who are otherwise in eligible for QIB status on their own, in availing benefits designated for QIBs.

8. What is the meaning of the term ‘investors from the same group’?

As per the SEBI Circular, the term ‘same group’ shall mean ‘related party’ and ‘relative’ as defined under the Listing Regulations.

Term	Regulation	Meaning
Related Party	Reg. 2(zb) of SEBI Listing Regulations	The term “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards. Provided

⁴ Read our detailed note [here](#).

Term	Regulation	Meaning
		<p>that following shall be deemed to be related parties:</p> <p>(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or</p> <p>(b) any person or any entity, holding equity shares of ten per cent or more in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013,</p> <p>at any time, during the immediate preceding financial year; shall be deemed to be a related party.</p>
Relative	Reg. 2(zd) of SEBI Listing Regulations	The term “relative” means relative as defined under sub-section (77) of section 2 of the Companies Act, 2013 and rules prescribed there under.

9. For the purpose of identification of ‘investors under the same group’ whether unlisted entities being the investors in the AIF also need to refer to the definition of related parties as provided under Listing Regulations?

Our view: For the rationale provided below, the term 'listed entity' shall be interpreted as ‘unlisted entity’ in this context. For example, the clause defining a related party by way of holding 10% shares in the listed entity during any time in the preceding financial year should be applied similarly in the context of an unlisted investor in the AIF.

Rationale:

Regulation 2 of the AIF Regulations begins with the phrase, ‘*In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below*’. (emphasis added)

Generally, when a word has been defined in a definition clause, that definition is used in the body of the statute. However, where the context makes the given definitions inapplicable or redundant, a defined word, when used in the body of the statute, may have to be given a meaning different from that contained in the definition clause.

In [Collector of Customs v. Nathella Sampathu Chetty \(1962\) 3 SCR 786](#) and [Nagpur Improvement Trust v. Vasantrao 2002 AIR SCW 4095](#), the principle discussed was that a statute may incorporate or reference provisions from another statute, effectively adopting them as part of its own framework. This process, known as incorporation by reference, treats the cited provisions as integral parts of the adopting legislation, making them fully applicable within the context of the first statute.

Moreover, when a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision, and the object intended to be served thereby⁵.

Also, In [*Jagatram Ahuja v. Commr. Of Gift-tax*](#), the Supreme Court held: words and expression defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expressions in another statute unless both the statutes are *pari materia* legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in other statute.

The term *pari materia* refers to laws or legal provisions that are related in subject matter and are interpreted together to maintain consistency in the legal framework. The Companies Act, 2013 and the SEBI LODR Regulations, 2015 are related in certain respects, particularly with regard to corporate governance and disclosure for listed companies, but they are not completely *pari materia*.

10. What happens if the investors belonging to the same group have not contributed more than 50% of the corpus to a particular scheme?

If the investors belonging to the same group have not contributed more than 50% of the corpus to a particular scheme, then the due-diligence requirement shall not be applicable.

11. When shall the DD be conducted?

The requirement to conduct DD has been made effective immediately from the date of the SEBI Circular, i.e. from October 08, 2024. AIFs obtaining the benefits designated for QIBs shall comply with the requirement as soon as possible and ensure that the due-diligence report is submitted to the custodian by April 07, 2025.

For prospective investments, the DD shall be completed prior to availing benefit applicable to QIBs.

12. What are the checkpoints for due-diligence as laid down by SFA?

- a. Eligible investor shall be a QIB in terms of reg 2(ss) of SEBI ICDR; or
- b. Should be an entity owned or controlled by the central government/ state government/ government of a foreign country including central banks and sovereign wealth funds.

13. Whether the DD is required to be conducted for every investor and investment made by the AIF as on October 8, 2024?

DD is required to be conducted only if the AIF has investments as on October 8, 2024 in which the AIF availed the benefits of QIB. In that case, AIF needs to carry out DD for investors, or investors belonging to the same group, who contribute(s) 50% or more to the corpus of such a scheme.

⁵ Justice G P Singh, Principles of Statutory Interpretation (15th edn, LexisNexis, 2022) 153

14. Is there a prescribed timeline for completion of due-diligence?

For existing investments that meet the requirement discussed in the previous FAQ, the details of such investments are required to be submitted to the custodian within 6 months i.e. on or before April 07, 2025.

[Refer FAQ no. 23.](#)

15. How will the AIF collate and verify if investors belong to the same group?

Two possible approaches that an AIF can opt for:

Option 1: the AIF will collate list of relatives/ related parties from every investor of the scheme and identify the investors belonging to same group and assess if their investments aggregates to 50% of the corpus of the scheme; or

Option 2: the AIF may circulate the list of investors along with the definition of relative/ related parties and seek confirmation from every investor to confirm and provide details of investors belonging to the same group. Thereafter, based on the responses from the investors, assess if the investments aggregate to 50% of the corpus of the scheme.

16. Whether the contribution made by multiple investors belonging to the same group is required to be aggregated for the purposes of determining the aforesaid limits?

Yes. Wherever investors belong to the same group (i.e related party or relatives), contributions made by them need to be aggregated for checking the threshold limits.

17. What happens if the investor contributing more than 50% corpus of the AIF scheme is a fund established outside India or a fund established in IFSC?

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 IFSC, the manager will be required to check whether the aforesaid condition is met on a look through basis. Accordingly, the details of investors of those funds will have to be obtained and DD in the manner indicated in [FAQ no. 15](#) will have to be carried out.

18. If an investor subsequently acquires 50% of the corpus of the scheme, whether the AIF will have to consider it as a 'contribution' and carry out DD again?

The purpose of the due-diligence check is to prevent facilitation of any circumvention of provisions of financial sector regulators, which cannot be a time specific check. An entity who intends to circumvent can design the structure in such a way that, once investment is made by the AIF, at a later date (i.e. post investment) it acquires the units of that AIFs, such as buying the units of an existing investor or by acquiring control over the existing investor entity, as per prior arrangement. Therefore, it has been indicated that DD around investors and investments will be an ongoing one, as AIFs will continue availing benefits of QIB during the tenure of the scheme.

AIF Cat I & Cat II funds are close ended, with minimum tenure of 3 years, computed from the date of First Close⁶. Schemes of Cat III AIFs may be open ended or close ended.

Subsequent to investment by AIF, if there is any change in existing contribution to corpus or holding of units, with certain investors crossing the threshold, the AIF will be required to carry out the DD.

19. In case of non-fulfillment of the DD requirement, what are the options available to the AIF?

If the due-diligence requirement is not fulfilled or is found not satisfactory, then the AIFs intending to avail the designated benefits, shall not make the proposed investment or the concerned investor shall be excluded from the said investment subject to the relevant disclosures in the PPM.

20. When can the AIF scheme avail the benefits of QIBs for investments made in future?

If the due-diligence check is found satisfactory, the AIF will be allowed to avail the benefits designated for QIBs.

21. Is DD required each time a scheme intends to take the benefits designated for QIBs?

As mentioned above, the intent of the law makers is to ensure that the AIF is in compliance with the requirements on an ongoing basis. As the eligibility to avail the benefit of QIB will have to be determined by the AIF, the DD will be required to be undertaken each time by ascertaining if there has been any change in the investor holding or change in relationship from the time DD was previously undertaken.

22. What will be the impact on existing investments not meeting the requirement?

If any of the existing investments of such schemes does not satisfy the DD checks for making investment, details of such investments shall be reported to the custodian of the AIF on or before April 07, 2025, in the format as specified at Annexure I to said circular.

23. What are the reporting requirements for AIFs in this regard?

For investments as on October 08, 2024:

- a. **If DD check not satisfactory** – details of investment to be reported to AIF’s custodian on or before April 07, 2025, in the format as per [Annexure 1](#) of the circular;
- b. **If DD check is satisfactory** – AIF manager to submit an undertaking to AIF’s custodian on or before April 07, 2025.

For all the prospective investments:

⁶ AIF may modify the tenure of a scheme at any time before declaration of its First Close. Prior to declaration of the First Close, the investor may withdraw or reduce commitment provided to such scheme of an AIF

- a. **If DD check is not satisfactory** –either such investor or investors of the same group shall be excluded from the investment, subject to necessary disclosure in the PPM for exclusion of investors; or, the investment shall not be made.
- b. **If DD check is satisfactory** – 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.

24. For existing investments, whether details are to be provided for each investment of the AIF scheme?

Yes. As per the format, certain details about the AIF viz. the name of AIF, registration number, name of the scheme, corpus amount, no. of investments, etc is to be given once. However, specific details relating to the investment viz. Name of the investee company, date an amount of investment, details of investor along with commitment to the scheme and which para of the circular was not complied with, needs to be provided for every investment.

III. Investors availing benefits designated for QBs under SARFAESI Act

25. Whether an AIF is considered as a Qualified Buyers (QBs)?

SEBI vide notification No. LAD-NRO/GN/2012-13/09/17427 dated [August 3, 2012](#), has notified AIFs set up as a body corporate as ‘Qualified Buyer’ under SARFAESI Act.

Further, RBI vide notification no. DNBR (PD-ARC) no. 07/ED(SS)-2018 dated [May 16, 2018](#), specified Category II and Category III AIFs registered with SEBI as ‘Qualified Buyers’ under SARFAESI Act subject to certain conditions as specified:

- a. The AIF which has invested in an ARC shall not invest in the security receipts issued by that ARC;
- b. The AIF shall not invest in the security receipts issued on the underlying loans of any of its associate or group company;
- c. The AIF shall not invest in the security receipts backed by non-performing assets of banks which hold equity of more than 10% in that AIF.

Thereafter, RBI vide notification dated [March 10, 2021](#) specified Category I AIFs set up as trust and registered with SEBI as ‘qualified buyers’, subject to the same conditions as mentioned above.

26. What are the benefits to QBs under SARFAESI Act?

The ARC can issue SRs only to QBs and such SRs are transferable/ assignable only in favour of other QBs.

27. When shall the DD be conducted?

The necessary DD shall be carried for schemes of AIFs where an investor, or investors belonging to the same group, who contribute(s) 50 percent or more to the corpus of the scheme.

The requirement to conduct DD has been made effective immediately from the date of the SEBI Circular, i.e. from October 08, 2024. AIFs obtaining the benefits designated for QBs shall comply with the requirement as soon as possible and ensure that the due-diligence report is submitted to the custodian by April 07, 2025.

For prospective investments, the DD shall be completed prior to availing benefit applicable to QIBs.

28. What are the checkpoints for due-diligence as laid down by SFA?

- a. Eligible investor shall be a QB in terms of Section 2(1) (u) of SARFAESI Act, 2002; or
- b. Should be an entity owned or controlled by the central government/ state government/ government of a foreign country including central banks and sovereign wealth funds.

29. What are the other compliance requirements in this regard?

Discussions made above in FAQ nos. 8 to 10, 13 to 17 and 19 to 24 above can be read mutatis mutandis in the context of DD of investors availing benefits of QB under the SARFAESI Act.

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

30. What are the pre-conditions for conducting DD?

Necessary DD shall be carried out for every scheme of an AIF:

- (a) whose manager or sponsor is an entity regulated by RBI; or,
- (b) that has investor(s) regulated by RBI who:
 - (i) individually or along with investors of the same group contribute(s) 25% or more to the corpus of the scheme; or,
 - (ii) is an associate of the manager/sponsor of the AIF; or,
 - (iii) by itself, or through its representative(s)/nominee(s), has majority or veto power in voting over decisions of the investment committee set up by the manager to approve investment decisions of the scheme.

31. Which entities are considered as RBI regulated entities/ lenders?

Regulated entities include scheduled commercial banks, cooperative banks, NBFCs, HFCs and All India Financial Institutions⁷. These entities are subject to various regulations and guidelines issued by the RBI to ensure financial stability, protect depositors' interests, and promote the orderly development of the financial system in India.

32. Is the contribution made by multiple investors belonging to the same group clubbed together for the purposes of determining the limit of 25% contribution to the corpus of the scheme of AIFs?

Only contributions from investors that are regulated by RBI and belonging to the same group need to be clubbed to check threshold limits as prescribed.

33. What happens if the investor is a fund established outside India or a fund established in IFSC?

If an investor of the scheme is an AIF, or a fund set up outside India or in IFSC in India, then the criteria check for investor(s) regulated by RBI shall be carried out on a look through basis, i.e. the AIF needs to identify actual investors who have contributed to funds set up outside India or in IFSC in India.

34. What is the actionable on part of AIF, if an investment made leads to the investor (being RBI regulated entity) acquiring or holding interest/exposure in the investee company which otherwise is not permissible by RBI?

In case if an investment made by the scheme leads to the investor (being RBI regulated entity) acquiring or holding indirect interest/exposure in the investee company which otherwise is not permissible by RBI then the AIF manager shall ensure that the scheme does not make any such investment in the investee company.

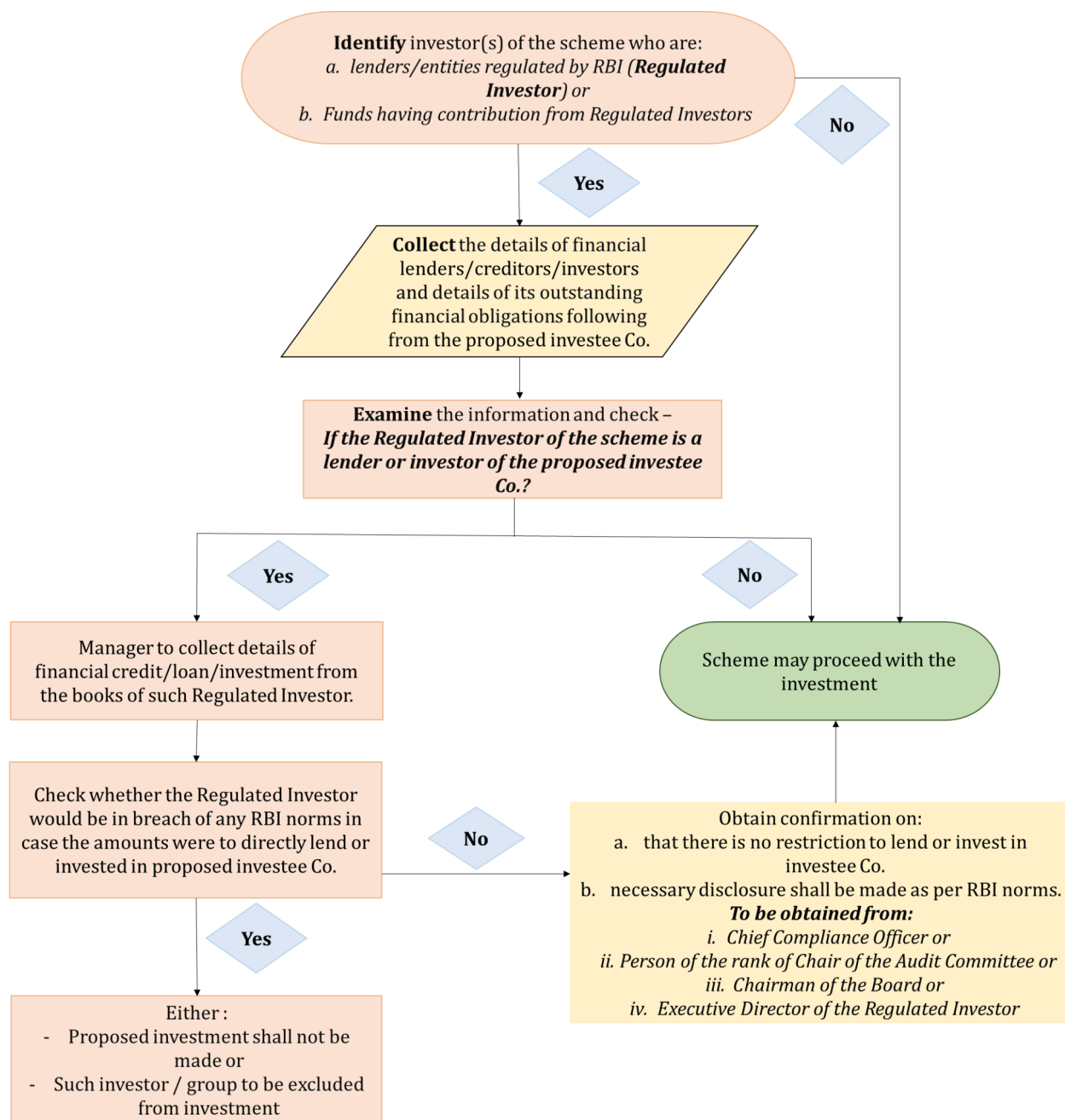
Where the such investment results in breach of RBI norms with respect to Income Recognition, Asset Classification, Provisioning and Restructuring of stressed loans/assets then following action may be taken by the AIF:

- A. either such investor or investors of same group shall be excluded from the investment, subject to necessary disclosure in the PPM for exclusion of investors; or,
- B. The investment shall not be made.

35. What are the checkpoints for due-diligence for RBI-regulated entities?

The following due-diligence checks shall be carried out by the AIF/manager/their KMPs, before making an investment -

⁷ Read our detailed note [here](#).



36. Whether the DD is required to be carried out even where the RBI-regulated entities have complied with the RBI Circulars dated December 19, 2023 and March 27, 2024?

Yes. The requirement of DD will apply irrespective, for the existing and proposed investments.

37. What are the other compliance requirements in this regard?

Discussion made above in FAQ nos. 8, 9 14 to 17 and 22 to 24 above can be read mutatis mutandis in the context of DD of investors that are RBI regulated lenders/ entities ever-greening their stressed loans/assets through AIFs,

V. Investment from countries sharing land border with India through AIFs

38. When does the requirement of DD become applicable?

The necessary DD is required to be carried out for every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by investors –

- (a) who are citizens of/are from/are situated in a country which shares land border with India, or,
- (b) whose beneficial owners, as determined in terms of sub-rule (3) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, are citizens of/are from/are situated in a country which shares land border with India.

The requirement of DD will apply for the existing and proposed investments.

39. How will the AIF carry out the DD?

Step 1: Check whether contribution to the corpus of the scheme from such investors is 50% or more. If yes, go to Step 2.

Step 2: Check whether the scheme has investment, which would result in the scheme holding 10% or more of equity/equity-linked securities issued by an investee company (on a fully-diluted basis). If yes, reporting is required.

40. If investors are from more than one country that shares a land border with India, should their contributions be calculated individually or combined based on their country of origin, and how should this be handled if their collective contribution meets the threshold prescribed for DD?

If investors are from multiple countries that share a land border with India, their contributions should be combined irrespective of their countries in order to determine if the collective total meets the prescribed threshold for DD.

This approach aligns with the strict conditions imposed by FEMA's Non-Debt Instruments (NDI) Rules, particularly Rule 6, as well as Press Note 3 issued by the RBI. There is no necessity to group investors based on their country of origin for this assessment.

41. Whether the scheme needs to report all its investment to its custodian where such investors hold 50% or more of the corpus of the scheme?

Once the investors in the scheme are identified in terms of [FAQ no. 38](#), the AIF will be required to check if the investments result in the scheme holding 10% or more of equity/equity-linked securities of the investee company (on a fully-diluted basis). If it does, then reporting is required to be made to the custodian.

42. What are the reporting requirements for AIFs in this regard?

- a. **If the scheme holds 10% of equity/equity-linked securities of the investee company (on a fully-diluted basis) as on October 08, 2024:** details of investment to be reported to AIF's custodian on or before April 07, 2025, in the format as prescribed by SFA;
- b. **For prospective investment** – Details of investment to be reported to AIF's custodian within 30 days of the said investment, in the format as prescribed by SFA

43. What details are reported in the format?

As per the format, details about the AIF viz. the name of AIF, registration number, name of the scheme, corpus amount and details about the investors from Land Bordering Countries (LBCs) viz. no. of investors from LBC, total commitment of such investors, types of security issued by investee company, % of holding on a diluted basis etc is required to be provided. Further, name, country and extent of contribution of every investor from LBC is also required to be provided.

VI. Responsibility of DD

44. Who is charged with the responsibility for conducting the DD?

Pursuant to regulation 20(20) of the AIF Regulations read with the SEBI Circular, the responsibility for complying with the due-diligence requirement has been imposed on the following:

- a. AIF;
- b. Manager of the AIF;
- c. KMP of the Manager;
- d. KMP of AIF

Further, as per the code of conduct for managers and KMPs as prescribed under fourth Schedule to the AIF Regulations, every Manager of AIF and KMP of the manager and AIF shall abide by the Act, Rules, Regulations, Guidelines and Circulars as applicable to Alternative Investment Funds at all times. Accordingly, the due-diligence is required to be conducted by the manager of the AIF or the KMP of the manager or AIF.

The trustee/ sponsor of the AIF is required to ensure that AIF report compliance in the '[Compliance Test Report](#)' submitted annually in terms of Chapter 15 of the [SEBI Master Circular on AIFs](#).

45. Whether the AIF should consider amending the contribution agreements and/ or investor charter to indicate and ensure compliance with this requirement?

The AIFs may consider amending contribution agreements and/or the investor charter to indicate and ensure compliance with the DD requirements under the SEBI regulations to include investor obligations to declare/confirm their status as QIBs/ QBs at the time of contribution and anytime thereafter, as may be required to be done by the AIF, providing a list of specified related parties and relatives other

confirmations as required in terms of SEBI Circular and Implementing Standards, to enable the AIF to streamline the DD process.

46. Whether non-compliance with the requirement to conduct due-diligence on AIF/ IM/ KMP of AIF is required to be reported to SEBI?

Yes, there are penal consequences for non-compliance with the requirement to conduct DD by the AIF, IM, or KMP of the AIF.

As per Regulation 20(17) of the AIF Regulations, the Compliance Officer appointed by the Manager of the AIF is responsible for monitoring compliance with all applicable laws, including the Act, rules, regulations, notifications, circulars, and directives issued by SEBI. Additionally, under Regulation 20(19), the Compliance Officer must immediately and independently report any instances of non-compliance to SEBI within seven working days of detecting such non-compliance.

Further, in terms of Para 15.2.4 of the [AIF Master Circular](#), in case of any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same is required to be intimated to SEBI as soon as possible.

47. Can the DD process be outsourced to a third party?

As outlined, the primary responsibility for conducting DD rests with the AIF, its Manager, and their KMPs under Regulation 20(20) of the AIF Regulations, read with the SEBI Circular. However, to ensure compliance and enhance the efficiency of the DD process, the AIF may engage professionals or third-party service providers to carry out the assessment.

It is important to note that while outsourcing is permitted, this does not transfer the onus of responsibility from the AIF to the third party. Ultimately, the accountability for conducting DD and providing the required declarations or undertakings remains with the AIF.

VII. Timeline for DD

48. When is the DD required to be carried out for prospective investments?

For prospective investments, the necessary due-diligence shall be carried out as follows:

S.no	Objective intended to be achieved by investors through investments in AIF scheme	Timing Of DD
1.	Where Investors availing benefits designated for QIBs through AIFs	Prior to availing benefits available to QIBs

2.	Investors availing benefits designated for Qualified Buyers (QBs) through AIFs	Prior to making any investments or availing benefits
3.	RBI regulated lenders/entities ever-greening their stressed loans/assets through AIFs	Prior to making any investments, to avoid indirect investment by RBI regulated lender/entity.
4.	Investment from countries sharing land border with India through AIFs	Prior to making any investment

49. When is the DD required to be carried out for existing investments?

The requirement to conduct DD has been made effective immediately, i.e. from October 08, 2024. AIFs obtaining the benefits under specified regulations shall comply with the requirement as soon as possible and ensure that on the basis of the outcome of DD, necessary reporting is submitted to the custodian by April 07, 2025.

VIII. Reporting requirements

50. What is the timeline for completion of due-diligence for the existing investor/ investments as on the date of this notification?

The last date for submission of details of investments, on the basis of the outcome of DD, to the custodian of the AIF is April 07, 2025.

51. What are reporting requirements if the outcome of DD for existing investments is not satisfactory?

If any of the existing investments of such schemes does not satisfy the DD checks for making investment, details of such investments are required to be reported to the custodian of the AIF on or before April 07, 2025, in the format as specified in [Annexure 1](#) of the SEBI circular.

52. What are reporting requirements if the outcome of DD for existing investments is satisfactory?

In that case, the AIF manager is required to submit an undertaking to this effect to the custodian, on or before April 07, 2025.