

DEPUTY GENERAL MANAGER

ALTERNATIVE INVESTMENT FUND AND FOREIGN PORTFOLIO INVESTOR DEPARTMENT

DIVISION OF POLICY AND DEVELOPMENT - I

SEBI/HO/AFD/PoD-1/OW/2025/7738

March 13, 2025

Ms. Dimple Mirchandani,
Firstport Ventures LLP,
Investment Manager of FirstPort Capital Angel Fund,
239, 2nd floor, Tower A, JMD Megapolis,
Sector 48, Gurugram, Haryana 122018.

Madam,

Sub: Request for Informal Guidance by way of interpretive letter under the provisions of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with provisions for Angel funds under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

Ref: Your letter dated April 12, 2024 and subsequent correspondences on the letter

1. In your letter / communications under reference, you have, *inter-alia*, stated that FirstPort Capital Angel Fund (“Fund”) is registered with SEBI as a Category I – Venture Capital Fund – Angel Fund and that you have come across certain operational issues while operating as an Angel Fund, on which guidance is required.
2. In this context, you have sought an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003 ('Informal Guidance Scheme') from SEBI on the following queries -

Query I: Angel Fund had made an investment in a start-up, meeting eligibility criteria as per DPIIT notification (G.S.R 34 (E) dated January 16, 2019). Subsequent to this investment, the start-up (“Investee Company”) over a period of time ceases to be eligible as a start-up under the eligibility criteria as per DPIIT notification.

In such an event, whether the Fund can exercise its pre-emptive right/rights issue/Renounced rights issue of shares against convertible securities as per

Shareholders Agreement by subscribing to the offered capital in terms of the definitive agreements executed at the time of the original investment?

Query II: With respect to Regulation 19F(2), in case of investment after original/first issue, whether the limit of INR 25 Lakh will be separately applicable for the investment after original investment in the same investee company or is it applicable only for the original/first investment?

Query III: Fund has received an opportunity of partial exit from the Strategic Contributor/facilitated by Investee Company and the contributions are offered to exit on pro-rata basis from the given investment scheme . In some cases, some of the contributors prefer to liquidate their holding more than their proportionate entitlement/ total holding while other contributors wish to liquidate lower than their entitlement/NIL. In such scenario, should the units be redeemed pro-rata to the contribution made by each investor or should the redemption be based on no. of units the investor wants to redeem?

Query IV: Will the reduction in commitment amount resulting from transfer of units from contributors (transferor) in confirmation with the terms of Master Memorandum read with Contribution Agreement, except in case of redemption of units, tantamount to shortfall in minimum capital commitment by the transferor in its respective Contribution agreement? Will the transferor be under an obligation to recoup its minimum capital commitment by the amount of such shortfall?

Further, in relation to transferee's minimum capital commitment, if such transferred units will form part of transferee's minimum capital commitment or value of such units be added to its already committed minimum capital commitment amount?

Query V: Whether the fees/costs/expenses payable to the Fund form part of capital commitment amount committed by the contributor/investor vide contribution agreement?

Query VI: Whether 'body corporate' mentioned in the definition of "Angel Investor" includes trust and if so, what is the criteria for on-boarding a trust as an Angel Investor?

Our Comments:

3. The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our views on the queries raised in your letter are as under:

Response to Query I:

- 3.1. In terms of Regulation 19F(1) of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”), Angel Funds shall invest in startups which meet certain specified conditions mentioned under Regulation 2(1)(wa) of the AIF Regulations.
- 3.2. Thus, extant AIF Regulations do not provide for investment by Angel Funds in entities other than start-ups. Investments by Angel Funds, by exercising pre-emptive rights, in their existing portfolio investee companies which are no longer start-ups, would not be in line with AIF Regulations.

Response to Query II:

- 3.3. As per Regulation 19F(2) of AIF Regulations, the minimum amount to be invested by an Angel Fund in a start-up is INR 25 Lakhs. Therefore, the first investment by an Angel fund in each investee company/start-up shall not be less than INR 25 Lakhs.
- 3.4. However, the requirement of minimum investment amount of INR 25 Lakh shall not apply to any additional/follow-on investment made by the Angel Fund in its existing portfolio investee company/start-up.

Response to Queries III and IV:

- 3.5. As per paragraph 8 of SEBI (Informal Guidance) Scheme, 2003, SEBI may not respond to requests where policy concerns require that the Department does not respond.
- 3.6. Since the queries III and IV fall under the aforesaid provision, no response has been provided to these queries.

Response to Query V:

- 3.7. In terms of Regulation 19D(3) of AIF Regulations, Angel funds shall accept, up to a maximum period of five years, an investment of not less than INR 25 lakh from an angel investor.
- 3.8. Regulation 2(1)(p) of AIF Regulations defines ‘investable funds’ as corpus of the scheme of Alternative Investment Fund net of expenditure for administration and management of the fund estimated for the tenure of the fund.

3.9. Regulation 2(1)(h) of AIF Regulations defines “corpus” as the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date. Thus, corpus of the Angel fund as defined, will include the total amount of funds committed by the investor to the Alternative Investment Fund by way of a written contract and accordingly, the capital amount committed by an investor may be inclusive of the fees/costs/expenses payable to the Fund.

Response to Query VI:

3.10. As per Regulation 19A (2) of AIF Regulations,

“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, or*
- (ii) has experience as a serial entrepreneur, or*
- (iii) is a senior management professional with at least ten years of experience;*

Explanation: For the purpose of this clause, 'early stage investment experience' shall mean prior experience in investing in start-up or emerging or early-stage ventures and 'serial entrepreneur' shall mean a person who has promoted or co-promoted more than one start-up venture.

- (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.”*

3.11. In this regard, it may be noted that Regulation 2(2) of AIF Regulations states that *‘All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, (42 of 1956) or the Companies Act, 2013 (18 of 2013), or any statutory modification or re-enactment thereto, as the case may be’.*

3.12. Section 2(11) of the Companies Act defines ‘body corporate’ as following:

“body corporate or —corporation includes a company incorporated outside India, but does not include—

*(i) a co-operative society registered under any law relating to co-operative societies; and
(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf; Thus, relevant provisions of the Companies Act, 2013, may be referred for any clarification/interpretation on which entities qualify as 'body corporates'.”*

- 3.13. Thus, in terms of Regulation 19A(2)(b) of the AIF Regulations a trust cannot be an angel investor in an angel fund unless it is registered as an AIF under the AIF Regulations or a Venture Capital Fund under SEBI (Venture Capital Funds) Regulations, 1996.
4. The above position is specific and based on the information / representation provided in your letter under reference. Different facts or conditions might entail a different interpretation. This letter does not express decision of the Board on the queries referred in your letter.
5. You may note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 and do not affect the requirements or applicability of any provisions of law, including the Securities and Exchange Board of India Act, 1992, and the rules, regulations, guidelines or circulars framed thereunder that are administered by the Securities and Exchange Board of India; or of the laws administered by any other authority.

Yours faithfully,

Sanjay Singh Bhati