

DEPUTY GENERAL MANAGER

ALTERNATIVE INVESTMENT FUND AND FOREIGN PORTFOLIO INVESTOR DEPARTMENT
DIVISION OF POLICY AND DEVELOPMENT

SEBI/HO/AFD/PoD/OW/2023/49070

December 12, 2023

Mangalkari Asset Investment AIF
HB - 170, Sector - III, Salt Lake,
Kolkata - 700 106

Dear Sir,

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 relating to Regulation 15(1)(c) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations")

Ref: Your letters dated June 18, 2023, October 11, 2023 and email dated October 31, 2023.

1. In the context of your letters and e-mail under reference, you have, *inter alia*, stated that Mangalkari Asset Investment AIF is a Securities and Exchange Board of India ("SEBI") registered Category II Alternative Investment Fund ("AIF") bearing registration no. IN/AIF2/22-23/1096 seeking an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003.
2. In your aforementioned letters, you have, *inter alia*, stated the following –
 - i. "RBI, vide notification dated May 16, 2018, has specified Cat I and Cat III AIFs as Qualified Buyers.
 - ii. In terms of Regulation 15(1)(c) of AIF Regulations, Cat I and Cat II AIFs shall invest not more than 25% of its investable funds in an investee company ('Concentration limit') directly or through investment in units of other AIF.
 - iii. An Asset Reconstruction Company ('ARC') may acquire stressed loan accounts along with underlying mortgaged assets and collateral securities ('NPA Loan Accounts') of different companies ('Target Companies') and hold these debts and related mortgaged and collateral assets and guarantees in different trusts ('ARC Trusts').



iv. *The ARC may acquire multiple such NPA Loan Accounts of Target Companies in multiple ARC Trusts set up by them. One ARC Trust may have NPA Loan Accounts of many such Target Companies. One Target Company's loan accounts are held by only one such ARC Trust. All such ARC Trusts are independent and have their own PAN numbers."*

3. Your Query

"For the purpose of considering and calculating the limit of 25% in an Investee Company as mentioned in regulation 15(1)(c), whether the threshold limit shall be applicable at the level of individual Target Company acquired by the ARC Trust (one ARC Trust may have assigned to it NPA Loan Accounts of many such Target Companies) or will it be at the level of the individual ARC Trust regardless of multiple Target Company loan accounts it may hold (each ARC Trust is independent and holds separate PAN)."

4. Our Comments

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

4.1. The relevant text of regulation 15(1)(c), which *inter alia* deals with the investment limits of Category II AIF, has been reproduced for reference as under:

"15(1)(c) Category I and II of Alternative Investment Funds shall invest not more than twenty five per cent of the investable funds in an Investee Company directly or through investment in the units of other Alternative Investment Funds"

*Provided
that....."*

4.2. Regulation 2(1)(o) of the AIF Regulations, which deals with the definition of investee company, specify as under:

"2(1)(o) "Investee company" means any company, special purpose vehicle or limited liability partnership or body corporate or real estate investment trust or infrastructure investment trust in which an Alternative Investment Fund makes an investment;"

4.3. In terms of Regulation 2(1)(o) of the AIF Regulations, 'investee company' means any company, special purpose vehicle or limited liability partnership or body corporate or real estate investment trust or infrastructure investment trust in which an AIF makes an investment.

- 4.4. Further, in terms of AIF Regulations, AIFs are allowed to, *inter alia*, invest in units of other AIFs, which has an underlying investment portfolio.
- 4.5. As mentioned at para 2(ii) above, in terms of Regulation 15(1)(c) of AIF Regulations, a Category II AIF shall invest not more than 25% of its investable funds in an Investee Company directly or through investment in units of other AIF. The clause '*or through investment in units of other AIF*' in Regulation 15(1)(c) refers that investment in an investee company by the AIF directly and through investment in units of other AIFs, is to be considered for the purpose of calculation of concentration limit.
- 4.6. Similarly, in the instant matter, investment in an investee company by the AIF directly and through investment in Security Receipts of ARC Trust, is to be considered for the purpose of calculation of concentration limit. Accordingly, the concentration limit shall be applicable at the level of individual Target Company acquired by the ARC Trust in addition to the investment made by the AIF directly in the Target Company.

Illustration – An AIF (say AIF A) having investable funds of INR 200 crore has made investment of INR 50 crore in an investee company (say Company X), which is within the concentration limit of 25% of investable funds. Further, AIF A has also made an investment of INR 50 crore in an AIF (say AIF B) having investable funds of INR 100 crore. AIF B has made an investment of INR 25 crore in Company X, out of which INR 12.5 crore is contributed in pro-rata by AIF A. Thus, total exposure of AIF A to Company X shall be INR 62.5 crore.

5. This above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different interpretation. This letter does not express the decision of the Board on the question referred through your letter.
6. You may note that the above views are expressed only with respect to the clarification sought in your letter under reference on the AIF Regulations and do not affect the applicability of any law and any other regulations, guidelines and circulars framed or administered by the SEBI or any other authority.

Yours faithfully,

Sanjay Singh Bhati