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SETTING UP ALTERNATE INVESTMENT FUND IN INDIA



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Introduction to AIF

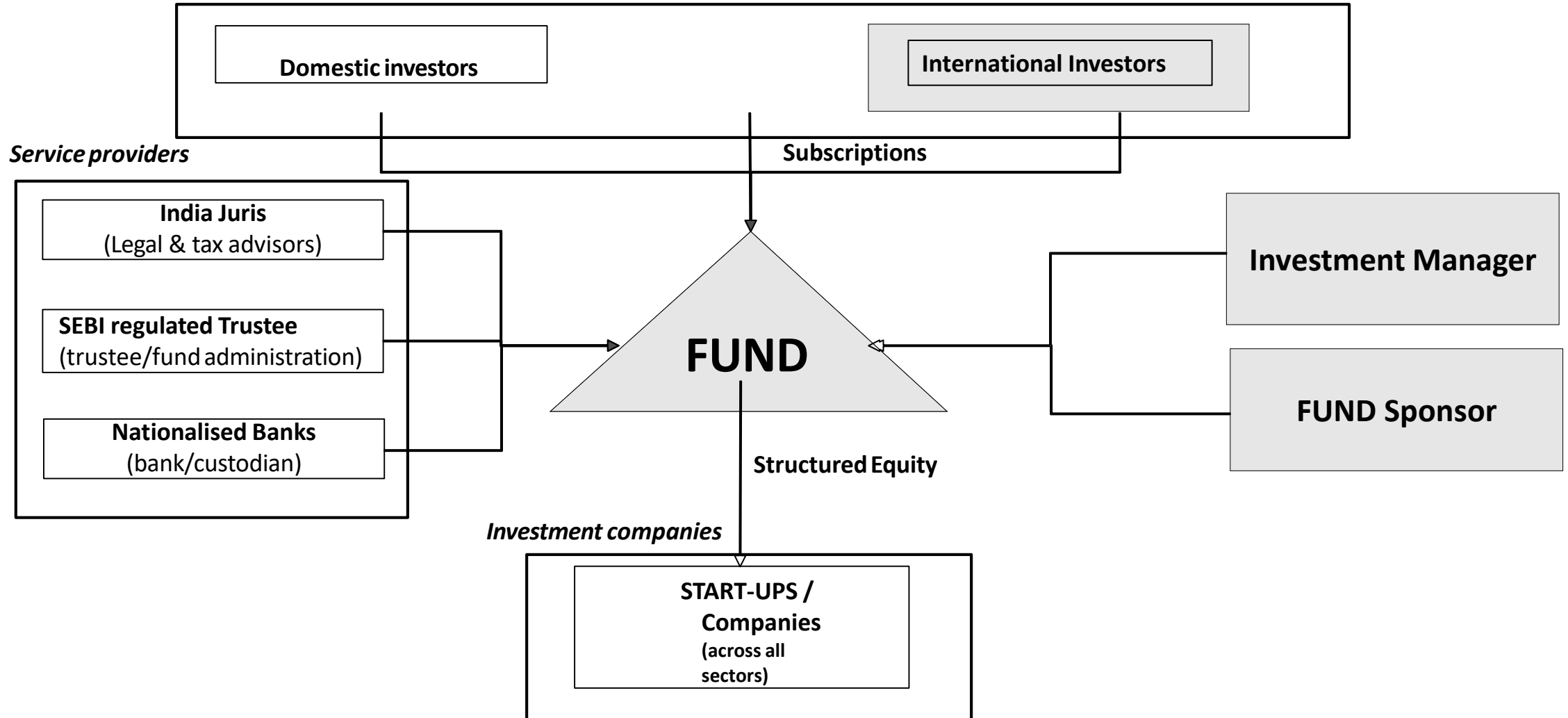
Alternate Investment Fund {“**AIF**”) under Regulation 2(1) (b) of the Securities and Exchange Board of India (AIF) Regulation, 2012 means any fund established or incorporated in India in the form of a trust or a company or a Limited Liability Partnership (LLP) or a body corporate which,

- is a privately pooled investment vehicle which collects funds from investors, whether Indian or Foreign, for investing in accordance to a specific investment policy for the benefit of its investors; and
- is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities.

Exemptions: Following shall not be treated as fund

- Family Trust
- ESOP trust
- Employee welfare trust
- Securitization trust

Legal Structure of AIF



Categories of AIF

Category-I AIF- AIFs which invest in a start-up or early-stage ventures or social ventures. Venture capital funds, SME fund, social venture funds, infrastructure funds, etc. fall under this category. The funds for which the SEBI or Government of India (GOI) or other regulators in India might consider providing incentives or concessions are included under this category.

Category-II AIF- AIF under this category includes debt funds or private equity funds, which receive no specific incentives or concessions from the GOI or any other regulator. The various types of funds, such as real estate funds, private equity funds (PE funds), funds for distressed assets, etc., are registered as Category II AIF.

Category-III AIF- Alternative Investment funds, like hedge funds and funds which trade to make short-term returns, fall under this category.

Categories of AIF – Which One to Choose

Criteria	Category I AIF	Category II AIF	Category III AIF
Categorization	<ul style="list-style-type: none"> - Angel Fund - Venture Capital Funds; - SME Funds; - Social Venture Funds; and - Infrastructure Funds. 	<ul style="list-style-type: none"> - Private Equity Funds; - Structured Credit Funds; - Debt Funds; - Real Estate Funds. 	<ul style="list-style-type: none"> - Long only Funds; - Long-short Funds; - Hedge Funds and any other Funds with diverse and complex trading strategies.
SEBI Registration Fees	Rs.5.00 Lakhs (Rs. 2.00 Lakhs for Angel Fund)	Rs.10 Lakhs	Rs.15.00 Lakhs
Continuing Interest by Sponsor / Manager	Lower of the following amounts: <ul style="list-style-type: none"> - 2.5% of corpus; or - Rs.5 crores - (Rs. 50 lakhs for Angel Fund) 	Lower of the following amounts: <ul style="list-style-type: none"> - 2.5% of corpus; or - Rs.5 crores 	Lower of the following amounts: <ul style="list-style-type: none"> - 5% of corpus; or - Rs.10 crores
Ability to invest in Listed Securities	Limited ability for listed investments. Different norms across sub-categories.	Upto 49.99% investments can technically be done in listed securities.	Investments upto 100% can be made in listed securities.
Restrictions & Compliances	Moderate	Low	High
Qualified Institutional Buyer (QIB) Status	Yes [No lock in for investment made prior to IPO if held for at least one year]	Yes [No lock in for investment made prior to IPO if held for at least one year]	Yes
Diversification	Not more than 25% of the Investible Funds can be invested in a single Portfolio Entity		Not more than 10% of the Investible Funds can be invested in a single Portfolio Entity.
Close Ended/Open Ended	Close Ended	Close Ended	Open or Close Ended

Thresholds under AIF

- Each AIF Scheme should have a corpus of at least Rs. 20 crores (Rs. 5 crores for Angel Fund)
- Each investor in AIF should commit to invest of at least Rs. 1 crore (Rs. 25 lakhs for Angel Fund)
- An employee or director of the Manager of AIF can invest Rs. 25 lakhs or more
- An employee of the Manager participating in the profits/carry of the AIF need not make any investment
- No AIF Scheme can have more than 1,000 investors (200 investors for Angel Fund)
- Category-I AIF & Cat-II AIF shall have minimum tenure of 3 years (maximum 5 years for Angel Fund)

AIF Registration with SEBI

Eligibility Criteria for AIF Registration:

- An entity shall be restricted through its MOA & AOA to invite the public to subscribe to its shares.
- Maximum number of investors shall not at any time exceed 1000.
- Trust Deed/Partnership Deed to be registered under Registration Act 1908.
- A partnership deed is compulsorily furnished in case the applicant is LLP, and such deed shall be duly registered under the LLP Act 2008.
- Investors of AIF shall be either Indian or Non-Resident Indian.
- The minimum corpus for any AIF must be a minimum of 20 crores.

Process of registration:

- Registration required on SEBI online portal and online payment of Rs. 1 lakh application fee
- Uploading of Form A on SEBI portal along with final PPM and copy of executed Trust Deed and requisite declarations/undertakings
- The entire registration process generally takes 3 to 5 months

Foreign Investment in AIF

- 100% FDI is permitted under automatic route in all the Categories of AIFs.
- In terms of FEMA20 Regulations, if the Sponsor and Manager (both) are “Owned and Controlled” by Indian resident citizens, then the AIF does not need to follow FDI downstream investment norms.
- The extent of foreign investment in the corpus of the AIF will not be a factor to determine as to whether downstream investment by the AIF is foreign investment or not.*
- Downstream investment by an AIF that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made.
- **As a special condition, a Category III AIF with any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest under the FEMA20 Regulations.*

How India Juris can help

Scope of Work	Documents required & action to be taken
<ol style="list-style-type: none">1. Drafting (including trust deed & PPM) and Filing of all documents related to proposed fund2. Assistance in formation of fund entities3. Providing clarification to SEBI and assistance till grant of registration4. Advise and guidance of best practices during the process5. End-to-end support	<ol style="list-style-type: none">1. Details of applicant name, address etc.2. Registration certificate of the Company.3. Partnership deed in case of an LLP4. Trust deed incase applicant is a trust.5. Business strategies and investment plan.6. Draft copy of placement memorandum7. Financial statements8. Past work profile of the sponsor

Professional fee- India Juris shall charge most competitive fixed professional fee for the assignment. All out of pocket expenses are charged extra in addition to above fee at actuals.

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