



DEPUTY GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

SEBI/HO/IMD/OW/P/23462/2019

September 5, 2019

Mr. Mohinder Pal Bansal
BlackSoil Realty Investment Advisors LLP
1203, Lodha SUPremus, Senapati Bapat Marg,
Opp. Kamala Mill Compound, Lower parel, Mumbai – 400013.

Dear Sir,

Sub: Request for interpretive letter by BlackSoil Realty Investment Advisors LLP under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

1. This has reference to your letter dated June 7, 2019, seeking an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your communication under reference you have *inter alia* represented as follows:
 - i. Blacksoil Realty Trust ('BRT'/the 'Fund') is registered as a Category II Alternative Investment Fund with the Securities and Exchange Board of India ('SEBI') under SEBI (Alternative Investment Regulations), 2012 ('AIF Regulations') vide registration number IN/AIF2/13-14/0052.
 - ii. BlackSoil Realty Investment Advisors LLP ('BRIA'/the 'Manager') acts as the investment manager to the Fund.
 - iii. Based on the reading of Regulation 17 read with Regulation 2(o) of the AIF Regulations, BRT should be permitted to invest in an LLP, therefore there is no violation of the provisions of AIF Regulations on account of investment by BRT in an LLP by way of capital contribution.
 - iv. As a part of its investment strategy, the Fund invests and intends to invest in debentures issued by investee companies. Regulation 17 provides for investment in investee companies which could include investment in, amongst others, debt securities.
 - v. The Fund has a corpus of INR 148.40 crore by way of capital commitments from various investors. Out of the above, the expenditure for administration and management purposes is estimated at INR 6.98 crore.

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अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड
**Securities and Exchange
Board of India**

- vi. Since Regulation 15(1) specifically mentions that for the purpose of computing the limits the investible funds should be considered, we understand that the commitment received from investors minus the estimated administration and management expenses should be considered.
 - vii. During the course of its operation, the Fund may face situations where it does not have liquidity to meet its expenses on account of lead time from raising funds from investors, delay in payment by investor/s, etc. It may be necessary for the Fund to borrow money for such unavoidable circumstances for a short period of time.
 - viii. Since all the three conditions viz. (i) borrowing for a period less than 30 days, (ii) borrowing for less than 4 occasions in a year and (iii) borrowing less than 10% of INR 141.42 crore are met, there is no violation of the conditions prescribed for temporary funding requirements for a Category II AIF.
 - ix. The sponsors of the Fund are Mr. Ganesh Dunganrshi Gala and Mr. Shashi Kiran Shetty. The sponsors have invested in the Fund for the purpose of mandatory sponsor investment requirements. Moreover, the relatives of the sponsors have also invested in the Fund which is in excess of the mandatory sponsor investment requirements.
 - x. The AIF Regulations only provide for a minimum continuing interest to be invested or maintained by the Manager or Sponsor. We understand that there is no express condition in the AIF Regulations prescribing the maximum investment which can be made by the Manager or Sponsor/s (and relatives of the Sponsor/s). Hence, investment by the sponsors and their relatives can exceed the minimum continuing interest threshold prescribed under the AIF Regulations.
3. Based on the above submissions, you have sought an interpretive letter under SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following:
- a. **Query No. 1:** Whether there would be any violation of the provisions of AIF Regulations on account of investment by BRT in an LLP by way of capital contribution to such LLP?
 - b. **Query No.2:** Regulation 17 of the AIF Regulations provides for investment by Category II AIF primarily in unlisted investee companies. Is it intended to cover only investment in equity shares of Indian entities? Whether investment by a Category II AIF in debt securities would lead to violation of provisions of AIF Regulations?
 - c. **Query No.3:** Whether for the purpose of computing the 25% threshold of Regulation 15(1), the Fund should consider 25% of total commitment (less estimated expenses) or 25% of the total amount drawn down?



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड
**Securities and Exchange
Board of India**

- d. **Query No.4:** If the Fund were to borrow INR 10 lakhs for a period of 29 days from the Manager (only one time in a year), would it tantamount to any violation of the above provision of AIF Regulations?
- e. **Query No. 5:** Whether there is any upper/maximum limit for investment made by the Manager or Sponsor?

Our Comments

- a. 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:

Query No. 1:

- i. As per Regulation 17 (a) of the AIF Regulations: “*Category II AIFs shall invest primarily in unlisted **investee companies** or in units of other AIFs as may be specified in the placement memorandum*”. Further, as per Regulation 2(o) of the AIF Regulations: “*an “**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*”.
- ii. Thus, Regulation 17 (a) read with Regulation 2 (1) (o) of the AIF Regulations indicates that Category II AIFs can invest in LLP.

Query No.2

- iii. Regulation 17 (a) of the AIF Regulations specifies that Category II AIF can invest primarily in unlisted investee companies or in units of other AIFs, however the type of investment is not specified in the said Regulation.
- iv. Explanation to Regulation 3(4) (b) of the AIF Regulations, which deals with the registration of AIF, has provided that Category II AIF shall include: “*AIFs such as private equity funds or **debt funds** for which no specific incentives or concessions are given by the government or any other Regulators.*”

Further, as per Regulation 2(1)(i): “***debt fund means an AIF which invests primarily in debt or debt securities of listed or unlisted investee companies** according to the stated objectives of the Fund.*”



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

- v. The aforesaid Regulation 3 (4)(b) and Regulation 2(i) of the AIF Regulations indicate that "debt funds" which primarily invest in debt or debt related securities of listed or unlisted investee companies, are registered under Category II AIFs.
- vi. Hence, the Category II AIFs include the funds which primarily invest in debt or debt related securities of listed or unlisted investee companies.

Query No.3

- vii. As per Regulation 15(1): General investment conditions:
*(c) Category I and II Alternative Investment Funds shall invest not more than twenty five percent of the **investible funds** in one **Investee Company**;*
- viii. Regulation 2(1) defines investible funds as:
*(p) "investible funds" means **corpus** of the Alternative Investment Fund net of estimated expenditure for administration and management of the fund*
- ix. Further, Regulation 2 (1)(h) also defines corpus as:
*"corpus" means 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.*
- x. It may be interpreted from the above that for the purpose of computing 25% threshold of Regulation 15(1)(c) of the AIF Regulations, the fund should consider 25% of total commitment net of estimated expenditure for administration and management of the fund.

Query No.4

- xi. Regulation 17 of the AIF Regulations, which deals with the investment conditions applicable to Category-II AIFs, under sub-clause (c) prohibits a Category II AIF to borrow except for certain specific conditions. The said Clause reads as under:
*"Category II Alternative Investment Funds may not borrow funds directly or indirectly and shall not engage in leverage except for meeting temporary funding requirements for **not more than thirty days, not more than four occasions in a year and not more than ten percent of the investable funds.**"*



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

- xii. It is apparent from the Regulation 17(c) that Category II AIFs can borrow funds only for meeting temporary funding requirements for not more than thirty days, not more than four occasions in year and not more than ten percent of the investible funds. The borrowing scenario given by the applicant appears in compliance with the Regulation 17(c) of the AIF Regulations.
- xiii. Further, as regards to the fund borrowing from the Manager, the provisions of AIF Regulations are silent from where or which entities the Category II AIF can borrow funds.
- xiv. It may also be noted that Regulation 21 of the AIF Regulations *inter alia* mandates that the sponsor or manager shall act in fiduciary capacity towards investors and shall disclose all conflicts of interest, establish and implement written policies and procedures to identify, monitor and mitigate conflicts of interest throughout the scope of business and shall abide by high level principles on avoidance of conflicts of interest with associated persons.
- xv. In view of this, it appears that there is no express bar for an AIF to borrow funds from its manager, subject to the compliance of other conditions mentioned in the Regulations (including that of the conflict of interests), other applicable laws and provisions.
- Query No.5**
- xvi. As per Regulation 10 of the AIF Regulations deals with the conditions for investment by all categories of AIFs. Sub-clause (c) of the said Regulation states: *"the Alternative Investment Fund shall not accept from an investor, an investment of value less than one crore rupees"*
- xvii. Further, Regulation 10 (d) states that *"the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of **not less than two and half percent of the corpus or five crore rupees, whichever is lower**, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees."*
- xviii. It may be seen from the above provisions, the Regulations only specify the criteria for investment and the amount of minimum investment by investors and the amount of minimum continuing interest to be maintained by the sponsor or manager.




अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

- xix. It may be interpreted that the said Regulation has not provided for the upper/maximum limit for investment made by the Manager or Sponsor. However, the quantum of investment made by the Manager or Sponsor must not be contrary to the continuous eligibility requirement of an AIF.
4. Vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the *interpretative letter* issued to you in this matter will not be made public for a period of 90 days from the date of issuance of this letter.
5. The above position is based on the representation/information furnished by you in your letter under reference. Different facts or conditions might lead to different interpretation. This letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought on Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 and do not affect the applicability of any other law and other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,


Sanjay Singh Bhati