

Sebi Asks AIFs to Give Full Disclosure on 'Associates'

Alternative investment funds (AIFs), having foreign entities as “associates”, are rattled by the latest Securities and Exchange Board of India (Sebi) directive to disclose the entire disciplinary history of sponsors, managers, directors, partners, promoters and associates in their placement memorandum.

In a recent informal guidance released by the market regulator, it has asked Peninsula Brookfield India Real Estate Fund (PBIREF) -a Sebi-registered Alternative Investment Fund -to disclose the entire history of various regulatory actions against its associates, even if they are located outside India, in the placement memorandum.

Brookfield, which manages over \$200 billion of assets with 24,000 odd employees in over 100 offices in 20 different countries, now has to provide the disciplinary history of its sponsors, managers, directors, partners, promoters and associates to Sebi due to the global asset management company's tie-up with Peninsula for the Peninsula Brookfield India Real Estate Fund in India.

Securities lawyers feel that Sebi is casting the net far too wide.

“Several AIFs registered with Sebi having “associates“ outside India may be concerned as this information was neither sought by Sebi at the time of registration nor did the AIF Regulations explicitly state that this information is to be made available to the investors in the placement memorandum,” said Yogesh Chande, partner at Shardul Amarchand Mangaldas. “Neither did the clarification circular issued by Sebi in June 2014 expressly ask for disclosure of “associates“ outside India.”

AIFs are funds established or incorporated in India for the purpose of pooling in capital from Indian and foreign investors for investing as per the investment norms prescribed in the AIF Regulations. There were around 135 AIFs registered with Sebi as on March 31, 2015.

As per Regulation 2(1)(c) of AIF Regulations, “associate“ means a company, LLP or a body corporate in which a director or trustee or partner or sponsor or manager of the AIF or a director or a partner of the manager or sponsor holds, either individually or collectively, more than 15% of its paid-up equity share capital or partnership interest.

“AIFs which have partners from outside India may find it challenging and cumbersome to comply with the regulatory stance taken by the Sebi,” said a senior official from a registered AIF.

Some, however, say this could improve corporate governance. “Though Sebi's new compliance requirements may be burdensome in terms of paper work, it will improve the transparency in the system,” said PR Ramesh, senior consultant, Economic Law Practice. “It's the right of investors to know the details of managers who are managing their fund.”

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