

**Consultation paper on expanding definition of Qualified Institutional Buyers under SEBI (ICDR) Regulations, 2018, to include Accredited Investors for the limited purpose of investments in Angel Funds**

**Objective**

Angel Funds, a type of Category I AIFs - Venture Capital Funds, raise capital from Angel Investors through private placement to invest in start-ups. A review of the current regulatory framework for Angel Funds indicated gaps in operational clarity and concerns about offering investment opportunities to a large number of investors without necessarily ensuring commensurate risk appetite. Considering these issues, a [consultation paper on review of regulatory framework for Angel Funds in AIF Regulations](#) (herein after referred as 'first consultation paper') was published on SEBI website to seek views/comments of stakeholders on proposals to streamline regulatory framework for Angel Funds.

The key proposal in the said consultation paper was to mandate that Angel Funds shall on-board and offer investment opportunities only to Accredited Investors ('AIs'), so as to ensure that only investors with commensurate risk appetite, invest in Angel Funds. Other flexibilities proposed in the first consultation paper were envisaged based on strength and regulatory comfort of allowing only AIs to invest in Angel Funds.

The Companies Act, 2013 limits offer and allotment of securities under private placement to 200 investors but exempts Qualified Institutional Buyers (QIBs) as defined in SEBI (ICDR) Regulations, 2015, from this cap. If, for the purpose of Angel Funds alone, the definition of QIBs is expanded to include AIs due to their better understanding of investment risks, Angel Funds can offer the investment opportunities to more number of discerning investors, thus increasing the funding avenues for start-ups through this route. This would also allow scaling up of Angel Funds by attracting more investors who are independently verified as having the necessary risk awareness and appetite, while staying in conformity with the regulatory intent/objective.

Accordingly, this consultation paper seeks comments of public/stakeholders on the proposal to amend the definition of 'QIB' under ICDR Regulations, to include AIs for the limited purpose of offering of investment opportunities by Angel Funds.

**Issues for consideration**

**Assessment of sophistication of Angel Investors through Accredited Investors ('AIs') framework**

1. Angel investor is defined in the AIF Regulations as any person who proposes to invest in an Angel Fund and satisfies one of the following conditions:
  - Individual investor with net tangible assets of at least INR 2 Cr. excluding value of his principal residence and who (a) has early-stage investment experience; or, (b) has experience as a serial entrepreneur; or, (c) is a senior management professional with at least 10 years of experience.
  - Body corporate with net worth at least INR 10 Cr.
  - AIF registered under the AIF Regulations or VCF under the erstwhile VCF Regulations.

2. Investments in start-ups are relatively risky and therefore, Angel Fund framework provides for mandatory investor consent for each investment. Hence, Angel Investors must have commensurate risk appetite and be well-informed about the risks involved. However, it was observed that managers often rely on self-declarations and social media profiles of investors to verify eligibility as an Angel Investor. Such inadequate verification of eligibility and risk appetite has led to Angel Funds on-boarding a large number of investors.
3. Section 42 of the Companies Act, 2013 lays down norms for '*Offer or Invitation for Subscription of Securities on Private Placement*'. In terms of the same, any offer or invitation to subscribe or issue of securities to a select group of persons by a company under private placement shall not exceed 200 in the aggregate in a FY, excluding QIBs, or to employees of the company under a scheme of employees stock option (the limit was 49 investors under Companies Act, 1956). Here, QIB is cross-referred to the definition under SEBI ICDR Regulations as given [here](#).
4. When the Angel Fund framework was introduced in 2013, the number of investors in a scheme of Angel Fund was capped at 49 to ensure that investment in a company is not akin to a public offering. This limit was later raised to 200 investors, in line with changes in the Companies Act. Note that the 200-investor limit in the Companies Act is applicable on offer or invitation to subscribe unlisted securities also.
5. Angel Funds disclose details of investment opportunities in start-ups to its investors while seeking their consent for the investment. While the present framework under AIF Regulations caps the number of investors in each investment of the Angel Fund to 200, no such cap is prescribed on the number of investors that can be on-boarded to an Angel Fund and offered an investment opportunity. In fact, many Angel Funds use web-based platforms to show investment opportunities to large numbers of investors. In essence, these funds would be deemed to be offering securities of unlisted companies to more than 200 investors, though limiting contributions in an investee company to 200 investors.
6. Thus, Angel Funds offering investment opportunities in unlisted companies to a large number of investors, may not be in consonance with the regulatory intent behind the Companies Act provisions for private placement. The said concern, combined with the concerns around the risk awareness of angel investors being on-boarded, exacerbates the issues with the existing eligibility criteria for angel investors.
7. While these aforesaid issues are acknowledged, the role of Angel Funds in channelizing capital to start-ups has to be recognised. Accordingly, it was viewed that the core issues identified in the Angel Fund framework have to be addressed, to ensure robust development of the industry and sustained capital inflow to start-ups.

8. To address these concerns, it was proposed by SEBI in the first consultation paper to allow only AIs to invest in Angel Funds. In terms of the AIF Regulations, AI means any person who is granted a certificate of accreditation by an accreditation agency who,
- (i) in case of an individual, HUF, family trust or sole proprietorship has:
    - (a) annual income of at least INR 2 Crore; or
    - (b) net worth of at least INR 7.5 Crore, out of which not less than INR 3.75 Crore is in the form of financial assets; or
    - (c) annual income of at least INR 1 Crore and minimum net worth of INR 5 Crore, out of which not less than INR 2.5 Crore is in the form of financial assets.
  - (ii) in case of a body corporate, has net worth of at least INR 50 Crore;
  - (iii) in case of a trust other than family trust, has net worth of at least INR 50 Crore;
  - (iv) in case of a partnership firm set up under the Indian Partnership Act, 1932, each partner independently meets the eligibility criteria for accreditation

Further, Central Government and State Governments, developmental agencies and funds set up under the aegis of these Governments, QIBs as defined under ICDR Regulations, Category I FPIs, sovereign wealth funds and multilateral agencies, shall be deemed to be an AI without the requirement to obtain a certificate of accreditation.

9. AIs who meet commensurate net-worth criteria specified by SEBI, accredited by a third-party accreditation agency after verification, are expected to have necessary financial strength and resources in place to carry out necessary due-diligence with respect to their investors. Such investors have been provided flexibility of concessions from specific regulatory requirements applicable to investment products.
10. It may further be noted that, the extant net-worth thresholds for Angel Investors were set in 2013 and have not been revised thereafter. Considering the significant growth in economic parameters, the market indices have grown more than 300% in the last 11 years; if the same is taken into account, the 10-year projection of angel investor net-worth criteria set in 2013 nearly reflects the current eligibility criteria for AIs. Accordingly, this proposal to mandate AI is expected to ensure that investors in Angel Funds possess the requisite risk appetite while also shielding less-experienced investors from exposure to risky, illiquid assets.
11. Considering the same and to enable Angel Funds to have a wide reach to such investors, it is also viewed that there may be no need to cap the total number of investors who may be on-boarded to an Angel Fund and offered an investment opportunity, since these are investors who are verified by an independent agency to have the necessary risk appetite. This is envisaged to facilitate scaling up of the industry and enhance capital flow to start-ups, while having sufficient guardrails in place.

#### **Aligning the proposal with provisions of Companies Act on private placement**

12. While the aforesaid proposal is meant to facilitate fundraising by Angel Funds, not capping number of investors at fund level implies that investment in a start-up may be shown by Angel Funds to a large number of investors, exceeding 200. This creates a dissonance with Section 42(2)

of Companies Act that caps invitation to subscribe/offer of securities to 200 investors, excluding QIBs.

13. However, limiting the number of investors to 200 for offering investments, could adversely affect the much-needed capital that is channelized by Angel Funds to start-ups. Therefore, it may not be desirable to align the cap on number of investors for offering securities of start-ups by Angel Funds with Companies Act provision.
14. Note that QIBs are excluded from the aforesaid 200 investor limit under private placement in Companies Act. Such exclusion is largely based on the following principles:
  - 14.1. The cap of 200 investors in private placement ensures that such offerings remain non-public and target a select group of investors. QIBs, being institutional investors rather than “general public”, do not dilute the private nature of such placements.
  - 14.2. QIBs being institutional investors with substantial resources, expertise, and risk assessment capabilities, can independently evaluate the merits and risks of a private placement without needing the level of regulatory protection required for retail or less experienced investors.
  - 14.3. Excluding QIBs from the 200-investor cap allows issuers to access, even on private placement basis, the broader institutional capital for raising significant funds efficiently without any artificial constraints while maintaining the private offering's intent.
15. The exclusion of QIBs from the 200-investor cap is intended to facilitate efficient capital raising without compromising on investor protection. It recognizes the expertise of QIBs while maintaining the private nature of such placements. Considering this regulatory intent, a parallel can be drawn between QIBs and AIs with respect to their financial strength, resources and sophistication and to carry out due diligence of such private offerings. As already stated above, AIs, on account of their financial resources, are expected to be aware of the inherent risks in illiquid early stage investment and carry out necessary due-diligence before making an investment.
16. Thus, there is a case for recognising ‘Accredited Investors’ as ‘QIBs’ for the limited purpose of offering investment opportunities and allotment of investments by Angel Funds under AIF Regulations, to meet the regulatory objectives in a non-disruptive manner. This would also be beneficial for the start-up ecosystem, as it would facilitate Angel Funds to scale up by raise capital for start-ups in a regulated environment from large number of AIs.
17. This proposal is specifically with reference to investment in unlisted companies with no impact on the definition of QIBs in the context of public markets. It is acknowledged that all AIs may not be “institutional” investors and hence, may not have strong governance mechanisms that QIBs are expected to have in place. Considering the same, for the purposes of public markets where QIBs have a key role to play in price discovery for the larger public, AIs shall not be considered as QIBs.

**Implication on other proposals for review of regulatory framework for Angel Funds**

18. It was proposed in the first consultation paper that there may be no need for a cap on the total number of AIs who may be on-boarded to an Angel Fund while the 200- investor limit per investee company of Angel Fund may be retained and that it may be applied annually, excluding QIBs, in line with Section 42 of Companies Act, 2013.
19. Presently, there is no cap in the Companies Act with respect to number of QIBs who can be allotted securities in a private placement. In line with the same and considering the proposal in this paper to include AIs as QIBs for the purpose of Angel Funds, the existing 200 investor limit for investment by Angel Fund in an investee company may be removed. This would significantly benefit Angel Funds and start-ups, as Angel Funds can accept contribution from more number of investors for investment in an investee company.
20. Further, it was proposed in the first consultation paper that KMPs of an Angel Fund and its manager may contribute to investments of Fund without requirement of a minimum investment amount. This was intended as a flexibility for Angel Funds that also brings additional skin in the game in the investments of Angel Fund. Further, employees of a company are excluded from the 200 investor limit for private placement under Companies Act. In line with the same, there may not be a need to cap the number of KMPs (even though they may not be AIs), who can contribute towards an investment of the Angel Fund.

***Proposals for consideration***

***Proposal 1 –***

The definition of Qualified Institutional Buyer in ICDR Regulations may be amended to include Accredited Investor as defined in AIF Regulations, for the limited purpose of offering of investment opportunities and allotment of investments by Angel Funds.

***Proposal 2 –***

The extant limit of maximum 200 investors in an investment of Angel Fund may be removed.

***Public comments***

21. Considering the implications of the aforementioned matter on the market participants, public comments are invited on the Proposals 1 and 2 given above. The comments / suggestions shall be submitted on or before March 14, 2025, via online web-based form through the following link: <https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>
22. In case of any technical issue in submitting your comment through web based public comments form, you may contact [afdconsultation@sebi.gov.in](mailto:afdconsultation@sebi.gov.in) with the subject of the email as, “Consultation paper on expanding definition of QIB under ICDR Regulations, to include Accredited Investors for the purpose of investments in Angel Funds”.

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**Definition of QIB under ICDR Regulations**

In terms of Regulation 2(1)(ss) of ICDR Regulations, “qualified institutional buyer” means:

- (i) a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with the Board;
- (ii) foreign portfolio investor other than individuals, corporate bodies and family offices;
- (iii) a public financial institution;
- (iv) a scheduled commercial bank;
- (v) a multilateral and bilateral development financial institution;
- (vi) a state industrial development corporation;
- (vii) an insurance company registered with the Insurance Regulatory and Development Authority of India;
- (viii) a provident fund with minimum corpus of twenty-five crore rupees;
- (ix) a pension fund with minimum corpus of twenty-five crore rupees registered with the Pension Fund Regulatory and Development Authority established under subsection (1) of section 3 of the Pension Fund Regulatory and Development Authority Act, 2013;
- (x) National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
- (xi) insurance funds set up and managed by army, navy or air force of the Union of India;
- (xii) insurance funds set up and managed by the Department of Posts, India; and
- (xiii) systemically important non-banking financial companies.