



KHAITAN
& CO ADVOCATES
SINCE 1911



16 May 2024

SEBI Enforces Certification Mandate - Key Investment Team of the AIF Manager Under Exam Pressure

INTRODUCTION & BACKGROUND

The Securities and Exchange Board of India (SEBI), in the consultation paper published on 3 February 2023, first indicated its intention of doing away with the requirement Regulation 4(g)(i) of the AIF Regulations where at least one key personnel on the key investment team (KIT) of every alternative investment fund (AIF) was required to have at least five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling or dealing of securities or financial assets. After much deliberation, SEBI noted that such eligibility condition under the SEBI (AIF) Regulations, 2012 (AIF Regulations) may act as a barrier for new age / first generation managers who may not have requisite experience but have competence and knowledge in fund management and generating returns for investors.

Following the consultation paper, SEBI, in its board meeting on 29 March 2023, approved the proposal to replace existing minimum experience requirement as an eligibility criterion for the key investment team of the manager with a comprehensive certification requirement.

The approval culminated in the amendment to Regulation 4(g)(i) of the AIF Regulations, *vide* the SEBI (AIF) (Second Amendment) Regulations, 2023, which has finally been notified and made effective from 10 May 2024.

The amendment omitted the subjective five years' experience criteria mandated for the KIT of Managers and instead introduced an objective requirement of obtaining '*relevant certification*' as may be prescribed by SEBI.

Regulation 4(g) (before and after the amendment) is reproduced below:

	Regulation 4(g) before amendment	Regulation 4(g) post amendment
Regulation 4(g)	The key investment team of the manager of Alternative Investment Fund has -	
Regulation 4(g)(i)	adequate experience, with at least one key personnel <u>having not less than five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling and dealing of securities or other financial assets;</u> and	<u>at least one key personnel with relevant certification as may be specified by the Board from time to time; and</u>
Regulation 4(g)(ii)	at least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualification as may be specified by the Board:	
Proviso	Provided that the requirements as specified in regulation 4(g)(i) and 4(g)(ii) may also be fulfilled by the same key personnel.	

REQUIREMENTS

From 10 May 2024, the KIT of a manager must have:

- (1) At least one personnel who meets the certification requirements in accordance with Regulation 4(g)(i).
- (2) At least one personnel who meets the professional qualifications in accordance with Regulation 4(g)(ii).

The requirements stated in (1) and (2) above may be fulfilled by two separate KIT personnels or by the same KIT personnel.

The AIF Amendment presented two facets.

Opportunity:

Managers consisting of skilled investment professionals who are short of five years of experience now have an opportunity to get certified and manage AIFs.

Obstacle:

Seasoned investment moguls, with age old experience and expertise in fund management, which is unbeatable by all standards, will either have to get certified or appoint a certified personnel to their AIF's KIT.

The timeline for existing AIFs and AIFs whose application for launch of scheme is pending with SEBI as on 10 May 2024, to comply with the certification requirement is by 9 May 2025, i.e., one year from the date of the amendment being effective.

We touched upon the certification requirement in our previous [Ergo](#)¹.

NISM CERTIFICATION

The certification in question is the 'NISM-Series-XIX-C: Alternative Investment Fund Managers Certification Examination', designed for the KIT of the AIF manager (NISM Certification)². This examination is tailored to cover all important aspects of AIFs, fund management activities, knowledge of the

relevant regulations, valuation norms, taxation, and other essential elements necessary for fulfilling fund management responsibilities for the KIT personnels.

Additionally, Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 has also been amended to effect the NISM Certification requirements and align with the updated Regulation 4(g) of the AIF Regulations.

CONCLUSION

The earlier criterion under Regulation 4(g) of the AIF Regulations was subjective and led to uncertainty around multiple applications. The experience criterion also allowed for different interpretations and leading to varied standards being applied to ascertain eligibility. The experience requirement also took able and skilful managers out of the race, making them ineligible to seek registration for an AIF and acted as gatekeeping conditions for first time managers, who may otherwise be equipped to run funds.

While this objective requirement of being certified provides a level playing field and ensures that first time fund managers are not discriminated against from participating in the growing alternative asset sector, there seems to be some form of overlap between the requirements under the now amended Regulation 4(g)(i) and 4(g)(ii) wherein both are vocational qualification related criteria.

Further, reasonable time for members of KIT of existing managers to meet the eligibility criteria has been offered by SEBI.

This is a welcome change and should further boost the growing AIF market in India.

- Sahil Shah (Partner); Khusboo Agarwal (Principal Associate) and Mansi Agarwal (Associate)

For any queries please contact: editors@khaitanco.com

¹ <https://www.khaitanco.com/thought-leaderships/SEBI-notifies-the-framework-for-enhanced-governance-of-AIFs-and-setting-up-of-the-CDMDF>

² <https://www.nism.ac.in/nism-series-xix-c-alternative-investment-fund-managers/>

AMBITION STATEMENT

"Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life. We should put greater emphasis on working in consonance with our aforesaid values than on maximizing earnings. Earn we should but with dignity and pleasure."

Khaitan & Co is a premier full-service Indian law firm with 25+ practice areas, over 1,000 lawyers, including 200+ partners. To know more about us, please visit www.khaitanco.com