



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

DEPUTY GENERAL MANAGER  
INVESTMENT MANAGEMENT DEPARTMENT  
DIVISION OF FUNDS-1

IMD/ DoF-1/ VCF/NG/OW/ 3214/2011  
February 6, 2012

Ms. Beena Chotai  
ICICI Venture Funds Management Company Limited  
ICICI Venture House,  
Ground Floor,  
Appasaheb Marathe Marg,  
Prabhadevi,  
Mumbai—400 025

Madam,

**Sub:- Request for interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 by ICICI Venture Funds Management Company Limited on applicability of the provisions of SEBI (Venture Capital Funds) Regulations, 1996 {VCF Regulations}.**

1. This has reference to your letter dated September 28, 2011 seeking an interpretive letter/no action letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference you have *inter alia* represented as follows:-
  - a. ICICI Venture Funds Management Company Limited manages various funds which are registered with SEBI as Venture Capital Funds. ("VCF")
  - b. The VCFs propose to invest in Investment Holding Companies ("IHC") which in turn hold various underlying operating entities. Such IHCs are registered with RBI as an NBFC in the nature of an 'Investment Company'.
  - c. As per VCF Regulations, definition of a 'Venture Capital Undertaking' ("VCU") excludes entities which are engaged in activities or sectors which are specified in the negative list as contained in the Third Schedule to the Regulations.
  - d. The Negative List includes 'Non-Banking Financial Services excluding those Non-Banking Financial Companies which are registered with Reserve Bank of India and have been categorized as Equipment Leasing or Hire Purchase Companies'.
  - e. While the participation by the VCF is intended to be in the downstream entities which are VCUs, the corporate structure requires the fund to invest through IHC which is an NBFC by nature of its activities as a holding company.
  - f. The intent of the VCF Regulations ~~is~~ *inter alia* appears to be to allow flexibility to invest in SPVs which would in turn invest into VCUs and regulatory focus appears to be on the nature of such underlying VCUs and not the SPVs.



अनुवर्ती:  
Continuation :

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- g. Furthermore, as per Regulation 12 (d) (ii) (e) of the VCF Regulations, not more than 33.33% of the investible funds of a VCF can be invested in SPVs which are created for the purpose of facilitating or promoting investment.

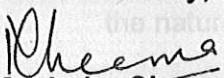
3. In view of the above submissions, you have sought interpretive/ no action letter under SEBI (Informal Guidance) Scheme, 2003 from SEBI with respect to investment by Venture Capital Funds into Venture Capital Undertakings through Investment Holding Companies.

**4. Our Comments**

The submissions made in your letter has been considered and without necessarily agreeing with your analysis, our views on the issues raised in your letter under reference are as under:-

- As per your submission IHC's are registered with RBI as NBFC in the nature of "Investment Company".
  - As per the Negative List in the Third Schedule to VCF Regulations, investment in NBFCs, excluding those NBFC's which are registered with RBI and have been categorized as Equipment Leasing or Hire Purchase Companies, is not permissible.
  - Therefore, investment in an IHC, registered with RBI as an NBFC, by VCF is not permitted under third schedule to SEBI (Venture Capital Funds) Regulations, 1996.
  - Regulation 12d (ii) (e) of SEBI (Venture Capital Funds) Regulations, 1996, inter alia, permits not more than 33.33% of the investible funds of Venture Capital Fund be made by way of Special Purpose Vehicles which are created by a Venture Capital Fund for the purpose of facilitating or promoting investment in accordance with these regulations. No representation has been made out in the letter dated September 28, 2011 that Investment Holding Company has been created by the Venture Capital Fund for the purpose of facilitating or promoting investment in accordance with the Regulations. Therefore, the question of treating Investment Holding Company as Special Purpose Vehicle under the Regulations may not arise.
5. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might require a different result. 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 SEBI (Venture Capital Funds) Regulations, 1996 and do not affect the applicability of any law and other SEBI Regulations, guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

  
Maninder Cheema



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SEBI/HO/IW/P/20110929/1521380244

September 28, 2011

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The Investment Management Division  
Securities and Exchange Board of India  
Plot No. C4-A, 'G' Block  
Bandra Kurla Complex, Bandra (East)  
Mumbai 400051

Kind Attn: Ms. Maninder Cheema,  
Deputy General Manager,  
Division of Funds – Venture Capital

Dear Madam,

Sub: Request for Interpretative / No Action Letter under the SEBI (Informal Guidance) Scheme, 2003 as amended in connection with SEBI (Venture Capital Funds) Regulations, 1996 ("VCF Regulations")

This is a request for an interpretative/no action letter under the SEBI (Informal Guidance) Scheme, 2003 as amended. Accordingly please find enclosed a demand draft of Rs. 25,000/- favouring SEBI, as fee payable under the scheme.

#### Factual and Legal Background

ICICI Venture is one of the largest private equity fund management companies in India. Various funds managed by ICICI Venture are registered with SEBI as domestic venture capital funds under the VCF Regulations (hereinafter referred to as "Funds"). These Funds primarily make investments into equity and equity-linked instruments of Indian companies operating in sectors such as Infrastructure, pharmaceuticals, Information Technology, media, manufacturing, logistics, textiles etc. The Funds are focused primarily on rapidly growing opportunities for private sector investment in India's economy and seeks to target high quality investments in companies with strong fundamentals, attractive risk / return profiles and substantial value creation potential.

1. In terms of the investment structure, in certain transactions, with an eye on ring fencing the liabilities and additionally consolidating value of investments and for facilitating certain financing structures, the Funds invest in an Investment Holding Company ("IHC") which in turn holds various underlying operating entities. In this regard, it may be noted that the IHC is registered as a Non-Banking Finance Company ("NBFC") in the nature of an *Investment Company* with the Reserve Bank of India ("RBI").

#### ICICI Venture Funds Management Company Limited

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2. As per VCF Regulations, a definition of the venture capital undertaking excludes entities which are engaged in the activities falling in the Negative List as contained in the Third Schedule to the VCF Regulations. As per the said Negative List Non Banking Financial Services (excluding those NBFCs which are registered with RBI and have been categorized as Equipment Leasing or Hire Purchase Companies) fall under the restricted activities.
3. While the participation by the Fund is *intended to be in the* downstream infrastructure operating project entities which are 'venture capital undertakings', corporate structure requires the fund to invest through the IHC which is a NBFC by nature of its activity as a holding company. It is submitted that intent of the VCF Regulations is *inter alia* to allow flexibility to invest into Special Purpose Vehicles ("SPVs") which would in turn invest into downstream entities which are venture capital undertakings and thus the regulatory focus has been on the nature of such venture capital undertakings as opposed to the SPV. It is submitted that a restriction on investment by the Fund into the IHC if applicable would run counter to the avowed objective of the VCF Regulations i.e. to allow structural flexibility for investing in VCUs through the use of SPVs such as the IHC, more so in certain sectors like infrastructure.
4. Furthermore, as per Regulation 12 d(ii)(e) of the VCF Regulations not more than 33.33 percent of the investible funds of a venture capital fund can be invested in SPVs which are created for the purpose of facilitating or promoting investment in accordance with the Regulations which clearly envisages that investments can be made through intermediate holding companies which may be regarded as SPVs for the purpose of this regulation.
5. It should be pointed out that the proposed SEBI (Alternative Investment Funds) Regulations, 2011 clarify the investment by Alternate Investment Funds ("AIF") into NBFCs which *are inter alia* Core Investment Companies do not fall under the negative or restricted list of investments for AIFs including VCFs. The proposed regulations thus clarify the intent, spirit and practical view taken on this issue by SEBI.

In light of the above factual and legal background we request you to issue an interpretative/no action letter under the SEBI (Informal Guidance) Scheme, 2003 and SEBI (Venture Capital Funds) Regulations, 1996 with respect to the investment by the Funds into venture capital undertakings through IHCs.

In terms of Clause 11 of the SEBI (Informal Guidance) Scheme, 2003, we hereby request that this application receives confidential treatment since the investments by contemplated are in the stage of proposal and facts contained in this letter are not available to the public at large.



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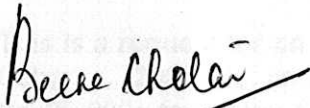
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We enclose ICICI Bank Demand Draft No.045753, dated 28<sup>th</sup> September 2011 for Rs. 25,000/- towards application fees, favoring "SEBI" payable Mumbai.

We hope you will find the same in order. We will be happy to provide any further information that you may seek.

Thanking you,

Yours truly,  
for ICICI Venture Funds Management Company Limited



Beena Chetai  
Chief Financial Officer

Encl : Demand Draft

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