

CAPITAL MARKETS NEWSFLASH

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LEGAL EYE**

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SEBI (VENTURE CAPITAL FUND) (AMENDMENT) REGULATIONS, 2004

The Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 have been amended vide Notification dated 5 April 2004¹. In view of the above, the following shall be applicable:

- ❖ The minimum amount to be invested by a Venture Capital Fund (VCF) in the equity share or equity linked instruments of a Venture Capital Undertaking (VCU) has been reduced from 75% to 66.67%. Further the maximum investment, which may be made by a VCF in subscription to IPO / debt or debt instrument of VCU etc., has been increased to 33.33%.
- ❖ The lock-in period of one year, which was imposed on VCF on subscription to initial public offer of a VCU whose shares are proposed to be listed, has been removed.
- ❖ The Negative List contained in the Third Schedule to the Regulations has also been pruned and the Venture Capital Fund can now invest in the Venture Capital Undertakings involved in the following activities, which was hitherto prohibited:
 - Real Estate;
 - Non-banking Financial companies which are registered with Reserve Bank of India and have been categorized as Equipment Leasing or Hire Purchase Companies; and
 - Companies, which are engaged in gold financing for jewellery.

As a result of the amendments, a VCF can invest more monies in listed securities. Additionally, the VCF is also permitted to invest in preferential allotments by listed companies and equity instruments of financially weak companies.

As per the amended Regulation 12(d), a VCF is now permitted to make investments as enumerated below:

- (A) At least 66.67% has to be invested has to be invested in unlisted equity share or equity linked instruments of venture capital undertaking
- (B) Not more than 33.33% of the investible funds may be invested by way of:
 - (a) Subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed.
 - (b) Debt or debt instrument of a venture capital undertaking in which the venture capital fund has already made an investment by way of equity.
 - (c) Preferential allotment of equity shares of a listed company subject to lock in period of one year.
 - (d) Equity shares or equity linked instruments of a financially weak company, i.e., a company which at the end of previous financial year has accumulated losses, which

¹ Published in Gazette of India on 6th April, 2004

resulted in erosion of more than 50% but less than 100% of its net worth as at the beginning of the previous financial year.

(e) Special purpose vehicles, which are created by a venture capital fund for the purpose of facilitating or promoting investment in accordance with these Regulations.

- ❖ Further, Clause (3) has been added to Regulation 24 whereby, subject to the conditions contained in the placement memorandum or contribution agreement a venture capital fund is permitted to make in-specie distribution of assets of the scheme as per the preference of investors, subject to obtaining approval of at least 75% of the investors of the scheme.
- ❖ Pursuant to the amendments the Venture Capital Fund is now required to disclose the duration of the life cycle of the fund.

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