Appendix
PUBLICATIONS

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VENTURE CAPITAL GUIDELINES — 1986-89

Venture Capital Companies/Funds which want to avail of concessional treatment of capital gains referred to in the Budget Speech of 1988-89, would be required to comply with the following guidelines:

1. Establishment

(i) Funds, Companies or Schemes wishing to undertake venture capital finance activities may be established using the term 'Venture Capital' if they come within, and agree to abide by, these guidelines.

(ii) Approvals would be given for the establishment of the Venture Capital Companies/Funds by the Department of Economic Affairs, Ministry of Finance, or such authority as may be nominated by the Government, and applications for such approvals should be made with a suitable explanatory note and details of the proposal and addressed to Joint Secretary (Investments) in Department of Economic Affairs.

(iii) Applications for issue of capital by companies should be made as per SEBI guidelines. Composite applications for approval to establish the fund and for the issue of capital can also be made.

(iv) All-India public sector financial institutions, SBI and other scheduled banks, including foreign banks operating in India, and the subsidiaries of the above would be eligible to start Venture Capital Funds/Companies, subject to such approval as may be required from the Reserve Bank of India in respect of banking companies. Joint ventures as between them, or non-institutional promoters and them would be permitted, but the equity holding of such promoters shall not exceed a total of 20 per cent and must not be the largest single holding.
2. Management

(i) It is required that the Venture Capital Funds/Companies are managed by professional such as bankers, managers and administrators and persons with adequate experience of industry, finance, accounts, etc. If established by subsidiaries of banks/institutions, or in-house schemes, they should maintain their independence and an arm’s length relationship. They would, however, be free to draw upon the professional expertise and infrastructure of the parent organisation in the interests of their shareholders and clients, and minimising costs.

(ii) No person would be permitted to be a full-time Chairman/President, Chief Executive, M.D. or Executive, M.D. or Executive Director or a wholetime director of a VCC/VCF if he holds any of the above positions in any other company, except that he may hold such a position in an assisted company by virtue of his position in the VCC/VCF.

3. Venture Capital Assistance

(i) It is intended that Venture Capital assistance should go mainly to enterprises where the risk element is comparatively high due to the technology involved being relatively new, untried or very closely held, and/or the entrepreneurs being relatively new and not affluent though otherwise qualified; and the size being modest. For successful units, the possibility of high returns would exist, but the projects would initially find it difficult to raise equity from the market, especially when public issues are no longer readily available for small, Greenfield companies. The assistance should mainly be for equity support; through loan support to supplement this may also be done. Venture capital assistance, therefore, should cover those enterprises, which fulfil the following parameters:

(a) Size: Total investment not to exceed Rs.10 crores.
(b) Technology: New or relatively untried or very closely held or being taken from pilot to commercial stage, or which incorporates some significant improvement over the existing ones in India.

(c) Promote/Entrepreneurs: Relatively new, professionally or technically qualified, with inadequate resources or backing to finance the project. Investment in enterprise engaged in trading, broking, investment or financial services, agency or liaison work, shall not be permitted. Further investment in assisted units for their expansion or strengthening, or investments for the revival of sick units, would be permitted as a part of venture capital activity, and the above parameters will not apply. The recipient venture should be established as limited company and must employ professionally qualified persons to maintain its accounts.

(ii) The VCPNCC should invest at least 75 per cent of its funds into venture capital activity as explained in para 3 (i).

(iii) During the first 12 months, any permissible investments may be made (including leasing up to 15 per cent of the funds), but a level of 30 per cent should be reached for venture capital activity by the end of the second year, and 60 per cent by the end of the third year, and 75 per cent by the end of the fifth year of operations.

The balance amounts may be invested in any new issue, by an existing or a new company, of equity, CCP, debentures, bonds or other securities approved for this purpose by CCI. A part of this may also be employed for leasing but this should not, at any stage, exceed 15 per cent of the total funds deployed, including in the first year. Activities such as money market operations, bill rediscounting, broking, portfolio, investments and fund management, financial services and consultancy, intercorporate lending would not be permitted to VCC/VCF.
4. Size

The minimum size of a VCC/VCF would be Rs. 10 crores. If it desires to raise funds from the public, the promoters’ share shall not be less than 40 per cent.

5. Capital Issues

(i) Funds may be raised through public issues and/or private placements to finance VCC/VCFs.

(ii) Foreign equity up to 25 per cent by multilateral/international financial organisations, development finance institutes, reputed mutual funds, etc. would be permitted, provided these are management-neutral and are for medium to long-term investments.

(iii) NRI investment would be permitted upto 74 per cent on a non-repatriable basis and upto 25 per cent/40 percent on a repatriable basis.

(iv) An application should be addressed to the Ministry of Finance, Investment Division, with a copy to Chairman, Securities, Exchange Board of India for foreign/NRI participation in capital issues.

6. Debt-Equity Ratio

Debt-equity ratio may be a maximum of 1:1.5.

7. Underwriting/Listing

(i) The VCC/VCF may be listed according to the prescribed norms. Its issue may be underwritten at the discretion of the promoters.

(ii) For assisted units also, listing, guidelines would apply. Investments by a widely-held VCF would be treated as public participation for this purpose.

8. Exit

Pricing of shares at the time of disinvestment by a public issue of general offer of sale by the VCC/VCF, may be done by them, subject to this being calculated on objective criteria like book value, profit-earning capacity, etc., and the basis is adequately disclosed to the public.
9. Eligibility for Tax Concession

The preferential tax treatment would be available to the approved venture capital company/fund only in respect of financing of such assisted units as are eligible to be treated as venture capitalists as defined in paragraph 3. For this purpose, the unit seeking equity support from the VCC/VCF should obtain a letter of eligibility from IDBI, ICICI or any such agency that may be nominated by the Government.
VENTURE CAPITAL GUIDELINES — 1996

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) the Securities and Exchange Board of India hereby, makes the following regulations:

REGISTRATION OF VENTURE CAPITAL FUNDS

Application for grant of certificate:

1. Any company or trust proposing to carry on any activity as a venture capital fund on or after the commencement of these regulations shall make an application to the Board for grant of a certificate.

2. Any company or trust, who on the date of commencement of these regulations is carrying any activity as a venture capital fund without a certificate shall make an application to the Board for grant of a certificate within a period of three months from the date of such commencement.

Provided that the board, in special cases, may extend the said period up to a maximum of six months from the date of such commencement.

3. An application for grant of certificate under sub-regulation (1) or sub-regulation (2) shall be made to the Board in Form A and shall be accompanied by a non-refundable application fee as specified in Part A of the Second Schedule to be paid in the manner specified in Part B thereof.

4. Any company or trust referred to in sub-regulation (2) who fails to make an application for grant of a certificate within the period specified therein shall cease to carry on any activity as a venture capital fund.

5. The Board may in the interest of the investors issue directions with regard to the transfer of records, documents or securities or disposal of investments relating to its activities as a venture capital fund.
(6) The Board may in order to protect the interests of investors appoints any person to take charge of records, documents, securities and for this purpose also determine the terms and conditions of such an appointment.

Eligibility criteria:

For the purpose of the grant of a certificate by the Board the applicant shall have to fulfil in particular the following conditions, namely:

(a) If the application is made by a company:

(i) Memorandum of association as has its main objective, the carrying on of the activity of a venture capital fund;

(ii) It is prohibited by its memorandum and articles of association from making an invitation to the public to subscribe to its securities;

(iii) Its director or principal officer or employee is not involved in any litigation connected with the securities market, which may have an adverse bearing on the business of the applicant;

(iv) Its director, principal officer or employee has not at any time been convicted of any offence involving moral turpitude or any economic offence;

(v) It is a fit and proper person;

(b) If the application is made by a trust:

(i) The instrument of trust is in the form of a deed and has been duly registered under the provisions of the Indian Registration Act, 1908 (16 of 1908);

(ii) The main object of the trust is to carry on the activity of a venture capital fund;

(iii) The directors of its trustee company, if any or any trustee is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant;
(iv) The directors of its trustee company, if any, or a trustee has not at any time been
convicted of any offence involving moral turpitude or of any economic offence;

(v) The applicant is a fit and proper person;

(c) The company or trust has not been refused a certificate by the Board or its certificate has been
suspended under regulation 30 or cancelled under regulation 31.

Furnishing of information, clarification:

The Board may require the applicant to furnish such further Information as it may consider
necessary.

Consideration of application:

An application, which is not complete in all respects, shall be rejected by the Board.

Provided that, before rejecting any such application. The applicant shall be given an opportunity to
remove, within thirty days of the date of receipt of communication, the objections indicated by the Board.

Provided further that the Board may, on being satisfied that it is necessary to extend the period
specified in the first proviso, extend such period by such further time not exceeding ninety days.

Procedure for grant of certificate:

(1) If the Board is satisfied that the applicant is eligible for the grant of certificate, it shall send
information to the applicant.

(2) On receipt of intimation, the applicant shall pay to the Board, the registration fee specified in Part A
of the Second Schedule in the manner specified in Part B thereof.

(3) The Board shall on receipt of the registration fee grant a certificate of registration in Form B.

Conditions of certificate. -

The certificate granted under regulation 7 shall be inter alias, subject to the following conditions,
namely-
(a) The venture capital fund shall abide by the provisions of the Act, the Government of India Guidelines and these regulations.

(b) The venture capital fund shall not carry on any other activity other than that of a venture capital fund.

(c) The venture capital fund shall forthwith inform the Board in writing if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any change in the information already submitted.

Procedure where certificate is not granted:

(a) After considering an application made under regulation 3, if the Board is of the opinion that a certificate should not be granted, it may reject the application after giving the applicant a reasonable opportunity of being heard.

(b) The decision of the Board to reject the application shall be communicated to the applicant within thirty days.

Effect of refusal to grant certificate:

(a) Any applicant whose application has been rejected under regulation 9 shall not carry on any activity as a venture capital fund.

(b) Any company or trust referred to in sub-regulation (2) of regulation 3, whose applicant for grant of certificate has been rejected under regulation 9 by the Board shall, on and from the date of the receipt the communication under sub-regulation (2) of regulation 9, cease to carry on any activity as a venture capital fund.

(c) The Board may in the interest of the investors issue directions with regard to the transfer of records, documents or securities or disposal of investments relating to its activities as a venture capital fund.
(d) The Board may in order to protect the interests of the investors appoint any person to take charge of records, documents, securities and for this purpose also determine the terms and conditions of such an appointment.

INVESTMENT CONDITIONS AND RESTRICTIONS

Minimum investment in a venture capital fund:

(1) A venture capital fund may raise monies from any investor whether Indian, foreign or non-resident Indian.

(2) No venture capital fund set up as a company or any scheme of a venture capital fund set up as a trust shall accept any investment from any investor which is less than five lakh rupees.

Provided that nothing contained in sub-regulation (2) shall apply to investors who are -

(a) Employees or the principal officer or directors of the venture capital fund, or directors of the trustee company or trustees where the venture capital fund has been established as a trust; or

(b) Non-resident Indians; or

(c) Persons or institutions of foreign origin.

Restrictions on investment by a venture capital fund:

All investments made or to be made by a venture capital fund shall be subject to the following restrictions:

(a) The venture capital fund shall not invest in the equity shares of the company or institutions providing financial services;

(b) At least 80 per cent of funds raised by a venture capital fund shall be invested in:-

(i) The equity shares or equity related securities issued by a company whose securities are not listed on any recognized stock exchange:
Provided that a venture capital fund may invest in equity shares or equity related securities of a company whose securities are to be listed or are listed where the venture capital fund has made these investments through private placements prior to the listing of the securities;

(ii) The equity shares or equity related securities of a financially weak company or a sick industrial company, whose securities may not be listed on any recognized stock exchange.

Explanation: For the purposes of this regulation, a "financially weak company" means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than 50% but less than 100% of its net worth as at the beginning of the previous financial year;

(iii) Providing financial assistance in any other manner to companies in whose equity shares the venture capital fund has invested under sub-clause (i) or sub-clause (ii), as the case may be.

Explanation: For the purposes or and ............................................. the actual monies raised from investors for subscribing to the securities of the venture capital fund and includes monies raised from the author of the trust in case the venture capital fund has been established as a trust but shall not include the paid up capital of the trustee company, if any.

Prohibition on listing:

No venture capital fund shall be entitled to get its securities or units, as the case may be, listed on any recognized stock exchange till the expiry of three years from the date of the issuance of securities or units, as the case may be by the venture capital fund.

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Prohibition on inviting subscription from the public:

No venture capital fund shall issue any document or advertisement inviting offers from the public for subscription or purchase of any of its securities or units.
Private placement:

A venture capital fund may receive monies for investment in the venture capital fund though private placement of its securities or units.

Placement memorandum:

(1) The venture capital fund established as a trust shall, before issuing any units file with the Board a placement memorandum which shall give details of the terms subject to which monies are proposed to be raised from investors.

(2) A venture capital fund established is a company shall before making an offer inviting any subscription to its securities file with the Board a placement memorandum which shall give details of the terms subject to which monies are proposed to be raised from the investors.

Contents of placement memorandum: -

(1) The placement memorandum referred to in sub-regulation (1) of regulation 16 shall contain the following, namely:

(a) Details of the trustees or Trustee Company of the venture capital fund;

(b) Details of entitlement on the units of the trust for which subscription is being sought;

(c) Details of investments that are proposed to be made;

(d) Tax implications that are likely to apply to investors;

(e) Manner of subscription to the units of the trust;

(f) The period of maturity, if any, of the scheme;

(g) The manner, if any, in which the scheme is to be wound up;

(h) Manner in which the benefits accruing to investors in the units of the trust are to be distributes;

(i) Details of the asset management company, if any, and of fees to be paid to such a company:
(2) The placement memorandum referred to in sub-regulation (2) of regulation 16 shall contain the following namely:

(a) Details of the securities that are being offered;

(b) Details of investments that are proposed to be made;

(c) Details of directors of the company;

(d) Tax implications that are likely to apply to investors;

(e) Manner of subscription to the securities that are to be issued;

(f) Manner in which the benefits accruing to investors in the securities are to be distributed; and

(g) Details of the asset management company, if any; and of fees to be paid to such a company.

Circulation of placement memorandum:

The placement memorandum referred to in regulation 16 may be issued for-private circulation only after the expiry of twenty-one days of its submission to the Board:

Provided that if, within twenty-one days of submission of the placement memorandum, the Board communicates any amendments to the placement memorandum, the venture capital fund shall carry out such amendments in the placement memorandum before such memorandum is circulated to the Investors.

Changes in the placement memorandum to be intimated to the Board:

Amendments or changes to any placement memorandum already filed with the Board can be made only if-

(a) A copy of the placement memorandum indicating the changes is filed with the Board and

(b) Within twenty-one days of such filing the Board has not communicated any objections or observations on the said amendments or changes.
Maintenance of books and records:

(1) Every venture capital fund shall maintain for a period of ten years books of accounts, records and documents, which shall give a true and fair picture of the state of affairs of the venture capital fund.

(2) Every venture capital fund shall intimate the Board, in writing, the place where the books, records and documents referred to in sub-regulation (1) are being maintained.

Power to call for information:

(1) The Board may at any time call for any information from a venture capital fund with respect to any matter relating to its activity as a venture capital fund.

(2) Where any information is called for under sub-regulation (1) it shall be furnished to the Board within fifteen days.

Submission of reports to the Board:

The Board may at any time call upon the venture capital fund to file such reports as the Board may desire with regard to the activities carried on by the venture capital fund.

Winding up:

(1) A scheme of a venture capital fund set up, as a trust shall be wound up.

(a) When the period of the scheme, if any, mentioned in the placement memorandum is over.

(b) If it is the opinion of the trustees or a trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units.

(c) If seventy-five percent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up; or

(d) If the Board so directs in the interests of investors.

(2) A venture capital fund set up as a company shall be wound up in accordance with the provisions of the Companies Act, 1956 (1 of 1956).
(3) The trustees or trustee company of the venture capital fund set up as a trust shall intimate the Board and investors of the circumstances leading to the winding up of the scheme under sub-regulation (1).

Effect of winding up:

(1) On and from the date of intimation under sub regulation (3) of regulation 23 no further investments shall be made on behalf of the scheme so wound up.

(2) Within three months from the date of intimation under sub-regulation (3) of regulation 23, the assets of the scheme shall be liquidated, and the proceeds accruing to investors in the scheme distributed to them after satisfying all liabilities.

INSPECTION AND INVESTIGATION

Board’s right to inspect or investigate:

(1) The Board may appoint one or more persons as inspecting or investigating officer to undertake inspection or investigation of the books of accounts, records and documents relating to a venture capital fund for any of the following reasons, namely:

(a) To ensure that the books of account, records and documents are being maintained by the venture capital fund in the manner specified in these regulations;

(b) To inspect or investigate into complaints received from investors, clients or any other person on any matter having a bearing on the activities of the venture capital fund;

(c) To ascertain whether the provisions of the Act and these regulations are being complied with by the venture capital fund; and

(d) To inspect or investigate suo motu into the affairs of a venture capital fund, in the interest of the securities market or in the interest of investors.
Notice before inspection or investigation:

(1) Before ordering an inspection or investigation under regulation 25, the Board shall give not less than ten days notice to the venture capital fund.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing direct that the inspection or investigation of the affairs of the venture capital fund be taken up without such notice.

(3) During the course of an inspection or investigation, the venture capital fund against whom the inspection or investigation is being carried out shall be bound to discharge its obligations as provided in regulation 27.

Obligations of venture capital fund on inspection or investigation by the Board:

(1) It shall be the duty of the venture capital fund whose affairs are being inspected or investigated, and of every director, officer and employee thereof, of its asset management company, if any, and of its trustees or directors or the directors of the trustee company, if any, to produce before the inspecting investigating officer such books, securities, accounts, records and other documents in custody or control and furnish him with such statements and information relating to venture capital fund, as the inspecting or investigating officer may require within such reasonable period as the inspecting officers may specify.

(2) The venture capital fund shall allow the inspecting or investigating officer to have reasonable access to the premises occupied by such venture capital fund or by any other person his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the venture capital fund or such other person and also provide copies of documents or other materials which, in the opinion of the inspecting or investigating officer are relevant for the purposes of the inspection or investigation as the case may be.
(3) The inspecting or investigating officer, in the course of inspection or investigation shall be entitled to examine or to record the statements of any director officer employee of the venture capital fund.

(4) It shall be the duty of every director, officer or employee, trustee or director of the trustee company of the venture capital fund to give to the inspecting or investigating officer all assistance in connection with the inspection or investigation, which the inspecting or investigating officer may reasonably require.

Submission of Report to the Board:

The inspecting or investigating officer shall as soon as possible on completion of the inspection or investigation submit an inspection or investigation report to the Board.

Provided that if directed to do so by the Board, he may submit an interim report.

Communication of findings, etc. to the venture capital fund:

(1) The Board shall, after consideration of the inspection or investigation report or the interim report referred to in regulation 28, communicate the findings of the inspection officer to the venture capital fund and give him an opportunity of being heard.

(2) On receipt of the reply if any from the venture capital fund, the Board may call upon the venture capital fund to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act and these regulations.

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Suspension of certificate:

The Board may suspend the certificate granted to a venture capital fund where the venture capital fund:

(a) Contravenes any of the provisions of the Act or these regulations;

(b) Fails to furnish any information relating to its activity as a venture capital fund as required by the Board;
(c) Furnishes to the Board information which is false or misleading in any material particular;

(d) Does not submit periodic returns or reports as required by the Board;

(e) Does not co-operate in any enquiry, inspection or investigation conducted by the Board;

(f) Fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf.

Cancellation of certificate:

The Board may cancel the certificate granted to a venture capital fund:

(a) When the venture capital fund is guilty of fraud or has been convicted of an offence involving moral turpitude;

(b) The venture capital fund has been guilty of repeated defaults of the nature specified in regulation 30.

Explanation- In this regulation, "fraud" has the same meaning as is assigned to it in section 17 of the Indian Contract Act, 1872 (9 of 1872); or

(c) Contravenes any of the provisions of the Act or these regulations.

Manner of making order of cancellation or suspension:

No order of suspension or cancellation of certificate shall be made by the Board, except after holding an enquiry in accordance with the procedure specified in regulation 33.

Manner or holding enquiry before suspension or cancellation:

(1) For the purpose of holding an enquiry under regulation 32, the Board may appoint one or more enquiry officers.

(2) The enquiry officer shall issue to the venture capital fund at its registered office or its principal place of business, a notice setting out the grounds or which action is proposed to be taken against it and calling upon it to show cause against such action within a period of fourteen days from the date of receipt of the notice.
(3) The venture capital fund may, within fourteen days from the date of receipt of such notice, furnish to the enquiry officer a written reply, together with copies of documentary or other evidence relied on by it or sought by the Board from the venture capital fund.

(4) The enquiry officer shall give a reasonable opportunity of hearing to the venture capital fund to enable him to make submission in support of its reply made under sub-regulation (3).

(5) Before the enquiry officer, the venture capital fund may appear through any person duly authorised by the venture capital Fund.

Provided that no lawyer or advocate shall be permitted to represent the venture capital fund at the enquiry:

Provided further that where a lawyer or an advocate has been appointed by the Board as a presenting officer under sub-regulation (6), it shall be lawful for the venture capital fund to present its case through a lawyer or advocate.

(6) The enquiry officer may, if he considers it necessary, ask the Board to appoint a presenting officer to present its case.

(7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the venture capital fund, submit a report to the Board and recommend the penal action, if any, to be taken against the venture capital fund as also the grounds on which the proposed action is justified.

Show-cause notice and order:

(1) On receipt of the report from the enquiry officer, the Board shall consider the same and may issue to the venture capital fund a show-cause notice as to why the penal action as proposed by the enquiry officer should not be taken against it.

(2) The venture capital fund shall, within fourteen days of the date of the receipt of the show-cause notice, send a reply to the Board.

(3) The Board, after considering the reply, if any, of the venture capital fund, shall, as soon as possible pass such order as it deems fit.
Effect of suspension and cancellation of certificate:

(1) On and from the date of the suspension of the certificate, the venture capital fund shall cease to carry on any activity as a venture capital fund during the period of suspension, and shall be subject to such directions of the Board with regard to any records, documents or securities that may be in its custody or control, relating to its activities as venture capital fund, as the Board may specify.

(2) On and from the date of cancellation of the certificate, the venture capital fund shall, with immediate effect, cease to carry on any activity as a venture capital fund, and shall be subject to such directions of the Board with regard to the transfer of records, documents or securities that may be in its custody or control, relating to its activities as venture capital fund, as the Board may specify.

Publication of order of suspension or cancellation:

The order of suspension or cancellation of certificate passed under regulation 35 may be published by the Board in two newspapers.
APPENDIX — III

(i) AMENDMENT IN VENTURE CAPITAL GUIDELINES - 1999

In a bid to attract venture capital investments, particularly FDI, the Union government has eased norms governing such investments by broad basing the definition of "infrastructure facility", doing away with the three-year investment lock-in and freeing investment norms stipulated for venture capital companies to enable them to avail of tax exemptions.

These norms include a three-year lock-in on investments. Additionally, to avail tax benefits the venture capital companies have to subscribe to a mandatory investment pattern over three years. The investment pattern prescribed includes mandatory investment of 20 per cent, 50 per cent and 80 per cent of the funds by the venture capital company over a period of three years in a venture capital undertaking to be eligible for tax shield.

Both these norms, prescribed in Rule 2D under the provisions of section 10(23F) of the Income-tax Act, have now been removed. The relaxations come into effect from April 1, 1999.

Additionally, the definition of the term infrastructure facility as defined in section 10 (23F) of the Income-tax Act has been expanded. This section deals with tax exemptions to venture capital earnings. The definition has now been expanded to include roads, highways, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Central Board of Direct Taxes.

The changes have been made primarily on the basis of demand from overseas venture capital funds, who have been demanding a relaxation in the stringent investment norms.

(ii) GUIDELINES FOR OVERSEAS VENTURE CAPITAL INVESTMENT IN INDIA

In recognition of the growing importance of Venture Capital as one of the sources of finance for Indian industry, particularly for the smaller unlisted companies, the Government has announced a policy governing the establishment of domestic Venture Capital Funds/Companies. An amendment has also been
carried out in the SEBI Act empowering the Securities and Exchange Board of India (SEBI) to register and regulate Venture Capital Funds (VCFs) and Venture Capital Companies (VCCs), through specific regulations.

1. With a view to augment the availability of Venture Capital, the Government has decided to allow overseas venture capital investments in India subject to suitable guidelines as outlined below:

(a) Offshore investors may invest in, approved domestic Venture Capital Funds/Companies set up under the new policy after obtaining FIPB approval for the investment. There is no limit to the extent of foreign contribution to a domestic venture capital company/fund. An offshore venture capital company may contribute 100% of the capital of a domestic venture capital fund, and may also set up a domestic asset management company to manage the Fund.

(b) Establishment of an asset management company with foreign investment to manage such funds would require FIPB approval and would be subject to the existing norms for foreign investment in non-bank financial services companies.

(c) Once the initial FIPB approval has been obtained, the subsequent investment by the domestic venture capital company/fund in Indian companies will not require FIPB approval. Such investments will be limited only by the general restrictions applicable to venture capital companies viz.

(i) A minimum lock-in period of three years will apply to all such investments.

(ii) VCFs and VCCs shall invest only in unlisted companies and their investment shall be limited to 40% of the paid up capital of the company. The ceiling will be subject to relevant equity investment limits that may be in force from time to time in relation to areas for the Small Scale Sector.

(iii) Investment in any single company by a VCF/VCCs shall not exceed 5% of the paid-up corpus of the domestic VCF/VCC.
(d) The tax exemptions available to domestic VCFs and VCCs under section 10(23F) of the Income-tax Act, 1961, will also be extended to domestic VCFs and VCCs which attract overseas venture capital investments provided these VCFs/VCCs conform to the guidelines applicable for domestic VCFs/VCCs. However, if the VCF/VCC is willing to forego the tax exemptions available under section 10(23F) of the Income-tax Act, it would be within its rights to invest in any sector.

(e) Income paid to offshore investors from Indian VCFs/VCCs will be subject to tax as per the normal rates applicable to foreign investors.

2. Offshore investors may also invest in the equity of unlisted Indian companies without going through the route of a domestic VCF/NCC. However, in such cases each investment will be treated as a separate act of foreign investment and will require separate approval as required under the general policy for foreign investment proposals.

These guidelines will become operative with immediate effect.

(iii) TAX RELIEF TO VENTURE CAPITAL FUNDS

The Finance Act, 1995 has amended Income-tax Act, 1961, to provide tax relief to Venture Capital Funds or Venture Capital Companies by inserting sub-section (23F) to Section 10 therein. Section 10 of Income-tax Act, 1961 contains provisions about incomes not included in total income for tax proposes. The relief suggests that certain incomes as specified in sub-section (23F) shall not be taxable incomes of VCCs/VCFs.

Income-tax relief under section 10(23F):

Sub-section (23F) of Section 10 of Income-tax Act, 1961 is reproduced below:

"Section 10. Income not included in total income - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -"
[(23F) any income by way of dividends or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking:

Provided that such venture capital fund or venture capital company is approved for the purposes of this clause by the prescribed authority in accordance with the rules made in this behalf and satisfies the prescribed conditions:

Provided further that any approval by the prescribed authority shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval:

Provided also that if the aforesaid equity shares are transferred (other than in the event of the said shares being listed in a recognised stock exchange in India) by a venture capital fund or a venture capital company to any person at any time within a period of three years from the date of their acquisition, the aggregate amount of income by way of dividends on such equity shares which has not been included in the total income of the previous year or years preceding the previous year in which such transfer has taken place shall be deemed to be the income of venture capital fund or of the venture capital company of the previous year in which such transfer has taken place:

Provided also that the exemption shall not be allowed in respect of the long-term capital gains, if any, arising on such transfer of equity shares as is mentioned in the third proviso.

Explanation - For the purposes of this clause:

(a) "Venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(b) "Venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines; and
(c) "Venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the manufacture or production of such articles or things (including computer software) as may be notified by the Central Government in this behalf;"

Procedure to avail of tax relief under Income-tax Rules:

To avail of the above benefits, the VCCs/VCFs shall have to apply to the Director Income Tax (Exemptions) in term of rule 2D inserted by Income-tax (Eleventh) Amendment Rules, 1995 which is also reproduced below:

"2D. Guidelines for approval under clause (23F) of section 10 - -

(1) For the purposes of clause (23F) of section 10, the prescribed authority shall be the Director of Income-tax (Exemptions) having jurisdiction over the venture capital fund or the venture capital company who makes application for approval under sub-rule (2).

(2) An application for approval shall be made in Form 56A by a venture capital fund or a venture capital company to the Director of Income-tax (Exemptions) referred to in sub-rule (1).

(3) Every application under sub-rule (2) may be made in any previous year in which any income by way of dividend or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking shall not be included in computing the total income of such venture capital fund or venture capital company, and

(4) Every application for approval under sub-rule (2) shall be accompanied by the following documents, namely:

(a) A copy of trust deed or certificate of incorporation under Companies Act, 1956 (1 of 1956);
(b) Balance sheets and profit and loss account for three previous years immediately preceding the previous year in which the application is made;

(c) Forms 56B and 56C duly filled in and signed by the applicant; and

(d) A copy of the certificate of registration issued by the Securities and Exchange Board of India.

(5) The Director of Income-tax (Exemptions) shall approve the venture capital fund or the venture capital company, as the case may be, subject to the following conditions, namely:

(a) The venture capital fund or the venture capital company, as the case may be, is registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) Every venture capital fund invests an amount not less than eighty per cent, of its total monies (hereinafter referred to as such monies) raised for investment by way of acquiring equity shares of the venture capital undertakings in the following manner, namely:

(i) Twenty per cent or more of such monies shall be invested during or before the end of the previous year in which the application is made under sub-rule (3) by way of acquiring equity shares of the venture capital undertakings,

(ii) Fifty per cent or more of such monies (including the investments referred to in sub-clause (i) above) shall be invested, during or before the end of the previous year immediately succeeding the previous year in which investment of twenty per cent, referred to in sub-clause (i) has been made, by way of acquiring equity shares of the venture capital undertakings,
(iii) Eighty per cent, or more of such monies (including the investments, referred to in clause (ii) above) shall be invested, during or before the end of the cent investment referred to in sub-clause (ii) has been made, by way of acquiring equity shares of the venture capital undertakings;

(c) Every venture capital company invests an amount not less than eighty per cent of its total paid up capital (hereinafter referred to as such capital) by way of acquiring equity shares of the venture capital undertakings in the following manner, namely:-

(i) Twenty per cent, or more of such capital shall be invested, during or before the end of the previous year in which the application is made under sub-rule (3), by way of acquiring equity shares of the venture capital undertakings,

(ii) Fifty per cent, or more of such capital (including the investments referred to in clause (i) above) shall be invested, during or before the end of the previous year immediately succeeding the previous year in which investment of twenty per cent referred to in clause (i) above has been made, by way of acquiring equity shares of the venture capital undertakings,

(iii) Eighty per cent, or more of such capital (including the investments referred to in clause (ii) above) shall be invested, during or before the end of the previous year in which fifty per cent investment referred to in sub-clause (ii) has been made, by way of acquiring equity shares of the venture capital undertakings;

(d) A venture capital fund or a venture capital company, as the case may be, shall not invest more than five per cent of its total monies raised or total paid-up share capital in one venture capital undertaking;
(e) A venture capital fund or a venture capital company, as the case may be, shall not make investment of more than forty per cent in the equity capital of one venture capital undertaking;

(j) Every venture capital fund and venture capital company, shall maintain books of account and get such books audited by an accountant, as defined in Explanation to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Director, Income-tax (Exemptions) before the due date of filing of the return under sub-section (1) of section 139.

(6) The Director, Income tax (Exemptions) shall pass an order in writing granting approval or refusing approval to the venture capital fund or venture capital company, as the case may be:

Provided that the Director, Income-tax (Exemptions) shall not refuse the approval except in concurrence with the Director General of Income-tax (Exemptions):

Provided further that every venture capital fund or venture capital company, as the case may be, shall be given an opportunity of being heard before passing an order under this rule.

(7) The Director, Income-tax (Exemptions) shall withdraw the approval granted under sub-rule (6) in the following circumstances, namely:-

(a) If the venture capital fund or the venture capital company -

(i) Fails to make investments in the manner specified in sub-rule (5); or

(ii) Invests more than five per cent of the monies raised by a venture capital fund or five per cent of paid up share capital of the venture capital company as the case may be, in one venture capital undertaking:
(iii) Makes an investment of more than forty per cent in the equity capital in one venture capital undertaking: -

(iv) Fails to maintain books of account and get such accounts audited by an accountant or fails to file the audit report required in clause (1) of sub-rule (5);

(v) Violates the provisions of the Act or rules made thereunder;

(b) If the certificate of registration granted under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), to a venture capital fund or a venture capital company is suspended or cancelled by the Securities and Exchange Board of India.

Application for tax relief:

It has been provided in Rule 2D that every application for approval under clause (23F) of section 10 shall confirm to the procedure laid down under the said Rule 2D. In other words, the application shall be made in prescribed Form 56A by the VCCs/VCFs to the Director of Income Tax (Exemption) which shall be duly accompanied by the information required in Form 56B and Form 56C respectively.
Dear Sir/Madam,
This questionnaire is specially designed to know the problems faced by venture capitalists while providing the funds to the entrepreneurs and the impact of Government policies on the venture capital business.
The study is aimed exclusively for the research purpose and the data will be used only for the research work.
I would therefore request you to fill in this questionnaire, as this is a part of the research work.

Thanking you.

Neeti Agrawal
Research scholar
Department of Business Management
Dr. H.S. Gour University
Sagar (M.P.)

THE COMPANY
NAME OF THE ORGANIZATION:
NATURE OF BUSINESS:
OVERALL MARKETING STRATEGY:
DETAILED PRODUCT/SERVICE DESCRIPTION:
OPERATING COMPETITIVE ADVANTAGES:

THE MANAGEMENT:
LEGAL STRUCTURE OF THE BUSINESS
a) Corporation  b) Partnership  c) Proprietorship

MARKET ANALYSIS
A. INDUSTRY DESCRIPTION AND OUTLOOK
   1. Size of the company:
      a) Historically (Past five years):
      b) Currently:
      c) Future prospects:

B. COMPANY CHARACTERISTICS AND TRENDS: (WHERE IT IS IN ITS LIFE CYCLE?)
   a) Historically:
   b) Currently:
   c) In future:

C. MAJOR CUSTOMER GROUPS:
   a) Business organizations:
      New/Existing
   b) Government organizations:
D. FINANCIAL ANALYSIS:

1. FINANCIAL DATA: (FOR PAST THREE TO FIVE YEARS, IF APPLICABLE)
   1. Annual statements:
   2. Income statements:
   3. Balance sheet:
   4. Cash flows:

2. PROSPECTIVE DATA (FOR PAST THREE TO FIVE YEARS)
   1. Next Year:
   2. Capital Expenditure Budget:
   3. Working Capital (If required)

Q1. At what stage the venture capital funding is provided by your organization?

   A) Early stage capital
      1. Seed financing
      2. R & D financing
      3. Start-up or fledgling stage financing
      4. First-stage financing

   B) Expansion financing
      1. Second-stage financing
      2. Development financing
      3. Bridge financing

   C) Acquisition/buyout financing
      1. Acquisition financing
      2. Management buy-out financing
      3. Turnaround financing

Q2. What is the participation area of the firm?

   a) Board of directors’
   b) Technical expertise
   c) Advisory body
   d) Others (specify)

Q3. What are the areas, the firm looks for, before providing VCF?

   a) Past experience
   b) Sound backing
   c) Young entrepreneurs
   d) Technical expertise
   e) all
   f) others (specify)
Q4. What type of Venture Capital assistance your company provides?
(Please tick whichever is applicable)

a) New product development    b) Product modification
c) Manufacturing/product promotion    d) Research and development
e) Others (Specify)

Q5. What is the general size of venture capital assistance provided by your co.?

a) New product development: High Moderate Low
b) Product modification: High Moderate Low
c) Manufacturing/product promotion: High Moderate Low
d) Research and development: High Moderate Low
e) Others (Specify)

Q6. What is the general mode of financing?

a) Equity    b) Debt c) Both d) others (specify)

Q7. The general size of the mode:

a) Equity: High Moderate Low
b) Debt: High Moderate Low
c) Both: High Moderate Low
d) Others (specify): High Moderate Low

Q8. What kind of projects your company finances?

a) Technological (IT)    b) Philanthropic c) Insurance
d) Pension funds e) Technological (Biological) f) others (specify)

Q9. The level of investment:

a) Technological (IT): High Moderate Low
b) Philanthropic: High Moderate Low
c) Insurance: High Moderate Low
d) Pension funds: High Moderate Low
e) Technological (Biological): High Moderate Low
f) Others (specify): High Moderate Low

Q10. Do you face problems after providing VCF?

Yes/No
Q11. What types of problems occur?
   a) Governmental       b) Individual       c) Entrepreneurial       d) all

Q12. What are the problems faced regarding government regulations? Please specify.

Q13. How do you rate the Indian venture capital funds to that of the foreign venture capital funds?
   a) High stake       b) Moderate stake       c) Low stake


Q15. Any special strategies to deal with the problems:

Q16. Recommendations/ suggestions regarding VCF:
Dear Sir/Madam,
This questionnaire is specially designed to know the problems faced by entrepreneurs going in for venture capital financing and the impact of Government policies on the venture capital business. The study is aimed exclusively for the research purpose and the data will be used only for the research work.
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Thanking you.

Neeti Agrawal
Research scholar
Department of Business Management
Dr. H.S. Gour University
Sagar (M.P.)

NAME OF THE ENTREPRENEUR:
THE COMPANY
NAME OF THE ORGANIZATION:
NATURE OF BUSINESS:
OVERALL MARKETING STRATEGY:
DETAILED PRODUCT/SERVICE DESCRIPTION:
OPERATING COMPETITIVE ADVANTAGES:
THE MANAGEMENT:
LEGAL STRUCTURE OF THE BUSINESS
a) Corporation  b) Partnership  c) Proprietorship

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      a) Historically (Past five years):
      b) Currently:
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   a) Historically:
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   4. Cash flows:

2. PROSPECTIVE DATA (FOR PAST THREE TO FIVE YEARS)
   1. Next Year:
   2. Capital Expenditure Budget:
   3. Working Capital (If required)

Q1. Are you aware of venture capital financing? If yes, answer question 2 onwards.
   Yes/No

Q2. Which financial alternative your firm has opted for?
   a) Venture Capital   b) Angels   c) Term loans   d) Others (Specify)

Q3. Which Venture Capital scheme are you availing?
   A) Early stage capital
      1. Seed financing
      2. R & D financing
      3. Start-up or fledgling stage financing
      4. First-stage financing
   
   B) Expansion financing
      1. Second-stage financing
      2. Development financing
      3. Bridge financing

   C) Acquisition/buyout financing
      1. Acquisition financing
      2. Management buy-out financing
      3. Turnaround financing
Q4. Details of the project started for which VC Finance is taken?

Project Name:
Project Size:
Product/Services:
VCF participation:
Technology used: Imported/Indigenous/Mixed

Q5. The assistance by Venture Capital Fund in form of:
a) Equity b) Conditional loan c) Income notes d) Others (specify)

Q6. Rank the factors, which helped you in taking the decision for a particular scheme: (1 is for least important and so on.)

Awareness:
Promoters' contribution:
Terms/conditions of finance:
Timely disbursal of finance:
Less documentation:
Speedy appraisal:
Repayment schedule:
Mode of financing:
Others:

Q7. What type of assistance is provided by venture capitalists?
a) Sufficient b) Insufficient

Q8. Promoters' contribution by venture capitalists:
a) High b) Reasonable c) Negotiable

Q9. Did you face any problems regarding appraisal procedure by venture capitalists?
Yes/No

Q10. If yes, answer the following:

<table>
<thead>
<tr>
<th>Procedure:</th>
<th>Lengthy</th>
<th>Cumbersome</th>
<th>Slow</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of documentation: Satisfactory</td>
<td>Dissatisfactory</td>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>% Stake of royalty: High</td>
<td>Reasonable</td>
<td>Low</td>
<td></td>
</tr>
</tbody>
</table>
Q11. What are the Governmental problems faced by you (please specify)?

Q12. What is the level of profits earned by your company as compared to the normal business?
a) High  b) Reasonably high  c) Medium  d) Low

Q13. Where are the earnings invested?
a) IT sector  b) R&D sector  c) Insurance sector  d) Pension funds
e) Any other, specify

Q14. What are the growth prospects of your company as compared to the conventional business?
a) Exceptionally high  b) High  c) Medium  d) Low

Q15. What are the reasons for unpopularity of venture capital funds in India?
Government policies:
Risk Factor:
Security level:
Others: (specify)

Q16. Recommendations / suggestions to facilitate the funding process: