CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

Since the time that economic liberalization began in India in 1991, policymakers have consistently opened up the economy to remote financing, pulling in worldwide players to contend and tap the expansive potential in the domestic business sector. India's dynamic foreign trade policy has been actualized through a synthesis of fiscal reform, liberalization of exchange and investment strategies and objective exchange controls. This joined together with solid essentials containing a great demographic profile, human capital, exchange openness, expanding urbanization and climbing buyer using has made India one of the quickest developing markets on the planet. The spiraling development in the economy has prompted a comparative climb in the funding given by Venture Capital and Private Equity Industry in India. Separated from a couple of divisions like non-saving money fiscal administrations and gold financing which are not allowed under the industrial policy of the Government of India, investors can put their investments in most different divisions612.

An institution like SEBI is characterized as regulative, standardizing, and cognitive structure exercising its strength and intending to give social behaviour for the overall benefit to society. Regulative structures perform brief practices through formal rules and guidelines, regularizing through socio-economic demand and cognitive through structuring of convictions or building baselines that are required. It is clear that for the fiscal economy of India to grow SEBI needs to depend on each of these characteristics as the foundations to plan for regulating framework for scaling up its contributing effect. The regulations can just go so far in the non-attendance of dark and white truth and the capacity to confirm it at expense of its sensibility. The various standardizing impacts have their constraints when regulatory effect is subjective and interlaced with other social and economic convictions. The cognitive structures can waver when various factors are contributing for economic growth and their impact is not impeding the investments made by investors. Building the environment for effective investment requires moving from the comprehensively held, extremely human, yet exceedingly individualized capability to adjust great and increase to assemble an indifferent system of regulations, rules and guidelines. The rigid and restrictive

612 Sahai P., Smooth Ride to Venture Capital, p. 60, 2009
conditions to the more comprehensive market conditions for investment won’t accomplish the potential as seen recently in the regulations and guidelines of SEBI for domestic and foreign investors. The various examples of overcoming adversity have hailed from natural inspiration that controls, standards, and outside desires can fortify however not recreate the interest of the investors. Looking ahead, SEBI must consider the regulations that are required for the investors and investing reforms in accordance with the global market conditions.\textsuperscript{613}

The underlying rationale of the Alternative Investment Funds (AIF) Regulations, 2010 seems to go past the SEBI piece of watching Venture Capital Funds and Private Equity investments malpractices and making safe financing conditions for investors. The provisions attempt to regulate the business of funds and their governance. The AIF Regulations have not been defined keeping business prerequisites and the adaptable nature of such finances or funds. As it has overruled all the previous regulations for investment in Indian market for both domestic and foreign investors it has created a deterrent impact on the investors. Thus it is concluded overall as an impeding factor for the Institutional investors and the foreign investors who are not having any clarity on the investment regulations.\textsuperscript{614}

Preceding the notification of AIF Regulations, all pooled financing vehicles including funds like infrastructure funds, foundation reserve, debt funds etc. was either falling in the category of Venture Capital Funds or the Private Equity funds which were enlisted with SEBI under its various regulations. This idea of one size fits all under SEBI (AIF) Regulation was overall paying little heed to the basics for the entry of various players into Indian market which led SEBI to order enlisted funds under Venture Capital Fund Regulations. Acknowledging the way that at present SEBI is ordering these funds focused around their basics, comparing progressions will be needed in existing laws, regulations and all the more especially into assessment and trade control laws to blanket these classes of funds and to give diverse motivations or concessions to diverse sorts of funds according to their requirement. As seen in the foreign investment is allowed in a fund just when it is a Venture Capital Funds. This implies that if a Small Medium Enterprises (SME) or a foundation reserve which fits in with the same classification to which Venture Capital Funds have a place, can’t get foreign investments. Such equivocalness appears to be unintentional but is having a negative impact on the investors. Thus in perspective of the above, it creates the impression that fitting revisions must be made in return to control regulations to guarantee that at least the funds

\textsuperscript{613} SEBI Act 1992
\textsuperscript{614} SEBI (Alternative Investment Funds) Act 2012
having a place with same classification appreciate the comparative benefits and there are no aberrations in looking for foreign investments\textsuperscript{615}.

Likewise, the predominating assessment laws stretch out the tax benefits just to Venture Capital Funds. This implies that a SME or an infrastructure funds which fits in with the same class to which Venture Capital Funds have a place won't be qualified for these tax benefits. In view of the previously stated rationale, it creates the impression that even the assessment laws might require proper corrections to synchronize with the expectation of AIF Regulations. This is having an overruling impact on the various tax exemptions which are enjoyed by the investors. Thus SEBI must incorporate new regulations for various tax benefits which are to be given to both domestic and foreign investors\textsuperscript{616}.

The existing funds (falling inside the meaning of an AIF) not enlisted with SEBI may keep on operating for 6 months from the date of beginning of the AIF Regulations or on the off chance that it has generally made a provision for enrolment under these regulations inside those 6 months then work the transfer of its requisition (extendable up to 12 months in unique cases with the authorization of the Board). These funds won't be permitted to buoy any new plan without enrolment under the AIF Regulations. Plans skimmed by such supports before coming into power of AIF Regulations, might just be permitted to proceed till development of the fund. Further existing finances that are as of now not enlisted with SEBI yet wish to look for enrolment under the AIF Regulations may apply to SEBI for exclusion from the strict agreeability with the AIF Regulations in the event that they are not fit to agree to all procurements of these regulations. Thus SEBI has given a rigid ruling in operating an existed fund which can not operate till it is registered with the SEBI regulations which itself is not feasible considering the volatile financial market conditions\textsuperscript{617}.

The Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000, endorse the way in which a Foreign Venture Capital Investor (FVCI) can make investments. A Foreign Venture Capital Investor, can through SEBI, apply to the Reserve Bank of India (RBI) for authorization to put resources into an Indian investment undertaking, a Venture Capital Fund or in a plan skimmed by an investment reserve. The consideration sum for investment could be paid out of internal settlements from abroad through typical banking channels. Subject to RBI support, a foreign

\textsuperscript{615} Section 3 SEBI (Alternative Investment Funds) Act 2012
\textsuperscript{616} Panwar V., \textit{Venture Capital Funding : Global and Indian Experiences}, p. 78, 2009
\textsuperscript{617} Section 6 SEBI (Alternative Investment Funds) Act 2012
V Venture Capital Investor can keep up an foreign currency or rupee account with a commissioned Indian bank. The funds held in such accounts might be utilized for investment purposes. The FEMA Regulations recommend as far as possible on foreign Venture Capital Investor into India. A company, which is occupied with the print media, segment, nuclear vitality and related ventures, media, postal administrations, resistance and rural exercises, must get the regard of the Foreign Investment Promotion Board or Secretariat of Industrial Assistance, depending upon the quantum of venture, before issuing shares to a foreign Venture Capital Investor arranged abroad. This act as a deterrent for the foreign Venture Capital Investor who wants to invest in India as no uniform regulations are given by the SEBI for foreign Venture Capital Investors even in new Alternative Investment Funds (AIF) regulations in India\textsuperscript{618}.

For the most part regulating Alternative Investment Fund is a critical venture inside SEBI dispatch as the major chunk of investment is made in the form of these funds. Extensively, SEBI regulations must pass an expense profit dissection and in accordance with that, SEBI has work now utilized light touch regulations where the investors are modern and can along these lines deal with themselves. The regulations distinguishes how essential the business is and talks exceedingly of the investor’s wellspring of dynamic capital which assumes an exceptionally significant part in the development of the corporate governance and that the capital brings a great deal of governance and great quality money. It is subsequently critical that the regulations tried to be forced by SEBI ought to further the item looked to be attained and such question be accomplished remembering an expense profit examination which is generally termed as regulatory impact assessment. The objectives of the regulations as expressed in the SEBI regulations itself are administration of systemic risk, focusing of profits to specific sorts of funds and putting financing confinements and tending to clash of investment interests by different corporate bodies. This basic objective is not incorporated with respect to institutional investors and fund managers. Thus the regulations are to be looked further with respect to the governance of these funds by the investors along with the fund managers as enshrined under the European Alternative Investment Funds Managers Directive\textsuperscript{619}.

\textsuperscript{618} The Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000

\textsuperscript{619} Alternative Investment Fund Managers Directive 2011/61/EU
While noting global improvements, SEBI has not tended to the issue of administration of systemic risk. In any occasion, the extent that domestic Venture Capital and Private Equity is concerned, there is essentially no influence or obligation included and along these lines tending to the issue from a perspective of systemic risk is unnecessary. In the meantime foreign investment institutions may be profoundly leveraged, and the effect of such leveraged finances needs to be seen from India's systemic risk point of view. This, SEBI needs to address alongside RBI. Further, the regulations try to make venture funds and forces confinements on where each one kind of fund may contribute. This takes away the main free lunch accessible in the fiscal markets — of enhancement in diverse sorts of organizations. In this way, a fund which needs presentation in SME, early stage organizations and listed companies might be restricted from contributing unless they make three separate pools. In this perspective, making these funds might force a serious cost not just on the players regarding absence of adaptability, however such a framework might infuse higher hazard on the investors. In this manner to make funds to target profits is improper. Rather, it might be helpful to make such funds discretionary, so anybody looking for a profit could be distinguished and benefit the profits. Thus the SEBI regulations should give more leverage to the foreign investors and strict compliance for the domestic investors.

The regulations tried to order the sorts of organizations which are genuine for a specific fund, including whether investment ought to be in listed or unlisted debt securities. There is a provision for the fund size to be at least Rs. 20 crore, the base financing for every investor to be 0.1% of the fund size. At that point there is a prerequisite that the funds be close finished with a base residency of five years. Venture Capital reserves can't hold more than Rs. 250 crore in a solitary pool and can't put resources into organizations pushed by the main 500 listed companies or their promoters. Venture Capital reserves can't put resources into warrants or convertibles or even in listed debt securities (today countless funds are put resources into convertibles). Private investments in public equity (PIPE) funds can't put resources into organizations which are recorded on trades that structure a piece of any trade list. Private Equity funds can't put resources into listed shares. Debt funds can't put resources into registered debt securities. Such sort of multiple restrictions are occurring as negative

\[\text{Ibid}\]
impact on the growth and investment potential in these funds. Thus SEBI alter such multiple restrictions on different funds so that easy investment can be made by the investors.621

In addition the investment micro administration, there are different issues as well. Concerning the clash of investment of the investors the SEBI regulations tries to mandate at least investment of 5% by the directors of the funds. This might make numerous fund managers to go bankrupt on the off chance that they can't shell out so much capital. Unmistakably, in the business which requires a savvy manager who can increase the value of the fund, as opposed to rich administrators who might be brilliant but can not give any profit to the investors. The logic behind directors putting resources into the funds that they oversee is to make arrangement of investment. Subsequently the 5% base financing by the administrator winds up ordering a base clash of enthusiasm. On the off chance that at the end of the residency any investments are un-sold, they are obliged to be consumed by the sponsor. This is additionally unsafe, if there is a monetary emergency and the securities can't be sold at a sensible cost, both the sponsor and investor might be hit by a controller commanded blaze deal and by a mandatory underwriting by the manager. There is, accordingly, a premium on rich managers and a regulatory prohibition of keen supervisors acting as a regulatory destination toward oneself. Thus SEBI has restricted the scope of the growth of the fund managers who seek profit by investing in these funds.622

Thus, it is concluded that SEBI Alternative Investment Funds Regulations are not proficient and effective for both domestic and foreign investments. The stringent and inflexibility of these regulations have an obstacle affect on the investors who always look for the profit with respect to their investments at an early time period. Further, these regulations are not in uniformity with various investment regulation regimes which is taken by the countries like U.S., U.K. etc. who are more investor friendly. The uniformity of registration of fund advisors for different funds is required at par with global fund manager directives for the better investment and growth of these funds in India.

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621 Ibid
622 Ibid
RECOMMENDATIONS

The AIF Regulations have made an expansion in the expense of fund formation and different compliance regulations have made the investors (both domestic and foreign investors) hesitant in putting resources into India. For its fitting development in Venture Capital and Private Equity in India a noteworthy change is required to handle different regulatory issues. The different recommendations for the regulatory issues which have come up with the critical analysis of regulations of US, UK and in India are as follows:

1) The Alternative Investment Funds (AIF) Regulations have isolated different funds in diverse classifications which is insignificant in nature. The AIF Regulations did not incorporate diverse funds in a single class, which in turn has prompted different registrations of classifications for differing financing in India. This happens as an obstruction to the investors as diverse sort of arrangements are needed for such Venture Capital and Private Equity Funds. It is recommended that the funds diversification into different class should be removed and single window registrations for various funds are incorporated.

2) The prohibition of amending any of the categories under Alternative Investment Fund Regulations has made it rigid and troublesome in working of the Venture Capital and Private Equity Funds. The investor’s methodologies rely on available market conditions which are erratic and continue changing; such inflexibility will have adverse impact on the Venture Capital and Private Equity Funds. The amending of the funds is required as the volatile market scenario will not give the sufficient returns to the investors causing more impediments on the investment in India.

3) The constraint of partners or shareholders to fifty numbers in Alternative Investment Funds constituted as a company or Limited Liability Partnership (LLP) is not giving any basis under AIF Regulations as constituted by SEBI. Various Private Equity Funds require more than that number of shareholders or partners. As various funds require different number of shareholders it is imperative on SEBI to make the amendment to the
above class so that more investment by the shareholders can be made to attain better results on the investments.

4) The AIF Regulations don't give any registration or regulation for funds having numerous advisors which are spotted at diverse nations. It has prompted the perplexity in choosing which fund manager is to be taken for regulation reason. Further, it is troublesome to register funds and the fund managers at distinctive areas. The regulations of fund managers are to be made uniform as with the AIFMD Regulations of UK fund managers. The SEBI can make such amendments to obtain uniformity in the regulations at global level market.

5) The provisions with respect to Hedge funds and different funds are to be close ended. The Hedge Funds because of its venture technique are barely close ended. This happens as an impediment to the investor as numerous fund investments is carried out in Hedge funds. The policymakers of the SEBI must incorporate such regulations which are in accordance with the volatile market demands and investor friendly at global level.

6) The new AIF Regulations have not characterized the qualifying status for the Hedge Funds and Pension Funds which are managed under SEBI (Foreign Institutional Investor) Regulations, 1995, and are either changed by Foreign Institutional Investors or their sub-accounts, after the AIF Regulations become effective. This has prompted regulation consistence in both Foreign Institutional Investor and AIF Regulations which again gives obstruction affect on the investors. The need to define the foreign investors and the foreign Venture Capital Funds is required as more foreign investors are willing to invest in diverse Indian financial market.

7) The prohibitions on the investment by any company which is promoted by and top 500 listed companies with capping of Rs. 250 crores for Venture Capital Funds goes about as control on raising money and arrangement deliberations. Further SEBI has not given any rules under this regulation. The restriction and the rigidity of SEBI regulations under these umbrellas is hindrance for the investors.
8) The AIF Regulations have excessively of do's and don'ts for the investors as for every class of the funds and limits the prudence of the investors. The Venture Capital Funds and Private Equity Investments are determined by the risk and return components. The over the top regulations are impediment for the investors for our nation. The SEBI might go away with these sort of multiple regulations for different funds and create uniformity in registration of funds in accordance with global market.

9) The AIF Regulation gives registration to the funds however is silent on the registration of the investment advisors which is needed for the transparency and protection of the fund management and for the investors. The role of investment advisors is prominent in the success of any fund which SEBI has not incorporated in its regulations. The registration of the investment advisors can be in accordance with the Alternate Investment Fund Managers Directives as incorporated at global level.

Lastly, the AIF Regulations have not characterized certain terms which will prompt making another translation bringing on more disarray particularly in the developing situation of real estate activities in India.

Areas for Future Research: India is just starting to witness committed research in the field of Venture Capital and Private Equity investments. Along these lines, there are numerous ranges that are interested in further research. Notwithstanding a developing investment business sector, passageways have been few and far between. It is paramount to study and comprehend the regulatory framework for Venture Capital and Private Equity investments to be made by the policymakers of India. Likewise, nations like India present enormous potentials for the both domestic and foreign investors who are willing to invest in India. Further, a comparative analysis is required among the Indian regulatory laws and the global regulatory laws for better results for the investors.