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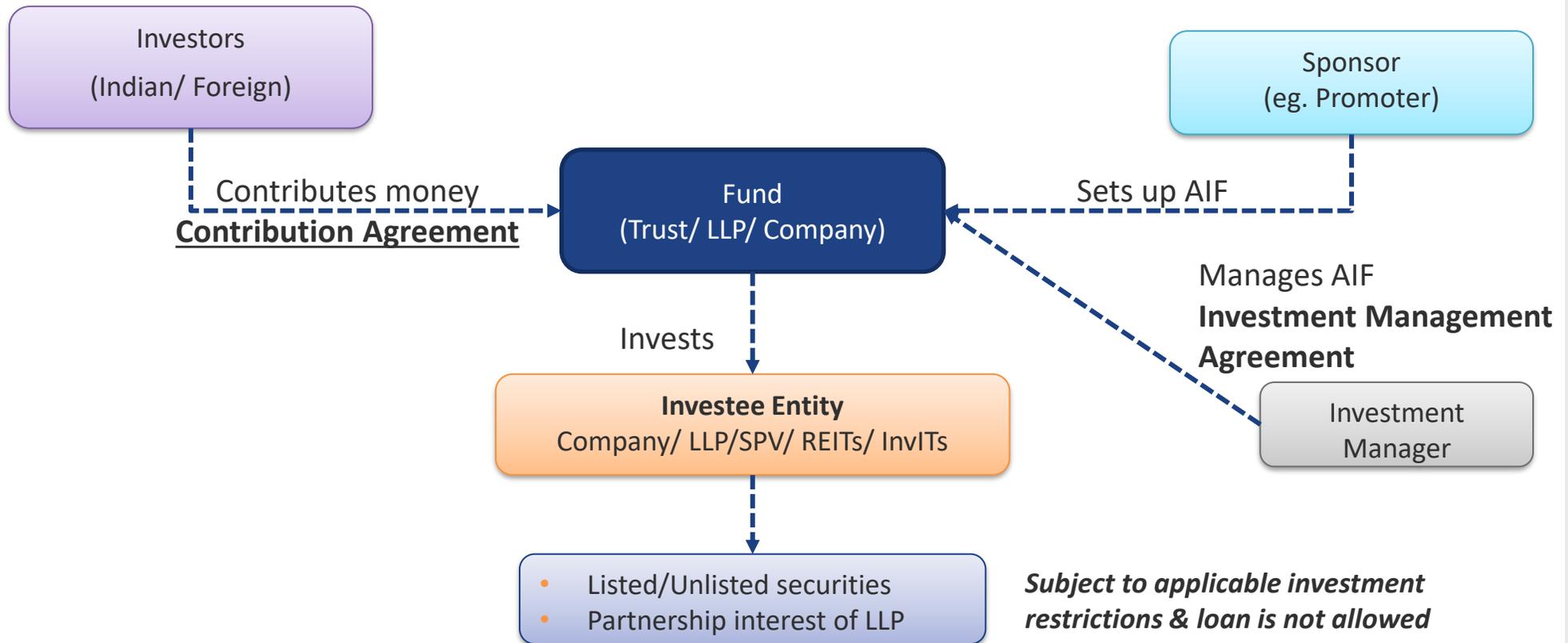
**GBCA**  
& ASSOCIATES LLP  
Chartered Accountants

# Alternative Investment Fund

*- An Overview*

***What is AIF?***

**AIF:** Fund established in India which is a privately pooled investment vehicle which collects funds from Investors for investing as per pre-decided investment policy



## Category I

- VCF : Min 2/3<sup>rd</sup> of fund in **unlisted** equity/equity instrument of VCU/ **SME listed** Cos.
- SME Fund : Min 75% of fund in **Unlisted** SME entities /SME Listed Cos.
- Social Venture Fund: Min 75% of funds in social ventures.
- Infrastructure Fund: Min 75% of fund in **Unlisted** entities/ listed debt securities of Infrastructure entities.

## Category II

- Invest primarily (i.e >50%\*) in **Unlisted** investee entity.
- Also enter hedging subject to SEBI Guidelines
- Eg. Debt Fund, Private Equity Fund
- *\*Based on SEBI Informal Guidance dated 28<sup>th</sup> February, 2014*

## Category III

- Invest in **Listed/ Unlisted investee entity**/ derivatives/ complex/ structured products.
- Eg. Hedge Fund, PIPE Fund, **Long Only Fund**
- ***Hence this AIF can hold investment in Listed, unlisted Equity Shares, other securities, Capital in LLP (provided AIF is a not Trust), Mutual Funds, AIF etc.***

## Category I

- Leverage : Not Allowed
- Compliances/Restrictions: Moderate
- Close Ended

## Category II

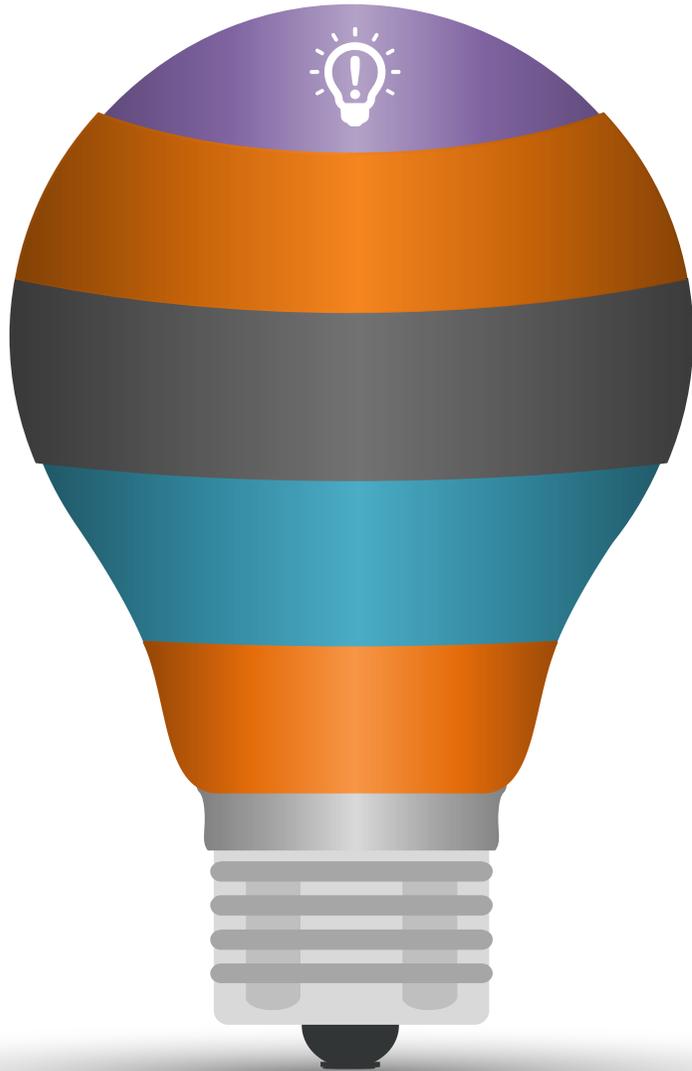
- Leverage : Not Allowed
- Compliances/Restrictions: Low
- Closed ended

## Category III

- Leverage : Allowed (Max. 2 X NAV of Fund)
- Compliances/Restrictions: High
- Close ended or Open Ended

- Category I, II and III are permitted to invest in the units of other AIFs
- For considering the threshold of maximum investment in an investee entity, both direct investment and indirect investment through investment in units of other AIFs to be considered

***Why AIF?***



**Common Structure for holding investments in:**

Listed Equity Shares

Unlisted Equity Shares

Debentures

Mutual Funds

Capital in LLP

Preference Shares

Convertible Securities

Units of AIF

## Company

- Requires prior NBFC registration from RBI and Subject to Stringent norms of RBI
- Dividend Implications / tax impact on distribution reserves

## LLP

- ROC and RBI does not permit LLP to carry out Investing activities

## Individual/Firm

- As per RBI Act - Individuals, firms and AOP can not do leveraging for Investment activities as principal business.

- **AIF is a SEBI registered entity and is allowed to do Investing activities.**
- **AIF III can do leveraging for such Investing activities (Max. 2 X NAV)**
- **AIF III can invest in Listed/Unlisted Securities, Capital of LLP, Mutual Fund, Other AIFs**



## Foreign Investments in AIF

- AIF to raise funds from any **Investor whether Indian, Foreign or Non-Resident** through the issue of units of the AIF.
- Foreign Investments into an AIF are allowed under **the Automatic route** without sectorial cap.
- AIF can be good vehicle for Non residents for investing in **Real Estate business in India.**



## Transaction Cost

- Mandatorily holding the units in dematerialised form for fresh investments made beyond September, 2024, subject to conditions
- Board approved the mandatory\* appointment of custodian for all schemes of Category I and II AIFs, irrespective of their Corpus (approx. cost INR 88,000 p.a.)

	Mutual Fund	PMS	AIF
Management Charges	2.5% – 3%	2% - 2.5% Fixed Fees, or 1.5% Fixed fee + profit share	1% - 2% Fixed fee + profit share

\*As per press release, PR No. 27/2023, dtd. November 25, 2023 issued by SEBI

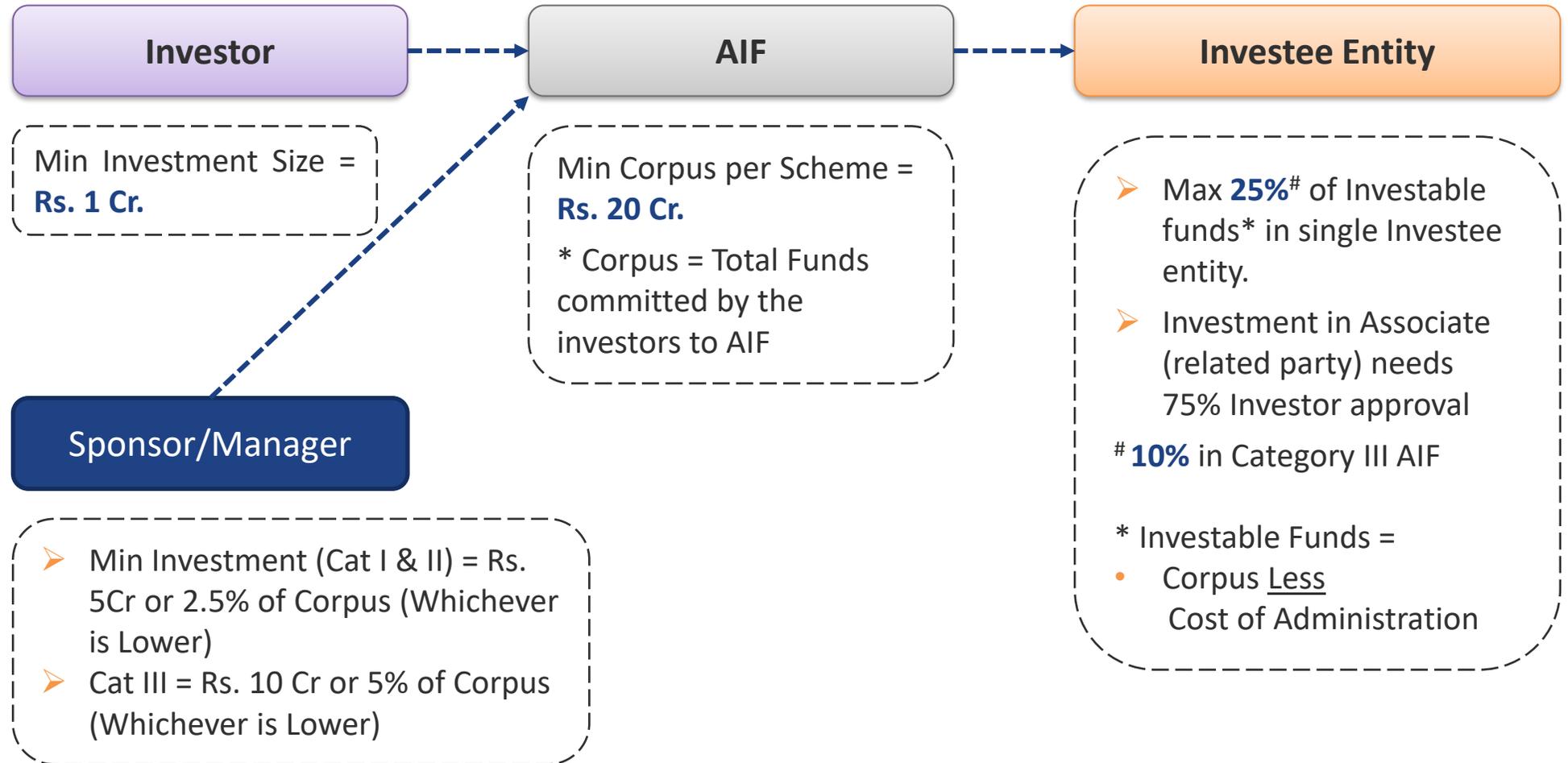


## Status of Qualified Institutional Buyer (“QIB”)

- **Relaxation from lock in requirement** : No post IPO lock in pre-IPO equity shares held by AIF provided
  - Such shares shall be locked in for min one year from the date of its purchase by it (hence if holding period is more than 1 year then no lock in)
  - This relaxation does **not apply to Cat III AIF**.
- In IPOs there are fixed quotas for QIB. AIF is considered as QIB. The limit of quotas based on different type of IPO is as under (Reg. 32 of SEBI ICDR).
  - IPO through book building process (where issuer does not satisfy min. net worth, tangible asset, operating profit criteria), allocation to QIB – **at least 75% of offer**.
  - IPO through book building process (where issuer satisfy min. net worth, tangible asset, operating profit criteria), allocation to QIB - **max. 50% of offer** (out of which 5% should be for Mutual Fund).
  - Fixed Price issue : **No reserved quota** for QIB as per SEBI Regulation
- Only QIBs are allowed to participate in a **Qualified Institutional Placement (“QIP”)**.

# ***Key aspects of AIF***

# Investment Size & Restrictions



## Type of Income of AIF

### Income other than Business Income (e.g. Dividend, Interest etc)

- Taxable to Investors as if direct investment made by him & exempt by AIF
- Withholding by AIF :
  - @ 10% Resident Investors
  - @ Rates in force – Non Resident Investor
- Other than Business Loss :
  - Passed to unit holders, if units are held by them for min. 12 months

### Business Income

- Taxable at AIF level and exempt to investor
- Business Loss – Carried forward at AIF level for set off in future years

# Taxation of AIF – Category I & II

- Re-investments possible only on income post withholding tax
- Income received by the AIF to be exempt from deduction of tax at source by portfolio companies
- No distribution tax on income paid / distributed by AIFs

# Taxation of AIF – Category III

- Tax pass through status has not been accorded to Category III AIFs. Accordingly, the taxability of category III AIFs will be governed by the general principle of taxation (depending on the form in which category III AIF is set up i.e Trust or LLP or company)
- Based on above, Tax Analysis of AIF III incorporated as:

Trust	LLP	Company
<b><u>Taxability of Income of Fund</u></b>		
In the hands of Trust or Investors (covered in next slide)	In the hands of LLP	In the hands of Company
<b><u>Tax on distribution of Income of Fund to investors</u></b>		
Exempt if Trust has already paid tax on the same	Exempt since share of profit	Dividend Implications

## Type of Private Trust

### Determinate /specific Trust

- Individual shares of beneficiaries (i.e. Unit holders in case of AIF), are expressly stated in the instrument of trust and are ascertainable as such on the date of such instrument.

Vs.

### Indeterminate Trust

- If the trust is not Determinate Trust then it shall be treated as 'Indeterminate Trust'.

### Irrevocable Trust

- It is the one that will not come to an end until the terms of the trust have been fulfilled.

Vs.

### Revocable Trust

- A trust of this kind can be revoked (cancelled) by its settlor at any time.

## Type of Private Trust Structure of AIF

### Irrevocable Determinate Trust

- Taxable in the hands of Trustees (representative) in the same manner as of unitholders & no further tax on unitholders.
- If there is some business income, then entire income of AIF shall be taxable at MMR in the hands of trustees (as representative).

### Irrevocable Indeterminate Trust

- Entire Income (with/without Business Income) of Trust – Taxable at MMR in the hands of trustee (as representative)

### Revocable Trust

- Income of the AIF will be taxable in hands of settlor / respective unitholders (proportionate to their contribution in the corpus)
- Trust is not liable to tax.

# Process for Registration

Application to SEBI for registration under specific AIF category with Application fees for **Rs 1 Lac** & Details regarding Fund, Sponsor/ Manager, Fund Management activities etc

**Time frame:  
3 to 5  
months**

SEBI will review application and ask for additional info. (if required) and then gives in principle approval.

Payment of Registration fees based on category of AIF and then SEBI issues Certificate of Registration (Registration fees : Cat I – Rs. 5 Lacs, Cat II Rs. 10 Lacs, Cat III – **Rs. 15 Lacs**)

# General Compliances by AIF – Category I and II

Sr.No	Compliance	Reporting Authority	Timelines
1	SEBI – Quarterly Compliance Report	SEBI	Within 10 days from the end of the Quarter
2	PPM Changes Intimation to SEBI and Investors	SEBI	30th April every year
3	PPM Audit	SEBI	Within 6 months from the year end
4	Audit of the Trust/Scheme	SEBI	Within 180 days from the year end
5	Benchmarking Reports - 31st March	SEBI	within 6 months - Audited Data
6	Benchmarking Reports - 30 September	SEBI	within 45 days - Unaudited Data

# General Compliances by AIF – Category I and II

Sr. No.	Compliance	Reporting Authority	Timelines
7	InVi Filings	RBI	Within 30 days of issuance of units
8	FLA Return Filing	RBI	By 15th July
9	FCTRS	RBI	within 60 days of purchase
10	Form 64D	Income Tax	15th June every year
11	Form 64C	Income Tax	30th June every year
12	Income Tax Return - Filing	Income Tax	31st October every year
13	FATCA Return - 61B Filing	Income Tax	31st May every year

# GBCA Role – One time / Annual services

Sr. No.	Services
<b>Advisory Services</b>	
1	Structuring of AIF with / without foreign investors
2	Advise on tax issues relating to the AIFs
3	Advise on taxation of income earned by the AIF in the hands of the AIF and investors
4	Advise on regulatory matters relating to AIFs in terms of SEBI AIF regulations, FDI regulations, FEM (non-debt) rules, etc.
5	Liaising with tax counsel for expert tax opinion on any legal issue
<b>Implementation Services</b>	
1	Review of various documents such as trust deed, private placement memorandum, investment management agreement, contribution agreement, and other document(s) from Indian income tax and regulatory perspective
2	Suggesting appointment of lawyers, merchant bankers, custodian, trusteeship company and other qualified professionals and liaising with them to set up the fund until the eco-system is set
3	Review of tax and foreign exchange related chapter, if any, of the private placement memorandum from an Indian income tax perspective
4	Review of SEBI application and other SEBI filings
5	Assistance in responding to queries raised by SEBI with respect to the application
6	Obtaining PAN for the fund and non-resident investors
<b>Audit and Assurance Services</b>	
1	Conducting Statutory Audit as per the SEBI (AIF) Regulations, 2012 (Amended from time to time)
2	Conducting Private Placement Memorandum Audit

# GBCA Role – Recurring Services

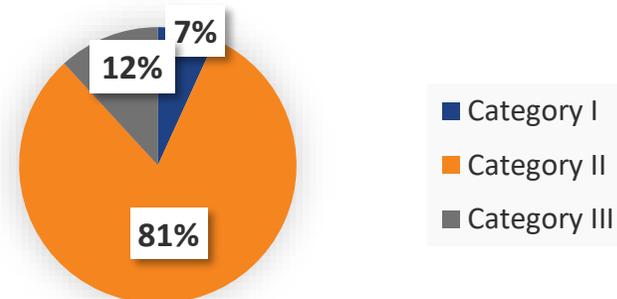
Sr. No.	Consultation / Management Services
1	Quarterly Review of SEBI Reports
2	Event based Review of NAV Working and Monthly SOA
3	FEMA Reporting Compliances, if any
4	Income Tax Consultations
5	Income Tax Returns and Advance Tax Computation in case there is any business income
6	Review of Distribution Summary, TDS Compliances and Quarterly TDS Return
7	Issuing Certificate for making payments to Non Resident, if any
8	Review of Compliance Test Report
9	Due Diligence of proposed Investee entity
10	Valuation report of investee entity
11	Indian Tax advisory and compliance for non-resident investors, if any
12	Representation before Income Tax Authorities, RBI authorities

# Snapshot of Indian AIF Industry

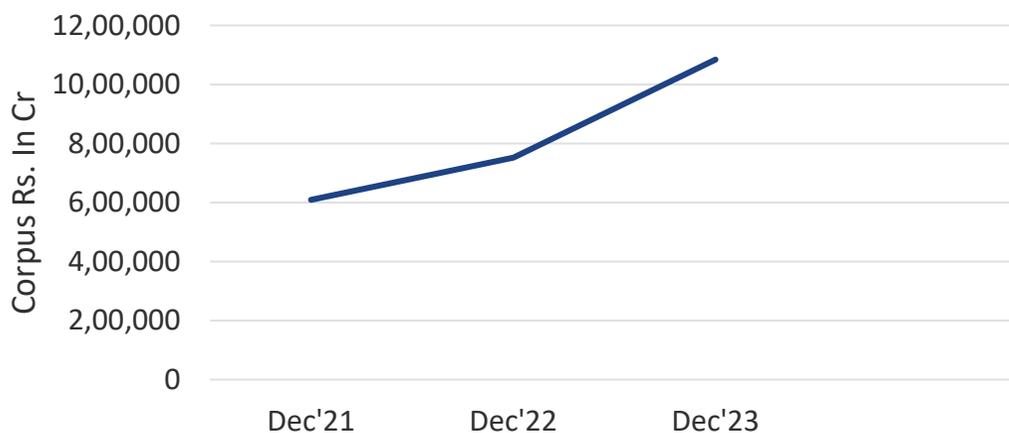
Approx. Rs. In Cr

AIF Category	Corpus	Funds Raised	Investments
Category I	73,601	39,407	43,486
Category II	8,83,216	3,08,472	2,67,911
Category III	1,28,058	81,676	88,256
<b>Total</b>	<b>10,84,875</b>	<b>4,29,555</b>	<b>3,99,653</b>

## Composition of AIF Industry (Corpus-Dec'23)



## Growth of AIF Industry (Corpus)



Based on the information available on [www.sebi.gov.in](http://www.sebi.gov.in)

Glossary	
Alternative Investment Fund	AIF
Limited Liability Partnership	LLP
Real Estate Investment Trust	REIT
Infrastructure Investment Trust	InvIT
Special Purpose Vehicle	SPV
Net Asset Value	NAV
Dividend Distribution Tax	DDT
Minimum Alternative Tax	MAT
Venture Capital Fund	VCF
Venture Capital Undertaking	VCU
Small and Medium Enterprises	SME
Private Investment in Public Equity	PIPE
Income-tax Act, 1961	IT Act
Foreign Exchange Management Act	FEMA
Private Placement Memorandum	PPM

November | 2023

**Disclaimer:**

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*Mentor and Motivator of the firm and a far sighted visionary practising as a Chartered Accountant for 41 years. He has expertise in the fields of Personal & Family Taxation coupled with Financial and Investment Analysis, Family Business Consultations and Restructuring, and Arbitration. He has been the President of Kutch Corporate Forum, a not-for-profit organisation focused on raising the bar of businesses and taking them to the next level. He is a practitioner of the Vipassana technique of meditation.*



## **HAREESH K. CHHEDA**

*Senior partner of the firm with 36 years of experience. He has in-depth knowledge and proficiency in the fields of Transaction and Business Structuring, Taxation (Domestic & International) and Estate and Succession Planning. An excellent motivator who champions the entrepreneurial model, Hareesh inspires the GBCA team to dream big and to take on challenging opportunities*



## **SANJEEV D. LALAN**

*Partner of the firm with 31 years of experience. Sanjeev has vast experience and expertise in the areas of Accounting, Auditing and Direct Taxation including representation & Litigation. He was the Chairman of the Western Region of the ICAI for the year 2010-11. He continues to be associated with other professional bodies like Bombay Chartered Accountants' Society and Chamber of Tax Consultants, The Indian Merchants Chamber and has been actively engaged with various regulatory bodies and government departments.*



## **TANSUKH K. CHHEDA**

*Partner of the firm with 29 years of experience. Tansukh's area of specialization is GST & Service tax, Value Added Tax (VAT) and Profession Tax. He also specialises in audits of Public Sector Banks and Public Trusts. He has delivered lectures at various private and public platforms and regularly contributes to professional journals.*



## **VARSHA R. GALVANKAR**

*CEO with 31 years of experience in Inbound and Outbound Investment, Foreign Exchange Laws and RBI Regulations. Varsha manages the firm's specialised NRI and Expatriate desk. She also heads human resource department and organisation building initiatives.*



## **HAREESH P. KENIA**

*Partner of the firm with 32 years of experience. He has vast knowledge and experience in Domestic and International Tax advisory; Income-tax representation and Corporate Taxation matters. He is a regular contributor of income-tax updates in the monthly Newsletter published by the Western Region of the ICAI. He is also an active member of Managing Council and a Joint Secretary of The Chamber of Tax Consultants'.*



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*Partner of the firm with 21 years of experience. Yogesh has been instrumental in GBCA's foray into Business Support Service and Outsourced CFO Practice and is experienced in managing audits of large corporates including listed companies, multinational companies and PSUs under various ERP environments. He has delivered talks at various seminars for professionals.*



## **HITESH K. PASAD**

*Partner of the firm with 23 years of experience. Hitesh leads the Audit and Assurance Practice along with Corporate Law, LLP Law and NBFC Practice. He also manages statutory and tax audits of large private enterprises, Indian Subsidiaries of foreign companies and Indian Corporates.*



## **TORAL J. SHAH**

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## **VIRAL P. MARU**

*Partner of the firm with over 19 years of experience. Viral specialises in the areas of Accounting, Auditing including Bank Audits, Due Diligence and Valuations. Apart from providing services of Statutory Compliances, with his experience and fluency in accounting and analytical skills, he plays a pivotal role in Accounting, Financial Reporting and Investment MIS of the HNI clients.*



## **NIRAJ B. CHHEDA**

*Partner of the firm with over 7 years of experience. He specializes in International Taxation including FEMA, Transfer Pricing & Expatriate taxation. He assists foreign entities in their India entry strategies & assistance in set up including, accounting & secretarial support, tax & regulatory compliance & advisory for doing business in India. He also works on structuring outbound ventures for Indian clients. He is actively associated with the Chamber of Tax Consultants' and CVO Chartered & Cost Accountants' Association.*

## Direct Tax & Regulatory Services

- Domestic Taxation
- International Taxation
- Transfer Pricing
- Representation & Litigation
- FEMA

## Business Advisory Services

- India Entry Strategy
- GAAP & Ind-AS Conversion
- Accounting Advisory
- Financial Advisory Services
- Corporate Law Advisory
- Internal Financial Controls

## Audit & Assurance Services

- Statutory Audit
- PSU & PSB Audits
- Commercial Banks & NBFCs
- Insurance Companies
- Income Tax Act
- Other Attestations

## Indirect Tax & Regulatory Services

- GST Impact Advisory
- GST Compliances
- Representation & Litigation
- Comprehensive Tax Reviews

## Transaction Advisory Services

- Business Valuations
- Advisory & Due Diligence
- Business & Ownership Restructuring Services
- Transaction Support & Post Deal Services

# Thank You

*We look forward to working professionally with you...*

When You Win,  
We Win!



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