

## IFSCA's Criteria to be an Accredited Investor in AIFs and for Capital

The IFSCA (Fund Management) Regulations, 2022 ("IFSCA FM Regulations") allows "accredited investors" exemptions from various financial thresholds. Schemes soliciting money only from accredited investors too are entitled to certain specific exemptions. The principle behind these exemptions is that accredited investors would be better informed of the risks involved in their investments, have the ability to withstand any loss in investment value and therefore require lesser protection from the law and the regulator. The IFSCA FM Regulations define an accredited investor to mean any person who fulfils the eligibility criteria as specified by the International Financial Services Centres Authority ("IFSCA") in the manner specified. Pursuant to a public consultation process, the IFSCA has issued a [circular dated January 25, 2024](#) ("Accreditation Circular") that sets out the eligibility criteria to qualify as an Accredited Investor and related modalities and processes thereto.

### Eligibility Criteria to be an Accredited Investor

The eligibility criteria for various categories of accredited investors, such as individuals, sole proprietorships, HUFs, trusts and corporates can be found in the [Accreditation Circular](#). For all categories, the criteria are based entirely on financials, such as annual gross income and net assets. It is provided that in determining the value of an individual's net assets, the value of the individual's primary residence shall not be included. Similarly, the primary residence of the Karta shall be excluded in case of HUF. Further, any indebtedness that is on account of primary residence, to the extent that it is in excess of the fair market value of the primary residence, shall be included as a liability while deriving the value of the net assets.

Hindu Undivided Families (HUFs) in India and similar such family structures in India and foreign jurisdictions, which are created solely for the benefit of the members of a single family<sup>1</sup>, would be eligible if they meet the eligibility criteria prescribed for individuals. On a plain reading of this provision, it appears that if a joint family with ten members meets either the gross annual income or net assets criteria prescribed for an individual by aggregating the income or assets of all members of the joint family, it would be sufficient to cross the eligibility threshold to be an accredited investor.

### Deemed to be an Accredited Investor:

Certain types of investors such as governments, central banks, sovereign wealth funds multilateral agencies, supranational agencies, university funds, pension funds, provident funds, AIF schemes in an IFSC etc. are deemed to be Accredited Investors.

### Verification of eligibility

Regulated Entities such as AIFs, which intend to accept an investor as an Accredited Investor, should lay down adequate procedures and put in place an internal policy for verifying and periodically reviewing the eligibility of such investor. In order to verify if an investor meets the prescribed financial parameters (such as income, net assets / net worth, etc.), Regulated Entities may rely upon the certificate(s) provided within the preceding 6 months period by members of the

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<sup>1</sup> The IFSCA FM Regulations define a "single family" to mean a group of individuals who are the lineal descendants of a common ancestor and includes their spouses (including widows and widowers, whether remarried or not) and children (including stepchildren, adopted children, ex nuptial children).

Institute of Chartered Accountants of India or professional bodies equivalent thereto in foreign jurisdictions which are identified the [gazette notification no. G.S.R. 882\(E\) dated November 28, 2019](#).

### Periodic review of eligibility

Regulated Entities are required to periodically the validity of accreditation of their investors as mandated by the [IFSCA \(Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer\) Guidelines, 2022](#). Regulated Entities should also review the validity of accreditation of their investors if and when the Regulated Entities have a reason to believe that there is a material change in the circumstances of the investor.

### Informed consent and withdrawal of consent

An accredited investor receives lesser protection under law and so Regulated Entities are required to adequately inform every accredited investor that the usual investor protection measures may not be made available or may be made available at a lower extent than in the case of non-accredited investors and obtain the following confirmations in writing from the accredited investor:

- that the accredited investor understands that the usual investor protection measures may not be made available or may be made available at a lower extent to the accredited investor;
- that it understands the risks, costs and benefits of investing in the specific product or service and wishes to be treated as an accredited investor for the purpose of the same; and
- that it wishes to be treated as an accredited investor.

An accredited investor has the right and freedom to withdraw at any time its consent to be an accredited investor. Regulated Entities are required to put in place a mechanism and a time-bound process for processing such withdrawal of consent. Upon withdrawal of consent, transactions previously entered by that investor will not be affected by the change in status. The Regulated Entity may continue to deal with that investor as if it were an accredited investor in respect of any contractual agreement entered into with that investor prior to withdrawal of consent.

### ELP Comments

*The main highlight of this Accreditation Circular is that Regulated Entities such as AIFs, can rely upon certificates provided Indian chartered accountants or their equivalents in foreign jurisdictions for the purpose of verifying if an investor meets the eligibility criteria to be an accredited investor.*

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

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