

ACCREDITED INVESTORS FOR STARTUPS INTRODUCED



The Ministry of Commerce (Department of Industrial Policy and Promotion) vide Notification No. G.S.R. 364 (E) dated 11th April 2018 [in supersession of Gazette Notification No. G.S.R. 501 (E) of Government of India dated 23rd May 2017] has introduced a concept akin to **Accredited Investor**.

Countries like the USA, Singapore, Australia, New Zealand, and Canada have already established this concept.

For the first time in India, “Accredited Investor” has been introduced for startups availing tax exemption under Section 56 (2)(viib) of the Income Tax Act.

INTRODUCING “ACCREDITED INVESTOR”

Special status: An **accredited investor** or **sophisticated investor** secures a special status under financial regulation laws.

Conditions: Conditions regarding **income, net worth, asset size etc.** are required to be fulfilled, as specified by regulation.

Varies across countries: Each country requires fulfillment of different conditions. Those required for India are part of this note.

Protection: Protect those who are unable to sustain economic risks from investing in unregistered securities.

ACCREDITED INVESTORS GLOBALLY (1/2)

COUNTRY	ACCREDITED INVESTOR CRITERIA	REGULATION
USA	<ul style="list-style-type: none"> Income that exceeded \$200,000 (or \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year; <p>OR</p> <ul style="list-style-type: none"> Net worth over \$1 million, either alone or together with a spouse (excluding the value of the person's primary residence). <p>Threshold has been expressed in US dollars. For foreign investors, they should meet the criteria using exchange rate on the last date of the year.</p>	SEC REG 501(d)
Singapore	<ul style="list-style-type: none"> Net personal assets exceeding \$2 million (or equivalent in foreign currency) or in case of corporates, net assets exceeding \$10 million (or equivalent foreign currency); <p>OR</p> <ul style="list-style-type: none"> Income in preceding 12 months of not less than \$300,000 (or equivalent in foreign currency). 	Section 4A(1)(a) of the Securities and Futures Act (SFA)
Australia	<ul style="list-style-type: none"> Net assets of at least \$2.5 million; <p>OR</p> <ul style="list-style-type: none"> A gross income of at least \$250,000 for each of the last 2 financial years. 	Sec 708(8) of the Corporations Act 2001

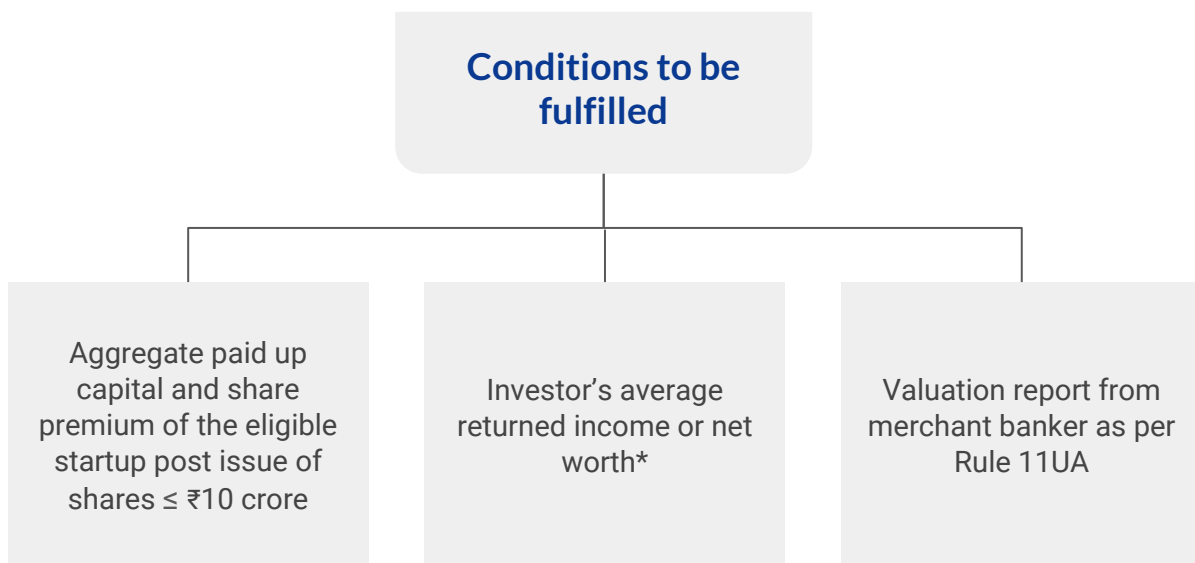
ACCREDITED INVESTORS GLOBALLY (2/2)

COUNTRY	ACCREDITED INVESTOR CRITERIA	REGULATION
New Zealand	<ul style="list-style-type: none"> Net assets of at least \$2,000,000; <p>OR</p> <ul style="list-style-type: none"> Annual gross income of at least \$200,000 for each of the last 2 financial years. <p>Independent chartered accountant certification is required on account of above 2 criteria.</p>	Section 5 of the Securities Act (1978)
Canada	<ul style="list-style-type: none"> Net financial assets exceeding \$1 million, either alone or together with a spouse; <p>OR</p> <ul style="list-style-type: none"> Individual whose net income before taxes exceeded \$200,000 (\$300,000 along with spouse) in each of the 2 latest calendar years; <p>OR</p> <ul style="list-style-type: none"> Net financial assets of at least \$5 million, either alone or together with a spouse. 	NI 45 106
India	<ul style="list-style-type: none"> Average returned income of ₹25 lakh or more for the last 3 financial years; <p>OR</p> <ul style="list-style-type: none"> Net worth of ₹2 crore or more as on the last date of the preceding financial year. 	Notification G.S.R 364 (E) dated 11 th April 2018

ACCREDITED INVESTOR IN INDIA

Clarification for the Purposes of 56 (2)(viib) Exemption “Angel Tax Exemption”

A startup shall be eligible to apply to the IMB for approval for the purposes of Section 56(2)(viib) – Angel Tax Exemption (No tax to the company on issue of shares above fair value) if all of the following conditions are fulfilled:



*Investor's Average Returned Income or Net Worth

1. The average returned income (refer Appendix 1) of ₹25 lakh or more for the preceding three financial years;

OR

2. The net worth (refer Appendix 1) of ₹2 crore or more as on the last date of the last financial year.

If the above two conditions are satisfied, the startup becomes eligible to raise money from the investor.

In order to satisfy the criteria, the investor will need to follow the details as listed in the ensuing pages.

HOW TO BECOME AN ACCREDITED INVESTOR?

STEP

01

Calculating Net Worth

STEP

02

Gathering Documents

STEP

03

Verifying Status

STEP

01

Calculating Net Worth

Return Income

Return income for the last 3 financial years has to be ₹25 lakh or more, or follow criteria #2 of net worth.

Value of Assets

Value of assets for net worth qualification includes all assets.

Subtract Value of Liabilities

Deduct all liabilities from the value of assets as determined in Step 2.

Net Worth

If the difference between the values as per Step 2 and Step 3 exceed ₹2 crore, the investor is deemed eligible.

Foreign Investor

- Clarity is needed in case of a foreign investor.
- The common practice is to use the exchange rate as on the last date of financial year to meet threshold.

STEP

02

Gathering Information

Copies of Income Tax Return

An investor should be ready with copies of income tax return for the last 3 years.

Copies of Balance Sheet

Copies of balance sheet as on the last date of the last year are to be kept ready to verify net asset threshold.

Copy of Ownership Document

(Not Mandatory as per Form 2)

Though not a mandatory requirement, it is advisable to keep ownership documents ready for verification.

Certificate from CA/ Merchant Banker

(Not Mandatory)

Though not a mandatory requirement, it is advisable for an investor to get a certificate from CA/merchant banker for investor criteria.

Foreign Investor

Clarity is needed as foreign investors are excluded from Section 56(2)(viib). Generally, foreign investors are also required to submit the above mentioned information.

STEP

03

Verifying Status

Obtain an Investor Questionnaire

An investor should obtain a questionnaire from the company with details such as personal information, assets and liabilities.

Self - Certify

An investor should sign wherever it is required to self-certify the documents.

Submit Request Documentation

An investor should submit all the requested information to the company.

Foreign Investor

Clarity is needed as foreign investors are excluded from Section 56(2)(viib). Generally, foreign investors are also required to submit the above mentioned information.

APPENDIX – I

These definitions are based on GPZ's view of practical references or corollary that can be drawn for these words. We accept no duty of care or liability of any kind to the recipient, and any reliance on it is at the recipient's own risk.

(1) Returned Income

Returned income refers to the total income as declared in the return of income furnished by the assessee (in the income tax return) for the assessment year i.e. income from salary, rent, capital gains, business or profession and other sources as reduced by deduction under Chapter VIA of Income Tax Act, 1961.

(2) Net Worth

- For companies: Section 2(57) of Companies Act, 2013:
The aggregate value of the paid up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
- For other than companies:
The amount by which value of assets exceeds liabilities.

APPENDIX – II

Investor KYC For Accredited Investor

Details Required from Each Investor (Extract of Form 2 of Startup Notification)

Sr. No.	PARTICULAR	INPUT DATA PARAMETER
1	Details of the investor <Whether Individual/HUF/LLP/Private Limited/other legal entities>	<These details are required from every resident indian investor >
2	Name of the investor	Name as per PAN Card
3	Address	Office address/permanent address
4	Contact details	Phone no./email ID
5	Permanent Account No. (PAN)	PAN as issued
6	Nature of business	Enclose copy of MOA, LLP/partnership deed, board resolution, etc., if applicable
7	Residential status	Resident/Non Resident
8	Amount of investment proposed	Amount to be invested
9	Average returned income of the investor in the last 3 financial years	Total income over 3 years divided by 3
10	Net worth of the investor on the last date of the preceding financial year	<Need clarity on whether net-worth certificate is required>

ABOUT US

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