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**JSA Annual Private Equity and
Funds Compendium 2023**

January- December 2023



This Annual Private Equity and Funds Compendium comprises and highlights the Private Equity (“PE”)/ Venture Capital (“VC”) investment trends and thriving sectors in India for the period January 2023 to December 2023. It broadly captures the regulatory developments in Alternative Investment Funds (“AIFs”), Real Estate Investment Funds (“REITs”), Infrastructure Investment Funds (“InvITs”), Venture Capital Funds (“VCFs”), Foreign Venture Capital Investors (“FVCIs”) and Foreign Portfolio Investors (“FPI”) space that shape the investment activities in India.

Investment Trends

In 2023, PE/ VC funds remained cautious of investing in India due to various factors resulting in a decline in investments. India’s PE/ VC market witnessed US\$49.8 billion (US Dollars forty-nine point eight billion) worth of investments across 853 (eight hundred and fifty-three) deals in 2023 as compared to US\$ 56.1 billion

(US Dollars fifty-six point one billion) across 1,273 (one thousand two hundred and seventy-three) deals in 2022¹. These trends were not limited to the Indian landscape, but also extended to other global economies. A fragile American banking system, unstable Europe and the geopolitical uncertainty with China and Russia pushed global funds to be wary of major investments globally. The decline majorly impacted Indian start-ups as they continue to experience a ‘funding winter’ in comparison with last year. However, indicating an optimistic 2024, FPI investment in 2023 outshined 2022 with the INR 1.71 trillion (Indian Rupees one point seven one trillion) investment in equity market².

Sectors such as technology, e-commerce, education and media and entertainment that once dominated the investment space were not warmly received, whereas new sectors such as real estate and infrastructure thrived due to the push given by the Government of India (“GoI”). In the Union Budget of 2023-24, the finance minister announced measures to improve infrastructure with emphasis on further development of sustainable cities to strengthen this sector’s demand and supply side. To facilitate this, an “Urban Infrastructure Development Fund” was proposed to be set up to fund urban infrastructure in Tier 2 and Tier 3 cities.

India’s PE/ VC market witnessed US\$49.8 billion (US Dollars forty-nine point eight billion) worth of investments across 853 (eight hundred and fifty-three) deals in 2023 as compared to US\$ 56.1 billion (US Dollars fifty-six point one billion) across 1,273 (one thousand two hundred and seventy-three) deals in 2022³. Several factors, such as global turmoil and the weak Indian startup scenario, contributed to the slowdown in Indian PE/VC investments. .

With the aim to bring transparency and protect the interests of investors, the Indian regulators took series of measures dealing with the allotment of securities, fund governances and pricing methodologies.

The Securities and Exchange Board of India (“SEBI”) cautiously monitored instances where AIFs were used to cover the bad loans by certain non-banking financial institutions to avoid the attention of the Reserve Bank of India (“RBI”). According to media reports, SEBI is

¹ Source- [IVCA-EY monthly PE/VC round-up, 2023](#).

² Source- [Business Standard](#).

³ Source- [IVCA-EY monthly PE/VC round-up, 2023](#).⁴ Circular dated February 1, 2023.

investigating several instances where AIFs are being misused to divert funds. The regulatory steps, such as dematerialisation of securities and identification of significant beneficial owners, were taken to curb the manipulative market practices.

The RBI addressed the long pending issue of evergreening loans *via* the AIF route. Lenders are not permitted to invest in schemes of any AIF that has invested in a borrower of that lender. The latter part of this newsletter discusses the RBI's move in detail.

Further, to attract the investment in Indian infrastructure sector and offer equal opportunities, the GoI may offer certain tax benefits to the sovereign wealth funds of the Middle East. This might be on the same line on the benefits offered to the Abu Dhabi Investment Authority.



Regulatory Developments

The regulatory bodies in India are periodically reviewing the regulatory framework, to boost investor confidence and bring transparency in the Indian investment and business environment. Some of the key regulatory developments are:

Tax incentives in the Union Budget 2023

1. Tax incentives were provided to foreign investment funds for relocating to International Financial Services Centres as an AIF. For example, exemption granted on the capital gains arising from the transfer of shares/ units held by the shareholder/ unitholder of such foreign fund in consideration of shares/ units of the relocated AIF. The timeline to avail the benefit from such

incentive was extended from March 31, 2023 to March 31, 2025.



2. A pass-through status was provided to InvITs and REITs ("**Business Trusts**") in respect of certain specified incomes such as interest, dividend and rental income (in case of REITs) received from special purpose vehicles (Indian companies in which a Trust holds the controlling interest or prescribed percentage). Any sum received by a unit holder (including on the redemption of units to the extent receipts exceed the cost of unit), will be taxed which is (a) not in the nature of exempted income in the hands of a Business Trust (i.e., interest, dividends and rental income), and (b) not chargeable to tax in the hands of a Business Trust.
3. At the time of distribution of income in the nature of interest and dividends to non-resident unit holders, Business Trusts are obligated to withhold income tax at 5%/ 10%, depending on the nature of income. Previously, a certificate allowing a lower tax rate, or no deduction of tax could not be obtained for such payments. A certificate that permits lower or no tax withholding on such payments is allowed.

Angel tax on non-resident investments

The Finance Act 2023 expanded the scope of the angel tax provision to include the issuance of shares to non-residents from the financial year 2023-24. Previously, this tax was charged only on the issuance of shares to persons resident in India. This is charged in the hands of the company (not being a 'company in which the public are substantially interested') receiving the consideration under the head of 'Income from Other Sources' on the amount of consideration received by it

that is in excess of the 'fair market value' of the shares issued. This will have a significant impact on inbound investments in India. The GoI also released the draft rules for valuation of shares for domestic and foreign investors. For a detailed analysis, please refer to the [ISA Prism of May 31, 2023](#).

Alternative Investment Funds and Venture Capital Funds

1. **Transaction in corporate bonds through request for quote ("RFQ") platform**⁴- AIFs must undertake at least 10% of their total secondary market trades in corporate bonds by value in a month by placing/ seeking quotes on the RFQ platform. All transactions in corporate bonds wherein AIF(s) is on both sides of the trade will be executed via the RFQ platform in 'one-to-one' mode. However, any transaction entered by an AIF in corporate bonds in 'one-to-many' mode which gets executed with another AIF, will be counted in 'one-to-many' mode and not in 'one-to-one' mode.
2. **Direct Plan for schemes and trail model for distribution commission**⁵- It was specified that for investors who have on-boarded AIFs/ schemes of AIFs from May 1, 2023:
 - a) schemes of AIFs to have an option of 'Direct Plan' for investors, which will not entail any distribution fee/ placement fee;
 - b) AIFs must disclose any distribution fee/ placement fee, to the investors of the AIF/ scheme of the AIF at the time of on-boarding;
 - c) Category I AIFs and Category II AIFs may pay upto one-third of the total distribution fee/ placement fee to the distributors on upfront basis, and the remaining fee must be paid on an equal trail basis over the tenure of the fund; and
 - d) Category III AIFs must charge any distribution fee/ placement fee to investors only on an equal trail basis over the tenure of the fund and no upfront distribution fee/ placement fee can be charged, directly or indirectly. Any distribution fee/ placement fee paid is required to be paid only from the management

fee received by the managers of such Category III AIFs.

3. **Guidelines for excluding an investor from an investment of AIFs**⁶ - An AIF may excuse its investor from participating in a particular investment in the following circumstances:
 - a) if the investor, based on the opinion of a legal professional/ legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation;
 - b) if the investor, as part of the contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, the investor's participation in such investment opportunity would be in contravention to the investor's internal policy;
 - c) if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF; and
 - d) if the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity, to the extent of the contribution of the said fund/ investment vehicle's underlying investors who are to be excused or excluded from such investment opportunity.
4. **Credit Default Swaps ("CDS")**⁷ - The key conditions applicable to AIFs for dealing in CDS are as follows:
 - a) Category I AIFs and Category II AIFs may buy CDS on underlying investment in debt securities only for the purpose of hedging;
 - b) Category III AIFs may buy CDS for the purpose of hedging or otherwise within permissible leverage as specified in the SEBI circular dated July 29, 2013;

⁴ Circular dated February 1, 2023.

⁵ Circular dated April 10, 2023.

⁶ Circular dated April 10, 2023.

⁷ Circular dated January 12, 2023.

- c) Category III AIFs may sell CDS subject to the condition that effective leverage undertaken is within the permissible limits as specified in SEBI circular dated July 29, 2013; and
- d) Category II AIFs and Category III AIFs may sell CDS by earmarking unencumbered Government bonds/ Treasury bills equal to the amount of the said CDS exposure.
5. **Introduction of the Corporate Debt Market Development Fund**⁸- A new category of AIF called Corporate Debt Market Development Fund (“**CDMDF**”) is introduced. The CDMDF will act as a backstop facility for purchase of investment grade corporate debt securities to instill confidence amongst the participants in the corporate bond market during times of stress and to generally enhance secondary market liquidity.
6. **Issue of units in dematerialized form**⁹ - It is mandatory for AIFs to issue units in dematerialized form subject to the conditions specified by SEBI.
7. **Approval of investors for buying or selling investments**¹⁰ - The additional conditions introduced for AIFs while buying or selling investments.
- a) AIFs are required to take the approval of 75% of the investors by value of their investment in the AIF, to invest in:
- i) associates; or
 - ii) units of AIFs managed or sponsored by its manager, sponsor, or associates of its manager or sponsor.
- b) The approval of 75% of the investors by value of their investment in the scheme of the AIF is required to buy or sell investments, from or to:
- i) associates; or
 - ii) schemes of AIFs managed or sponsored by its manager, sponsor or associates of its manager or sponsor; or
 - iii) an investor who is committed to invest at least 50% of the corpus of the scheme of the AIF.
- However, the investor specified under para (c) above who is committed to investing at least 50% of the corpus of the scheme of the AIF and is buying or selling the investment, from or to, the AIF, will be excluded from the voting process.
8. **Valuation of investment**¹¹ - AIF’s are required to carry out valuations of their investments in accordance with the manner specified by SEBI from time to time. The manager of the AIF must ensure that the AIF appoints an independent valuer who satisfies the criteria specified by SEBI from time to time. The manager and the key management personnel of the manager must ensure that the independent valuer computes and carries out valuation of the investments of the scheme of the AIF in the manner specified by SEBI.
9. **Appointment of compliance officer**¹²- The manager of each AIF is required to appoint a compliance officer for the AIF. The compliance officer is responsible for monitoring compliance of the AIF with the provisions of the SEBI Act, 1992, rules, regulations, notifications, circulars, guidelines, instructions or any other directives issued by SEBI. The compliance officer is required to immediately and independently report any non-compliance observed by him to SEBI, as soon as possible but no later than 7 (seven) working days from the date of observing such non-compliance.
10. **The ever-increasing regulatory oversight on AIFs:** In addition to direct regulatory oversight on the AIFs itself, AIFs are also indirectly impacted by various other statutory and regulatory restrictions or conditions that are applicable to the underlying legal form of the AIF, the investors in the AIF or the investment portfolio of the AIFs. Regulatory developments about the following are going to have impact on operations of the AIFs:
- a) Significant beneficial ownership.
 - b) Evergreening of debts by banks and NBFCs through AIFs.
 - c) Dematerialisation of units issued by AIFs.
 - d) Dematerialisation of investments held by AIFs.

⁸ Circular dated June 15, 2023.

⁹ Circulars dated May 22, 2023.

¹⁰ Circular dated June 15, 2023.

¹¹ Circular dated June 15, 2023.

¹² Circular dated June 15, 2023.

e) Appointment of custodian.

For a detailed analysis, please refer to the [ISA Prism of January 5, 2024](#).

11. **Guarantee Scheme for Corporate Debt (“GSCD”)**¹³ - GSCD introduced to provide a guarantee cover against debt raised/ to be raised by the Corporate Debt Market Development Fund (“CDMDF”). CDMDF is a new category of AIF created under the SEBI (AIF) Regulations, 2012, for investing in corporate debt securities at times of market dislocation.

The guarantee covers debt raised, along with interest accrued and other bank charges, and must not exceed INR 30,000 crore (Indian Rupees thirty thousand crores). The GSCD is initially for a period of 15 (fifteen) years from the initial closing date of CDMDF, extendable at the discretion of the Department of Economic Affairs in consultation with the SEBI.

SEBI specified debt-oriented Mutual Fund (“MF”) schemes and existing/ new asset management companies of specified debt-oriented MF can be eligible unitholders of CDMDF.

The framework for CDMDF is detailed in the notification as also in the SEBI circular dated July 27, 2023. CDMDF must deal only in the following securities during normal times:

- a) Low duration government securities;
- b) Treasury bills;
- c) Tri-party Repo on G-sec; and
- d) Guaranteed corporate bond repo with maturity not exceeding 7 (seven) days.

The securities purchased by CDMDF must have an investment grade credit rating and residual maturity not exceeding 5 (five) years on the date of purchase. CDMDFs are not permitted to buy unlisted or below investment grade or defaulted debt securities or securities in respect of which there is a material possibility of default or adverse credit news or views.

12. **Restrictions on investments in AIFs by regulated entities** - The RBI issued a circular on December 19, 2023, for regulating investments in AIFs by banks and financial institutions. It restricts regulated entities from making investments in any scheme of an AIF, which is downstream investments, either directly or indirectly, in a ‘debtor company of the regulated entity. For a detailed analysis, please refer to the [ISA Prism of December 21, 2023](#).

13. **Reduction in validity period of approval granted by SEBI to AIFs and VCFs for overseas investment**¹⁴ - The time limit for making overseas investments by AIFs/ VCFs is reduced from 6 (six) months to 4 (four) months from the date of prior SEBI approval.

In case the applicant AIF/VCF does not utilise the investible fund limits allocated to them within the prescribed time, then SEBI may allocate such unutilized limit to other applicant AIFs/VCFs. The reason for the change is to ensure that the allocated limit is utilised efficiently and, if unutilised, the same is again available to the AIF industry in a shorter time span.

14. **Regulatory reporting by AIF**¹⁵ - All AIFs are directed to submit quarterly reports in the specified formats with respect to the activities carried on by them. The quarterly report must be submitted by AIFs online on the SEBI Intermediary Portal within 15 (fifteen) calendar days from the end of each quarter.

15. **Fund Management Entities (“FMEs”) to seek authorisation for filing schemes**¹⁶ - The International Financial Services Centres Authority (“IFSCA”) (Fund Management) Regulations, 2022 (“Fund Regulations”) regulate the landscape for investment funds and fund managers operating in an International Financial Services Centre (“IFSC”). On September 15, 2023, the IFSCA issued directions setting out the procedure to obtain authorisations for schemes filed under Chapters III, IV, and V of the Fund Regulations i.e., schemes relating to:

¹³ The MoF, *vide* notification dated July 26, 2023

¹⁴ Circular dated August 4, 2023

¹⁵ Circular dated September 14, 2023

¹⁶ IFSCA-AIF/47/2023-Capital Markets dated September 15, 2023

- a) fund management such as the venture capital schemes, restricted schemes (non-retail schemes) and retail schemes;
- b) exchange traded funds; and
- c) environmental, social and governance.

16. Determination of fair value of unquoted shares under the Income Tax Act, 1961¹⁷ - Ministry of Finance (“**MoF**”) issued the Income-tax (Twenty first Amendment), Rules, 2023 for the determination of fair market value (“**FMV**”) of unquoted equity shares and compulsorily convertible preference shares as on the valuation date for the purposes of section 56(2)(viib) of the Income Tax Act, 1961.

In a case where the consideration is received from a resident, the FMV of unquoted equity shares is required to be determined based on any one of the following methods, at the option of the assessee:

- a) net asset value method using the specified formula (“**Method 1**”);
- b) as determined by a merchant banker using the discounted free cash flow method (“**Method 2**”);
- c) where any consideration is received by a venture capital undertaking for issue of unquoted equity shares, from a VCF or a venture capital company or a specified fund (within a period of 90 (ninety) days before or after the date of issue of shares which are the subject matter of valuation), the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the FMV of the equity shares to the extent the consideration from such FMV does not exceed the aggregate consideration that is received from a VCF or a venture capital company or a specified fund (“**Method 3**”);
- d) where any consideration is received by a company for issue of unquoted equity shares, from any entity notified section 56(2)(viib) (within a period of 90 (ninety) days before or after the date of issue of shares which are the subject matter of valuation), the price of the

equity shares corresponding to such consideration may, at the option of such company, be taken as the FMV of the equity shares to the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity (“**Method 4**”);

- e) where consideration is received from a non-resident, the FMV of unquoted equity shares is required to be determined based on any one of the methods prescribed above for receipts from residents or the following additional methods, at the option of the assessee (“**Method 5**”):
 - i) Comparable Company Multiple Method;
 - ii) Probability Weighted Expected Return Method;
 - iii) Option Pricing Method;
 - iv) Milestone Analysis Method; and
 - v) Replacement Cost Methods.

The FMV of compulsorily convertible preference shares shall be the value, on the valuation date, as determined:

- a) in accordance with the provisions of Method 2, Method 3, or Method 4, at the option of the assessee, or based on the FMV of unquoted equity shares as determined in accordance with Method 1 to Method 4 at the option of the assessee, where such consideration is received from a resident; and
 - b) in accordance with the provisions of Method 2 to Method 5, at the option of the assessee, or based on the FMV of unquoted equity shares as determined in accordance with Method 1 to Method 5, at the option of the assessee, where such consideration is received from a non-resident.
- 17. Appointment of director nominated by the debenture trustee on boards of issuers** - SEBI, *vide* its circular dated July 4, 2023, instructed issuers that are not companies to submit an undertaking to the debenture trustees, to designate a non-executive/ independent director/

¹⁷ Notification dated September 25, 2023

trustee/ member of its governing body as a nominee director for the purposes of Regulation 23(6) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”) in consultation with the relevant debenture trustee(s). Such an undertaking must be submitted if any event occurs under Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993.

18. Simplified procedures for listed entities making private placements of non-convertible securities - The SEBI, *vide* notification dated July 3, 2023, issued the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023, amending the NCS Regulations. The key amendments are as follows:

a) **Introduction of a key information document and general information document** - The process of filing information with stock exchanges for private placement of non-convertible securities is altered. Previously, an issuer seeking to list privately placed non-convertible securities had to file a placement memorandum with the stock exchange. An issuer seeking to list privately placed non-convertible securities will have to file:

- i) a one-time yearly comprehensive General Information Document (“**GID**”) (which will be valid for 1 (one) year from the date of opening of the first offer of non-convertible securities made under that GID), which is akin to the erstwhile placement memorandum, containing the detailed disclosures prescribed in the amended Schedule I (as explained in detail in the point below) and the general details of the non-convertible securities proposed to be issued by the issuer within a period of 1 (one) year from the date of the GID; and
- ii) a Key Information Document (“**KID**”) with limited disclosures and information, specific to the particular offer for issuance of non-convertible securities.

In case the issuer proposes to make any second or subsequent private placement offers of non-convertible securities during the validity of the GID, it will only be required to file a fresh KID containing limited details since the issue of the GID which is relevant to the offer. This change was brought about to avoid multiplicity of placement

memorandums filed by issuers for listed non-convertible securities in the same year and to reduce the costs involved in the transactions.

- b) **Alignment of disclosures for private placements and public issues** - The existing Schedule II to the NCS Regulations, which dealt with disclosure requirements for issuance and listing of privately placed non-convertible securities is deleted. Instead, the existing Schedule I, which previously dealt with disclosure requirements for issuance and listing of publicly issued non-convertible securities is modified to make it applicable to both, public issuance and private placement of non-convertible securities. This led to new disclosure requirements for issuance of privately placed non-convertible securities which were previously applicable to only public issuance.
- c) **Commencement of new formats** - The issuers are required to disclose the information in the new format (i.e., GID and KID) on a ‘comply or explain’ basis until March 31, 2024 and on a mandatory basis thereafter.
- d) **Key Managerial Personnel and ‘Senior Management’ defined** - the terms ‘Key Managerial Personnel’ and ‘Senior Management’ are specifically defined in the NCS Regulations. ‘Senior Management’ is defined to mean members of the core management team of an issuer excluding the board of directors and includes the members of the management one level below the chief executive officer or managing director or whole-time director or manager and financial heads. Senior management is also required to make certain disclosures relating to their financial or other material interest. ‘Key Managerial Personnel’ is defined to have the meaning ascribed to the said term under sub-section (51) of section 2 of the Companies Act, 2013. This is done to ensure uniformity in the identification of Key Managerial Personnel and ‘Senior Management’ defined both during pre-listing and post-listing of non-convertible securities.

Real Estate Investment Funds and Infrastructure Investment Funds

1. **Dematerialized form of securities** - InvITs/ REITs are required to hold the securities of holding

companies and special purpose vehicles only in dematerialized form. In case the existing securities holdings are in physical form, the managers of the InvITs/ REITs were directed to dematerialize the same on or before June 30, 2023. This move aims to facilitate transparency and doing ease of business.

2. **Appointment of auditors and woman director** - The investment manager/ manager of the InvIT/ REIT must appoint a woman independent director on the board of the investment manager/ manager, establish a vigil mechanism, submit the compliance reports and appoint an individual or a firm as the auditor. The investment manager/ manager cannot appoint or re-appoint an auditor (a) in the case of an individual, for more than 1 (one) term of 5 (five) consecutive years; and (b) in the case of an audit firm, for more than 2 (two) terms of 5 (five) consecutive years. The auditors must undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT/ REIT.
3. **Applicability of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations")** - Certain provisions of the LODR Regulations, such as constituting an audit committee, nomination and remuneration committee, risk management committee and stakeholders relationship committee, employees obligations including senior management and obligations in respect of independent directors, are made applicable to InvITs and REITs.
4. **Leverage calculation**- It is clarified that overnight MFs, characterized by investments in overnight securities and with maturity of 1 (one) day, will be considered cash and cash equivalents; and the amount of cash and cash equivalent will be excluded from the value of the REIT/ InvIT assets.
5. **Definition of "change in control"**- The definition of 'change in control' is amended to include the right to appoint a majority of the directors or control the management or policy decisions

exercisable by a person or persons acting individually or in concert, directly or indirectly. This may be through the authority shareholding or management rights or shareholders agreements or voting agreement.

6. **Offer for Sale ("OFS") framework for sale of units of REITs and InvITs¹⁸** - The circular dated January 10, 2023, was modified to allow OFS for units of private listed InvITs. In case of OFS for listed InvITs, the trading lot must be the same as the trading lot prescribed for such InvITs in the secondary market in terms of the SEBI (InvITs) Regulations, 2014 ("**InvIT Regulations**"). Further, the provisions relating to retail investors prescribed in paragraph-A of the circular dated January 10, 2023, is not applicable in case of OFS for such InvITs and the OFS remain open only for one day (i.e., T-day).
7. **Pricing of units by REITs and InvITs¹⁹** - The provisions relating to the pricing of units in an institutional placement of units by listed REITs and InvITs were amended to offer uniform pricing for frequently and infrequently traded units. The institutional placement must be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the 2 (two) weeks preceding the relevant date. The InvIT/ REIT may, however, offer a discount of not more than 5% on the price so calculated, subject to approval of unitholders through a resolution.
8. **Transfer of unclaimed distributions to the 'Investor Protection and Education Fund'²⁰** - Any distributions declared by the InvIT/ REIT and the holdco and/or SPV remaining unclaimed or unpaid must be transferred to the 'Investor Protection and Education Fund' and can be claimed as prescribed by SEBI.
9. **Transfer of unclaimed amounts to the escrow account²¹** - Where a distribution is made by the manager, but the payment to any unitholders remained unpaid or unclaimed, up to 15 (fifteen)

¹⁸ Offer for Sale framework for sale of units of REITs and InvITs (Circular dated August 3, 2023).

¹⁹ SEBI Circulars each dated July 5, 2023.

²⁰ SEBI (InvITs) (Third Amendment) Regulations, 2023 and SEBI (REITs) (Third Amendment) Regulations, 2023 (Notifications each dated October 20, 2023).

²¹ Procedural framework for dealing with unclaimed amounts lying with REITs/ InvITs and manner of claiming such amounts by unitholders (Circulars each dated November 8, 2023).

days from the date of declaration, the manager must, within 7 (seven) working days from the date of expiry of such period, transfer such unclaimed amounts to an escrow account to be opened by it on behalf of the InvIT/ REIT in any scheduled bank, unpaid distribution account. The manager, must, within a period of 30 (thirty) days of transferring the unclaimed amount to the Unpaid Distribution Account, upload the details on the website of InvIT/ REIT and it is required to provide a search facility on the website of InvIT/ REIT for unitholders to verify if there is any unclaimed amount due to them and lying in the Unpaid Distribution Account of the InvIT/ REIT. Further, a policy specifying the process to be followed by unitholders for claiming their unclaimed amounts is required to be formulated by the manager of the InvIT/ REIT.

These provisions will come into effect from March 1, 2024.

10. **Preferential issue and institutional placement**²²- Institutional placement is required to be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the 2 (two) weeks preceding the relevant date. Provided, the InvIT/ REIT may offer a discount of not more than 5% on the price so calculated, subject to approval of unitholders through a resolution.
11. **Special rights to unitholders and role of sponsor** - SEBI (REITs) Regulations, 2014 (“**REIT Regulations**”) and InvITs Regulations were notified on September 26, 2014. The underlying principle of various provisions in both these regulations is that the units of REITs and InvITs are equal in all respects and hence all unitholders should have equal rights and no special rights should exist with any unitholder based on the units held in REIT/InvIT. It was noted by SEBI that certain REITs/InvITs are provided the right to nominate directors on the board of the manager/investment manager to unitholders holding certain percentage of units of REIT/InvIT. Such rights were not envisaged in the REIT

Regulations and InvIT Regulations and appear to be unequal.

In this context, it was represented before SEBI that the special rights are required by institutional investors to protect their investments in the REIT/InvIT. It was further argued that these rights are in the nature of protective rights typically sought by minority unitholders to protect their investment and would not impact the day-to-day functioning, business or operations of the REIT/InvIT. Such investors do not seek to control the manager/investment manager or REIT/InvIT in any manner.

Taking the above into consideration, SEBI issued the following notifications amending the REIT Regulations and InvIT Regulations to provide regulatory framework for the special rights in REITs and InvITs:

- a) SEBI (REIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:
- i) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the manager;
 - ii) Schedule IX inserted which specifies the stewardship code. Unitholders with substantial holdings are obligated to act in the best interests of the REIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary;
 - iii) the sponsor(s) and sponsor group(s) collectively must hold a specified percentage of units for varying periods, ensuring a sustained commitment to the REIT's success; and
 - iv) transition from a manager to a self-sponsored manager is allowed.

²² Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT/REIT (circulars each dated July 5, 2023).

b) SEBI (InvIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:

- i) "Self-Sponsored Investment Manager" is recognized, referring to an investment manager with dual responsibilities as the investment manager and sponsor;
- ii) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the Investment manager;
- iii) units held to fulfil the minimum unitholding requirements will be locked in and cannot be encumbered; and
- iv) Schedule VIII inserted which specifies the stewardship code. This code is applicable to unitholders holding a minimum of 10% of the outstanding units and are obligated to act in the best interests of the InvIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary.
- v) transition from a manager to a self-sponsored manager is allowed.

12. Nomination rights to unitholders of REIT/InvITs²³ - SEBI prescribed frameworks for exercising the right by unitholders to nominate directors on the board of directors of the manager of the REIT/InvIT ("**Board**"). Under Regulation 4(2)(h) the InvIT Regulation and Regulation 4(2)(g) of the REIT Regulations, unitholders holding not less than 10% of the total outstanding units of the REIT/ InvIT, either individually or collectively, are entitled to nominate 1 (one) director on the Board.

Accordingly, a framework to exercise such a right to nominate a director to the Board is set out. Some of the key provisions of the framework are as follows:

- a) eligible unitholders will have the right, but not the obligation, to nominate any person for appointment as unitholder nominee director;
- b) the Board must formulate and adopt a policy in relation to the qualification and criteria for appointment and evaluation parameters of individuals nominated by a unitholder as a director;
- c) the trust deed and investment management agreement will stand amended or be deemed to incorporate provisions to provide such rights of nomination;
- d) the manager must send a written intimation to all unitholders within 10 (ten) days from the end of each financial year requesting unitholders to inform the manager if any eligible unitholders wish to exercise the right to nominate a nominee director; and
- e) eligible unitholders will be determined based on the unitholding pattern of the REIT/InvIT as on March 31st of the relevant financial year.

13. Revision in manner of achieving minimum public unitholding requirement²⁴ - An additional method for privately placed InvITs to achieve minimum public unitholding requirements is prescribed. In case of issuance of units through preferential allotment, only units issued to the public will be considered for compliance with minimum unitholding requirement.

14. Computation of Net Distributable Cash Flow ("NDCF")²⁵ - To promote ease of doing business, SEBI standardized the framework for calculation of available NDCF. Accordingly, the revised framework for computation of NDCF by InvITs/ REITs and its hold cos/ SPVs will be as per the prescribed format. The revised framework will be applicable with effect from April 1, 2024.

15. Securities under the Income Tax Act, 1961²⁶ - The MoF expanded the class of securities on which any profits or gains arising to a non-resident from the transfer of following capital assets on a recognised stock exchange located in an IFSC,

²³ Board nomination rights to unitholders of REITs/ InviTs (Circulars each dated October 31, 2023).

²⁴ Revision in manner of achieving minimum public unitholding requirement -InvITs (circular dated October 31, 2023).

²⁵ SEBI Circular dated December 6, 2023.

²⁶ Notification dated September 12, 2023,

where consideration is paid or payable in foreign currency, would not be chargeable to income-tax under the head 'Capital gains'. The following class of securities are included:

- a) unit of investment trust;
- b) unit of a scheme;
- c) unit of an Exchange Traded Fund launched under the Fund Regulations.

REITs and InvITs are included in the term 'investment trust' for the above purposes. 'Scheme' is defined as a scheme of a fund management entity launched under the Fund Regulations.

Foreign Portfolio Investors



1. **Streamlined boarding process of FPIs-** Designated Depository Participants (“DDPs”) may grant FPI registration to the applicant on the basis of scanned copies of the executed Common Application Form (“CAF”) and the certified supporting documents and payment of the applicable fees. They are required to update the CAF module as per the standard process for issuance of Permanent Account Number (“PAN”) card. Post PAN allotment, the scanned copies of the applicant’s certified Know Your Client (“KYC”) documents must be uploaded on the KYC Registration Agencies by the DDP/ custodian. Only upon receipt and verification of the physical documents by the DDP/ custodian, the custodian will make an application to the clearing corporation for the allotment of a custodial participant code to the FPI and carry out necessary steps for enabling the FPI to transact in the Indian securities markets. FPIs may use digital signatures for the purpose of execution of CAF and other registration related documents, in accordance with

the provisions of the Information Technology Act, 2000.

2. **Disclosure of information to SEBI-** FPIs are required to inform SEBI and DDPs, within 7 (seven) working days, if there is:
 - a) information or particulars previously submitted to SEBI or DDP found to be false or misleading, in any material respect;
 - b) material change in the information including any direct or indirect change in its structure or ownership or control or investor group previously furnished by him to SEBI or DDP; and
 - c) penalty, pending litigation or proceedings, findings of inspections or investigations for which action may be taken or is in the process of being taken by an overseas regulator against it.
3. **Provisions relating to enhanced transparency in ownership-** SEBI, *vide* notification dated August 10, 2023 (“**Notification**”), amended the SEBI (FPI) Regulations, 2019 (“**FPI Regulations**”) to enhance transparency in ownership of FPIs. The amendments seek to address the following concerns:
 - a) Certain FPIs hold a concentrated portion of their equity portfolio in a single investee company/ corporate group. Such concentrated investments raise the possibility that promoters of such investee companies/ corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements like disclosures required under Substantial Acquisition of Shares and Takeovers Regulations, 2011 or maintaining minimum public shareholding in the listed company;
 - b) Entities with large Indian equity portfolios potentially disrupting the orderly functioning of Indian securities markets by utilizing the FPI route to circumvent Press Note 3 dated April 17, 2020 (since it is not applicable to FPI investments).
 - c) Non-identification of natural persons as Beneficial Owners (“**BO**”) of several FPIs. While the thresholds for identification of BOs of FPIs are specified in Prevention of Money

Laundering (Maintenance of records) Rules, 2005 (“**PMLR**”), it is often observed that no natural person is identified as the BO of several FPIs based on economic interest or ownership interest, since each investor entity in the FPI may be below the threshold prescribed in the PMLR. However, there is a possibility that the same natural person may hold a significant aggregate economic interest in the FPI via various investment entities, each of which are individually below the threshold for identification as a BO as prescribed in PMLR.

To allay the above concerns, certain additional obligations are added in Regulation 22 of the FPI Regulations. The additional obligations include provision of such information or documents in relation to the persons with any ownership, economic interest or control, as specified by SEBI, by certain objectively identified FPIs.

While the Notification laid down the substantial law, the procedural law was detailed *vide* circular dated August 24, 2023 (“**Circular**”). The Circular provides that granular details of all entities holding any ownership, economic interest, or exercising control in the FPI must be provided by FPIs that fulfil any of the following criteria:

- a) FPIs holding more than 50% of their Indian equity Assets Under Management (“**AUM**”) in a single Indian corporate group;
- b) FPIs that individually, or along with their investor group hold more than INR 25,000 crore (Indian Rupees twenty five thousand crore) of equity AUM in the Indian markets;

The following FPIs are not required to make the disclosures:

- a) government and government related investors registered as FPIs under Regulation 5 (a) (i) of the FPI Regulations;
- b) public retail funds as defined under Regulation 22(4) of the FPI Regulations;
- c) exchange traded funds (with less than 50% exposure to India and India-related equity securities) and entities listed on specified exchanges of the permissible jurisdictions as may be notified by the SEBI; and
- d) pooled investment vehicles registered with/ regulated by a government/ regulatory

authority in their home jurisdiction/ country of incorporation/ establishment/ formation.

Road Ahead



From January 2023, SEBI is engaged in consultation with the various stakeholders to improve the governance, operation, and registration provisions for REITs, InvITs, AIFs, FVCIs, and VCFs. Some of the anticipated amendments are listed below:

Alternate Investment Funds

1. To address the concerns of the priority distribution model (“**PDA**”) in the AIF schemes, SEBI is considering introducing *prorata* and *paripassu* rights of the investors. It is proposed that:
 - a) while making investment, the rights of each investor may be required to be maintained prorata to their commitment to the scheme;
 - b) while distributing the proceeds of the investment, the rights of each investor may be maintained on pro rate to the investment made in the investee company;
 - c) the ongoing PDA-based scheme may continue without new commitments and investments; and
 - d) differential rights, other than the hurdle rate of return, performance linked fee/ additional return and management fees, which can affect

the rights of other investors cannot be granted and all investors will be required to be treated equally in AIFs.

2. To ensure that AIFs do not hold their certificate of registration indefinitely, without any intention of carrying out the activity of an AIF, it is proposed that the AIF may pay a renewal fee equal to 50% of its applicable registration fee for the subsequent block of 5 (five) years from the date of grant of their registration, within 3 (three) months of expiry. Existing AIFs who have completed 5 (five) years from the date of grant of certificate of registration are required to pay renewal fee equal to 50% of its applicable registration fee.
3. AIFs, other than those having 50% or more contribution from a single investor or investors belonging to the same group, may be entitled to avail benefits designated for qualified institutional buyers (“QIBs”).

Foreign Portfolio Investors

SEBI is contemplating additional disclosures for FPIs to safeguard the minimum public shareholding requirement and compliance with the provisions of Press Note 3 of 2020, which prescribed that an entity of a country that shares land border with India, or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government approval route.

Real Estate Investment Funds / Infrastructure Investment Funds

Affirming that a strong and independent board of directors of the manager/ investment manager of a REIT/ InvIT is important, SEBI proposes:

1. a unitholder holding a minimum of 10% of units, will be entitled to nomination rights, i.e., for every 10% held, the unitholder will be entitled to nominate one director on the board of the manager/ investment manager of the REIT/ InvIT;
2. formation of the unitholders council with members nominated by the unitholders holding minimum 10% of units, with the aim of making it mandatory for the manager/ investment manager of the REIT/ InvIT to constitute such a Unitholders Council;

3. making the stewardship code, which is currently applicable to MFs and all categories of AIFs, applicable to the entities having representation on the board of directors of the manager/ investment manager of the REIT/ InvIT and/ or the Unitholders Council;
4. having at least one “sponsor” (sponsor is defined as a person who sets up the REIT/ InvIT and is designated as such at the time of application for registration) throughout the life of the REIT/ InvIT ensuring that the said sponsor holds a certain percentage of units in the REITs/ InvITs on a perpetual basis.

Foreign Venture Capital Investors

1. While filing the registration application, FVCIs may be permitted to avail the services of DDPs for obtaining a certificate of registration. The requirement of PAN and demat account can be pre-requisites for the purpose of registration of FVCIs. Form A can be aligned with the common application form used for FPIs.
2. It is proposed to align the eligibility criteria of FVCIs with FPIs.
3. FVCIs may soon be required to hold the instruments/ securities of their investments only in dematerialized form.
4. To ensure that FVCIs do not hold their certificate of registration indefinitely, without any intention to carry out the activity of an FVCI, it is proposed that an FVCI may pay a renewal fee of USD 2500 (US Dollars two thousand five hundred) if it wishes to continue with its registration for the subsequent block of 5 (five) years.
5. FVCIs, who are other than corporate bodies and family offices, may be designated as QIBs.

Venture Capital Funds

VCFs, other than those having 50% or more contribution from a single investor or investors belonging to the same group, may be entitled to avail benefits designated for QIBs.

Private Equity Practice

We provide legal services to PE funds across the full range of their operations and activities, besides International and Domestic entities. The PE practice represents both investors and investee entities in diverse sectors. We are actively involved in legal and governmental issues affecting the Private Equity and Venture Capital industry on a national level, including legislative and regulatory matters, and provide ongoing support, advice and views to the various committees of SEBI. The PE practice complements and works closely with our Investment Funds practice to provide legal advice on several aspects such as:

- Onshore and Offshore structuring and formation of funds in India and overseas and enabling tax efficient modes of investing in India;
- Investment structures to ensure compliance with Takeover Regulations, Insider Trading Regulations;
- Representation of funds, either alone or as lead members of a syndicate;
- Drafting applications for regulatory approvals and liaising with regulatory authorities, including SEBI/ Reserve Bank of India (RBI) registrations and compliance;
- Drafting offer documents for the raising of funds;
- Due Diligence of prospective investee companies and targets;
- Negotiation assistance from term sheet stage till closing;
- Assisting in downstream investments;
- Advising on ongoing activities of portfolio companies;
- Assistance with exit strategies and implementation thereof;
- Advising investee companies on issues relating to receiving venture capital and PE investment;
- Negotiations and drafting of transaction documents including investor agreements, share subscription/purchase agreements, joint venture agreements and shareholder agreements;
- Documentation and overall transactional support, including working closely with regulators like RBI, Foreign Investment Facilitation Portal (FIFP) and SEBI; and
- Structuring incentives and sharing of the 'carry' for fund managers and research analysts.

This Compendium is prepared by:











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<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p> <p>-----</p> <p>Employer of Choice 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

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