



advocates & solicitors

Private Equity and Funds Newsletter



July-December 2024

This newsletter captures the regulatory developments from July 2024 to December 2024 relating to Alternative Investment Funds (“AIFs”), Real Estate Investment Trusts (“REITs”), Infrastructure Investment Trusts (“InvITs”), Venture Capital Funds (“VCFs”), Foreign Venture Capital Investors (“FVCIs”) and Foreign Portfolio Investors (“FPIs”) that are likely to shape the investment activities in India.

Introduction

As per recent investment trends, India’s Private Equity (“PE”)/Venture Capital (“VC”) investments reached USD 2.7 billion (United States Dollars two point seven billion) in July 2024, which was a decline of 42% compared to

July 2023.¹ However, for the period after that, it continued to show an upwards trend, with PE/VC investments in August 2024 recorded at USD 2.9 billion (United States Dollars two point nine billion), being 5% higher in value terms compared to July 2024.² For the month of October 2024, it reached USD 4.7 billion (United States Dollars four point seven billion) that is 40% higher than that in September 2024.³ A similar trend followed in November 2024 where PE/VC investments totalled USD 4 billion (United States Dollars four billion), 156% higher than that in November 2023.⁴

¹ www.ey.com

² www.ey.com

³ www.ey.com

⁴ www.ey.com

Overview of the Regulatory Measures

Foreign Direct Investment

Foreign Direct Investment: Clarification on the downstream investment in India

After a long-drawn confusion over the applicability of deferred consideration provisions to Foreign Owned or Controlled Companies (“FOCCs”), the Reserve Bank of India (“RBI”) under the latest the [Master Directions on Foreign Investment in India](#), has clarified that the arrangements which are available for direct investment under the the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“NDI Rules”) will also be applicable for the purpose of downstream investment (subject to overall compliance with the downstream investment regime).

This is a positive move towards clearing up the prevalent ambiguity over treating downstream investments with a stricter compliance lens as opposed to foreign direct investment (where payment of consideration is specifically permitted subject to such amount not exceeding 25% of the total consideration being paid within a period of 18 (eighteen) months from the date of the transfer agreement on a deferred basis).

It is refreshing to see that the RBI has taken inputs from the various stakeholders and brought definitive closure to this point (albeit by way of a clarification included in the Master Directions) even after issuing notices to FOCCs for this alleged non-compliance.

This clarification will enable FOCCs to structure earn-outs and post-closing adjustments (in line with their foreign counterparts) and not necessarily use their foreign holding company to make acquisitions in India on account of the unclear regulatory framework surrounding investments by FOCCs.

Infrastructure Investment Trusts and Real Estate Investment Trusts

Framework for unit-based employee benefit scheme introduced for REITs and InvITs

The Securities and Exchange Board of India (“SEBI”), *vide* notifications dated July 11, 2024, and July 12, 2024, has issued the [SEBI \(InvITs\) \(Second Amendment\) Regulations, 2024](#) and the [SEBI \(REITs\) \(Second](#)

[Amendment\) Regulations, 2024](#) respectively. The amendments aim to provide a structured approach to offering unit-based benefits, promoting employee participation and safeguarding the interests of all stakeholders involved in REITs/InvITs. Some of the key amendments are as follows:

1. the term ‘employee unit option scheme’ is inserted to mean a scheme under which the investment manager grants unit options to its employees through an employee benefit trust;
2. the term ‘liquid asset’ is inserted to mean cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds; the manager/investment manager may, at its discretion, offer unit-based employee benefit scheme for its employees based on the units of the REIT/InvIT, subject to compliance with the provisions of Chapter IVA/Chapter IVB (Framework for Unit Based Employee Benefit Scheme) of the respective principal regulations; and
3. a new schedule is inserted in the respective principal regulations, pertaining to minimum provisions in trust deed, such as details of the trust, powers and duties of trustee, mode and manner of dissolution of the trust.

Board nomination rights to unitholders of REITs and InvITs

SEBI, *vide* circulars dated August 6, 2024, has amended the Master Circulars for [REITs](#) and [InvITs](#) dated May 15, 2024 (“**Master Circulars**”), in relation to the right to nominate a nominee director. The Master Circulars provided that eligible unitholder(s) are entitled to nominate 1 (one) unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate 1 (one) or more directors on the board of directors of the manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the manager or lender to the manager or the REIT/InvIT (or its holding company or special purpose vehicle), then such entity in its capacity as unitholder, is not entitled to nominate or participate in the nomination of a unitholder nominee director.

Pursuant to the amendment, a proviso is inserted stating that the above restriction relating to the right to nominate a unitholder nominee director will not be applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993.

On August 22, 2024, SEBI further amended the Master Circulars for [REITs](#) and [InvITs](#) to promote ease of doing business by amending provisions related to the review of statement of investor complaints and timeline for disclosure of statement of deviation(s). Some of the key amendments are as follows:

1. all complaints including SEBI Complaints Redress System (SCORES) complaints received by the InvITs/REITs must be disclosed on the website of the InvITs/REITs and must also be filed with the recognised stock exchange(s). The statement must be placed, on a quarterly basis (*earlier, this was to be reviewed before submission to the stock exchange*), before the board of directors/governing body of the investment manager/manager and the trustee for review; and
2. pursuant to such review, the statement must be submitted to the stock exchange(s) along with the submission of the financial results (earlier such submission was to be made within 21 (twenty-one) days from the end of each quarter).

SEBI (InvITs) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, has notified the [SEBI \(InvITs\) \(Third Amendment\) Regulations, 2024](#) amending the SEBI (InvITs) Regulations, 2014. The amendments relate to the trading lot for trading units, timeline for making distributions, as well as the voting threshold.

Some of the key amendments are as follows:

1. with respect to listing of privately placed units, trading lot for the purpose of trading of units on the designated stock exchange must be INR 25,00,000 (Indian Rupees twenty-five lakh) (*earlier this was INR 1,00,00,000 (Indian Rupees one crore)*);
2. with respect to distributions made by the InvITs and the holding company and/or special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this*

was 15 (fifteen) days from the date of such declaration);

3. the voting threshold specified under the principal regulations must be calculated on the basis of unit holders present and voting;
4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI; and
5. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

SEBI (REITs) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, has notified the [SEBI \(REITs\) \(Third Amendment\) Regulations, 2024](#) amending the SEBI (REITs) Regulations, 2014. The amendments relate to the timeline for making distributions as well as the voting threshold.

Some of the key amendments are as follows:

1. with respect to distributions made by the REITs and the holding company and/or special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this was 15 (fifteen) days from the date of such declaration*). With respect to distributions made by the scheme of small and medium REIT and special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this was 7 (seven) working days from the date of such declaration*);
2. the voting threshold specified under the principal regulations must be calculated on the basis of unit holders present and voting; and for all unit holder meetings, the manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI; and

3. REITs are permitted to hold a meeting for unit holders after providing shorter notice, so long as consent is obtained in writing or electronically:
 - a) in case of an annual meeting, by not less than 95% of the unit holders entitled to vote thereat; and
 - b) in case of any other meeting, by majority of the unitholders in number entitled to vote and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting.

Relaxation from certain provisions for units allotted to an employee benefit trust by REITs and InvITs

SEBI, *vide* notifications dated November 13, 2024, has made some relaxations and aligned distribution timelines for [REITs](#) and [InvITs](#) to promote ease of doing business. Some of the key changes made under both the notifications are as follows:

1. the 1 (one) year lock-in on units allotted to persons other than the sponsor(s), the 6 (six) months lock-in on pre-preferential issue unitholding of the allottees, and allotment related restrictions on preferential issue of units will not apply to the units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme; and
2. the manner of distribution of unclaimed or unpaid amounts is provided. Where a distribution has been made by the investment manager within the timelines specified under respective InvITs/REITs principal regulations, but the payment to any unitholders has remained unpaid or unclaimed, the investment manager must, within 7 (seven) working days from the date of expiry of the prescribed timelines, transfer such unclaimed amounts to an escrow account to be opened by it on behalf of the InvIT/REIT in any scheduled bank. Such account will be termed as the 'Unpaid Distribution Account'.

Foreign Portfolio Investors

Amendment to additional disclosures by FPIs

1. SEBI, *vide* [circular](#) dated August 1, 2024, has amended the Master Circular for FPIs, Designated Depository Participants ("[DDPs](#)") and Eligible

Foreign Investors' dated May 30, 2024, that mandated additional disclosures for FPIs. Pursuant to the amendment, university funds and university related endowments, registered or eligible to be registered as Category I FPI, are not required to make the additional disclosures as prescribed under the 'Master Circular for FPIs, DDPs and Eligible Foreign Investors' dated May 30, 2024, subject to them fulfilling the following conditions:

2. Indian equity Assets Under Management ("[AUM](#)") being less than 25% of global AUM;
3. global AUM being more than INR 10,000 crore (Indian Rupees ten thousand crore) equivalent; and
4. appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

The eligible jurisdictions with respect to the exemption granted to university funds and university related endowments will be as specified by SEBI from time to time.

Reclassification of foreign portfolio investment to Foreign Direct Investment

RBI, *vide* [circular](#) dated November 11, 2024 ("[Circular](#)"), has introduced an operational framework for reclassification of foreign portfolio investment to Foreign Direct Investment ("[FDI](#)"). This reclassification applies when an FPI by an investor exceeds the prescribed threshold of 10% of the total paid-up equity capital of the Indian investee company on a fully diluted basis.

While NDI Rules mandated that foreign portfolio investment exceeding the prescribed threshold must be divested failing which it would be treated as FDI, there were no guidelines regulating the reclassification of such foreign portfolio investment into FDI. The Circular provides clarity regarding this reclassification process while ensuring that such conversion is in adherence to the operational framework outlined in the Circular. The directions under the Circular have become operative with immediate effect.

Simplified registration for FPIs

To facilitate ease of onboarding for FPIs and reduce duplication of available information, SEBI, *vide* [circular](#)

dated November 12, 2024, has eased the registration process. Some of the key features are as follows:

1. while onboarding FPIs applicants belonging to the categories prescribed under paragraph 2 of the circular, they may be provided with an option to fill the entire Common Application Form (“CAF”) or fill an abridged version of the CAF where they fill only those fields that are unique to them;
2. in case applicant opts for this abridged version of CAF, the remaining fields must either be auto populated from the information available in the CAF module or must be disabled;
3. while using the available information, an explicit consent to use the same and a confirmation that all the details other than those mentioned in the abridged version of CAF remain unchanged, must be obtained from the applicant; and
4. DDPs, upon receipt of information from the applicant, must update the details in CAF against the application number of the applicant for future reference purposes. Further, they must also ensure that the CAF module hosted on the website of the depository reflects complete information (information filled in by applicant and that auto-populated) and facilitates seamless fetching of the same; and
5. all depositories, custodians, and DDPs are advised to make necessary changes in their systems to effect the changes proposed under this circular.

The provisions of this circular will come into effect from February 12, 2025.

Measures to address regulatory arbitrage with respect to offshore derivative instruments and FPIs

SEBI, *vide* [circular](#) dated December 17, 2024, has issued measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (“ODIs”) and FPIs, with segregated portfolios *vis-à-vis* FPIs. Certain requirements under the Master Circular for FPIs, DDPs and Eligible Foreign Investors dated May 30, 2024, related to ODIs and FPI with segregated portfolios are modified as follows:

1. FPIs can issue ODIs only through a separate dedicated FPI registration with no proprietary investments. Such FPI registration will be in the

name of the FPI with ‘ODI’ as suffix under the same PAN;

2. FPIs must not issue ODIs with derivatives as reference/underlying;
3. FPIs cannot hedge their ODIs with derivative positions on stock exchanges in India. Accordingly, ODIs will only have securities (other than derivatives) as underlying that must be fully hedged with the same securities on a one-to-one basis, throughout the tenure of the ODI; and
4. additional disclosures requirements are inserted for ODI subscribers, some of which are:
 - a) granular details of all entities holding any ownership, economic interest, or exercising control in the ODI subscriber, on a full look through basis, up to the level of all natural persons, without any threshold;
 - b) the detailed mechanism for independently validating conformance of the ODI subscribers with the conditions, exemptions and format for disclosures must be spelt out in the standard operating procedure framed and adopted by depositories, DDPs/custodians and ODI issuing FPIs in consultation with SEBI; and
 - c) ODI subscribers such as Government and Government related investors registered as FPIs, Public Retail Funds, Exchange Traded Funds (“ETFs”), pooled investment vehicles registered with/regulated by a Government/regulatory authority are not required to disclose any granular details of their entities.

Alternative Investment Funds, Venture Capital Funds and Foreign Venture Capital Investors

Information to be filed by schemes of AIFs

SEBI, *vide* [circular](#) dated July 9, 2024, has issued a clarification regarding the information to be filed by schemes of AIFs availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs. The clarification states that:

1. any scheme of an AIF entering dissolution period must file an information memorandum along with a

due diligence certificate with SEBI through a merchant banker in the manner specified by SEBI. The information memorandum must be submitted before the expiry of the liquidation period or additional liquidation period of the scheme, as the case may be;

2. schemes of AIFs that have expired or are expiring within 3 (three) months, on or before July 24, 2024, may be granted an additional/fresh liquidation period, on submitting information to SEBI in the prescribed format, subject to certain conditions; and
3. in specie distribution of investments of a scheme of an AIF must be carried out after obtaining approval of at least 75% of the investors by value of their investment in the scheme of the AIF.

SEBI (AIFs) (Third Amendment) Regulations, 2024

SEBI, *vide* [notification](#) dated July 18, 2024, has issued the SEBI (AIFs) (Third Amendment) Regulations, 2024, amending the SEBI (AIFs) Regulations, 2012. Some of the key amendments are as follows:

1. a VCF may seek registration as migrated VCFs in terms of Chapter III-D, within 12 (twelve) months from July 18, 2024;
2. SEBI may specify enhanced regulatory reporting and other measures for VCFs that do not seek registration as a migrated VCF; and
3. a new Chapter (Chapter III D), is inserted for migrated VCFs and schemes launched by such funds, providing:
 - a) the procedure for grant of certificate;
 - b) eligibility criteria;
 - c) prohibition on inviting subscription from the public;
 - d) issue of placement memorandum or subscription agreement; and
 - e) conditions for investment by migrated venture capital fund.

SEBI (AIFs) (Fourth Amendment) Regulations, 2024

SEBI, *vide* [notification](#) dated August 6, 2024, has issued the SEBI (AIFs) (Fourth Amendment) Regulations, 2024,

amending the SEBI (AIFs) Regulations, 2012. Some of the key amendments are as follows:

1. a Large Value Fund (“LVF”) for accredited investors is permitted to extend its tenure up to 5 (five) years (*earlier this was 2 (two) years*), subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Further, the extension in tenure of any existing scheme of a LVF for accredited investors will be subject to such conditions specified by SEBI; and
2. Category I and Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the ‘Harmonised Master List of Infrastructure’ issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions specified by SEBI.

Further, *vide* [circular](#) dated August 19, 2024, SEBI has issued guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs for accredited investors. Category I and Category II AIFs (subject to the prescribed conditions) are allowed to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies. They must maintain 30 (thirty) days cooling off period between 2 (two) periods of borrowing, which must be calculated from the date of repayment of previous borrowing. An LVF may extend its tenure up to 5 (five) years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and subject to the prescribed conditions, such as:

1. existing LVF schemes who have not disclosed definite period of extension in their tenure in the private placement memorandum or whose period of extension in tenure is beyond the permissible 5 (five) years, must align the period of extension in tenure with the requirement above, within 3 (three) months i.e., on or before November 18, 2024; and
2. while realigning the period of extension in tenure, LVF schemes must have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Modalities for migration of VCFs

SEBI, *vide* [notification](#) dated August 19, 2024, has issued modalities for migration of VCFs registered under the erstwhile SEBI (VCFs) Regulations, 1996 to the SEBI (AIFs) Regulations, 2012.

To initiate the migration, VCFs must submit an application to SEBI, including the original certificate of registration and the prescribed information as per the notification. The deadline for this application is July 19, 2025.

Conditions for migration:

1. schemes whose liquidation period has not expired can migrate provided they continue with the same tenure upon migration;
2. VCFs having at least 1 (one) scheme which has not been wound up post expiry of its liquidation period can migrate only if they do not have any unresolved investor complaints and get an extra year to liquidate;
3. the tenure of the migrated schemes will either continue as per the original disclosure in the private placement memorandum or, if no definite tenure was disclosed, the tenure will be determined before the migration application with the approval of 75% of investors by value; and
4. VCFs that do not opt for migration and whose liquidation period has not expired will be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under SEBI (AIFs) Regulations, 2012. Further, VCFs having at least 1 (one) scheme whose liquidation period has expired will be subject to appropriate regulatory action for continuing beyond the expiry of their original liquidation period.

Amendments to the SEBI (FVCIs) Regulations, 2000 and operational guidelines for FVCIs

SEBI, *vide* [notification](#) dated September 5, 2024, has notified the SEBI (FVCIs) (Amendment) Regulations, 2024, amending the SEBI (FVCIs) Regulations, 2000.

Some of the key amendments are as follows:

1. the term 'Bilateral Memorandum of Understanding with the Board' is inserted to mean a bilateral memorandum of understanding between SEBI and

any authority outside India that provides for information sharing arrangement as specified under Section 11(2)(ib) of the SEBI Act, 1992;

2. the term 'certificate' is inserted to mean a certificate of registration granted to a FVCI by the DDP on behalf of SEBI under the principal regulations;
3. provisions pertaining to application for grant of certificate as a FVCI, are amended stating that no person will buy, sell or otherwise deal in securities as a FVCI unless it has obtained a certificate granted by a DDP on behalf of SEBI;
4. the eligibility criteria of the applicant for grant of certificate of registration as a FVCI is amended, among other conditions the applicant must be an entity incorporated or established outside India or in IFSC;
5. FVCI certificates are permanent unless suspended, cancelled, or surrendered, and renewal fees must be paid every 5 (five) years; and
6. FVCI investments must be held in dematerialised form, ensuring greater transparency and efficiency in managing investments.

SEBI, *vide* [notification](#) dated September 26, 2024, has also issued operational guidelines for FVCIs and DDPs pursuant to the amendments.

Some of the key guidelines are as follows:

1. any FVCI failing to engage a DDP by March 31, 2025, will not be permitted to make any further investment and will liquidate:
 - a) investments in listed securities, by March 31, 2026; and
 - b) other investments, by March 31, 2027;
2. remittance of the proceeds of such sale will be subject to compliance with applicable 'know your customer' requirements and requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Post liquidation of investments within the said time-period, the FVCI will apply for surrender of its registration within 30 (thirty) days;
3. every DDP will submit monthly reports on the applications received from FVCI applicants to SEBI in the prescribed format; and
4. DDP engaged by an existing FVCI will carry out registration related due diligence and assess the compliance of such an FVCI with the eligibility

criteria within 6 (six) months from the date of engagement.

The amendments and the operational guidelines have come into effect from January 1, 2025.

Reporting by FVCIs

SEBI, *vide* [circular](#) dated September 13, 2024, revised the format for the quarterly report on venture capital activity to be submitted by an FVCI. From quarter ending March 31, 2025, FVCIs will submit quarterly report in the revised format on the SEBI intermediary portal. The report must be submitted within 15 (fifteen) calendar days from the end of each quarter. FVCIs must submit the quarterly report irrespective of the fact that any investment is made or not during the quarter.

Modification in framework for valuation of investment portfolio of AIFs

SEBI, *vide* [circular](#) dated September 19, 2024, has issued modifications to the valuation framework for AIFs under the SEBI (AIFs) Regulations, 2012. Accordingly, the Master Circular for AIFs dated May 7, 2024, is amended. Some of the key amendments are as follows:

1. valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 (“**MF Regulations**”), must be carried out as per the norms prescribed under the MF Regulations;
2. valuation of securities which are not covered above, will be carried out as per valuation guidelines endorsed by any AIF industry association, which in terms of membership represents at least 33% of the number of SEBI registered AIFs;
3. SEBI also extended the timeline for AIFs to report valuation data based on audited accounts of investee companies from 6 (six) to 7 (seven) months. Further changes include harmonising valuation norms for thinly traded and non-traded securities by March 31, 2025;
4. change in methodology/approach within the valuation guidelines/valuation norms prescribed for AIFs, will not be construed as a 'Material Change'. However, upon such change, the valuation of the investment carried out based on valuation methodologies/approaches, both old and new, must

be disclosed to the investors to ensure transparency; and

5. the eligibility criteria for independent valuer for a partnership entity or company is as follows: (a) such entity or company must be a ‘Registered Valuer Entity’ registered with the Insolvency and Bankruptcy Board of India; and (b) the deputed/authorised person(s) of such ‘Registered Valuer Entity’, who undertake(s) the valuation of investment portfolio of AIFs, must have a membership of the prescribed institute.

Specific due diligence of investors and investments of AIFs

SEBI, *vide* [notification](#) dated October 8, 2024, has outlined specific due diligence requirements for AIFs, their managers, and key personnel on investors and investments. These include:

1. carrying out due diligence for investments from countries sharing land borders with India, in line with the NDI Rules. For every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by investors, necessary due diligence as per the implementation standards formulated by the Standard Setting Forum for AIFs must be carried out prior to the investment;
2. necessary due diligence is carried out prior to availing benefits to Qualified Institutional Buyers (“**QIBs**”) (under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018) and Qualified Buyers (“**QBs**”) (under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) for every scheme of AIFs having an investor, or investors belonging to the same group, who contribute(s) 50% or more to the corpus of the scheme. AIFs must ensure that investors who are not eligible for QIB or QB status do not avail of the benefits through the AIF;
3. if an investor of the scheme is an AIF, or a fund set up outside India or in International Financial Services Centres (“**IFSCs**”) in India, then the criteria check for investor(s) regulated by RBI; and
4. reporting of any existing investments that fail the due diligence checks or confirm compliance by April 7, 2025.

SEBI (AIFs) (Fifth Amendment) Regulations, 2024

SEBI, *vide* [notification](#) dated November 18, 2024, has notified the SEBI (AIFs) (Fifth Amendment) Regulations, 2024, amending the SEBI (AIFs) Regulations, 2012. Regulations 20(21) and 20(22) have been inserted dealing with the rights of investors of a scheme. Some of the key amendments are as follows:

1. the investors of a scheme of an AIF must have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment, except as may be specified by SEBI. The rights of investors of schemes of an AIF issued prior to this amendment, which are not pro-rata to their commitment to the scheme and not exempted by SEBI, must be dealt with in the manner specified by SEBI; and
2. the rights of investors of a scheme of an AIF, other than that specified above, must be *pari passu* in all aspects. However, differential rights may be offered to select investors of a scheme of an AIF, in the manner as may be specified by SEBI, without affecting the interest of other investors of the scheme. This requirement will not apply to large value fund for accredited investors. Further, any differential right already issued by an AIF to select investors of a scheme of an AIF, prior to this amendment must be dealt with in the manner as specified by SEBI.

Pro-rata and pari-passu rights of investors of AIFs

SEBI *vide* [circular](#) dated December 13, 2024, has introduced significant changes to the *pro-rata* and *pari-passu* rights of investors of AIFs, to protect the interests of investors within AIFs. Some of the key provisions are as follows:

1. pursuant to the SEBI (AIFs) (Fifth Amendment) Regulations, 2024, it is specified that the requirement of maintaining investors' rights pro-rata to their commitment to the scheme, will not be applicable in an investment of a scheme and distribution of proceeds of the investment to the extent:
 - a) an investor has been excused or excluded from participating in the said investment; or,

- b) an investor has defaulted on providing his/her pro-rata contribution for the said investment;
2. the requirement of maintaining pro-rata rights of investors in distribution of proceeds of investments of a scheme, will not be applicable to the extent returns or profit on the investments are shared by an investor with the manager or sponsor of the AIF, in terms of contribution agreement executed between them;
3. the following entities may accept returns lesser or share losses more than their pro-rata rights in investments of an AIF:
 - a) manager or sponsor of the AIF;
 - b) multilateral or bilateral development financial institutions;
 - c) State Industrial Development Corporations; and
 - d) entities established or owned or controlled by the Central Government or a State Government or the Government of a foreign country, including Central Banks and Sovereign Wealth Funds;
4. existing AIFs/schemes of AIFs that have adopted priority distribution model and not falling under the exemption of the above point, will neither accept any fresh commitment nor make investment in a new investee company, directly or indirectly;
5. differential rights may be offered by AIFs to select investors without affecting the rights of other investors, based on certain guiding principles; and
6. large value funds for accredited investors, whose private placement memorandum are filed with SEBI for launch of scheme before December 13, 2024, may avail exemption from the requirement of maintaining *pari-passu* rights among investors, subject to certain conditions.

Classification of Corporate Debt Market Development Fund as Category I AIF

SEBI, *vide* [circular](#) dated December 13, 2024, has clarified that Corporate Debt Market Development Fund has been classified as Category I AIF.

JSA 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 Newsletter has been prepared by:



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Partner

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| <p>18 Practices and 41 Ranked Lawyers</p> | <p>7 Ranked Practices, 16 Ranked Lawyers</p> <p>-----</p> <p>Elite – Band 1 - Corporate/ M&A Practice</p> <p>-----</p> <p>3 Band 1 Practices</p> <p>-----</p> <p>4 Band 1 Lawyers,1 Eminent Practitioner</p> | <p>12 Practices and 50 Ranked Lawyers</p> |
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| <p>14 Practices and 12 Ranked Lawyers</p> | | |
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| <p>20 Practices and 22 Ranked Lawyers</p> | <p>Ranked Among Top 5 Law Firms in India for ESG Practice</p> | <p>Recognised in World’s 100 best competition practices of 2025</p> |
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| <p>Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>11 A List Lawyers in IBLJ A-List - 2024</p> | <p>Asia M&A Ranking 2024 – Tier 1</p> <p>-----</p> <p>Employer of Choice 2024</p> <p>-----</p> <p>Energy and Resources Law Firm of the Year 2024</p> <p>-----</p> <p>Litigation Law Firm of the Year 2024</p> <p>-----</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>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> |
| | |  |
| | | <p>7 Practices and 3 Ranked Lawyers</p> |

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