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ALTERNATIVE INVESTMENT FUND

REGULATORY UPDATE

SEBI AMENDS PROVISIONS REGARDING BORROWINGS BY AIF AND TENURE OF LVFs

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Securities and Exchange Board of India ("**SEBI**"), *vide* its notification dated August 5, 2024 has notified the SEBI (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024 ("**AIF Amendment Regulations**"), thereby amending the SEBI (Alternative Investment Funds) Regulations, 2012 ("**Principal AIF Regulations**").

Key amendments were introduced regarding (a) borrowing by Category I Alternative Investment Fund ("**Cat-I AIF**") and Category II Alternative Investment Fund ("**Cat-II AIF**") and (b) maximum permissible limit for extension of tenure of large value fund for accredited investors ("**LVFs**"). Further, SEBI, *vide* its circular dated August 19, 2024 ("**AIF Circular**"), has also introduced guidelines in this regard.

Borrowing by Cat-I AIF and Cat-II AIF:

The AIF Amendment Regulations continue to restrict Cat-I AIF and Cat-II AIF from borrowing funds directly or indirectly or engage in any leverage for the purpose of making investments or otherwise, except for borrowing funds to meet temporary funding requirements and day-to-day operational requirements for not more than 30 days, on not more than 4 occasions in a year and not more than 10% of the investable funds and subject to additional conditions mentioned in the AIF Circular.

Pursuant to the AIF Circular, SEBI has allowed Cat-I AIFs and Cat-II AIFs to borrow for meeting shortfall in amount called from investors for making investments in investee companies ("**Drawdown Amount**"). However, such borrowing shall be made only in cases of emergency.

The amount borrowed shall not exceed 20% of the investment proposed to be made in the investee company, or 10% of the investable funds of the scheme of Alternative Investment Fund ("**AIF**"), or the commitment pending to be drawn down from investors other than the investor(s) who has failed to provide the Drawdown Amount, whichever is lower. Further, the cost of such borrowing shall be charged only to investor(s) who failed to provide the Drawdown Amount.

A disclosure in this regard shall be made in the Private Placement Memorandum ("**PPM**"). Further, the manager shall disclose the details with respect to amount borrowed, terms of borrowing and repayment to all the investors of the AIF/scheme, on a periodic basis as per the terms of agreement with the investors of the AIF.

Furthermore, all Cat- I AIFs and Cat- II AIFs shall maintain 30 days cooling off period between 2 periods of borrowing, which shall be calculated from the date of repayment of previous borrowing.

Maximum permissible limit for extension of tenure for LVFs:

The AIF Amendment Regulations now provide a maximum permissible limit for extension of tenure of up to 5 years to LVFs, subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Prior to the amendment, the extension of tenure for LVFs was uncapped.

Existing LVF schemes who have not disclosed the definite period of extension in their tenure in the PPM or whose period of extension in tenure is beyond the permissible 5 years, shall align the same within 3 months from the date of the AIF Circular, i.e., on or before November 18, 2024. The same shall be reported in the quarterly report submitted on the SEBI Intermediary Portal (SI Portal) for the quarter ending December 31, 2024.

While realigning the period of extension in tenure, LVF schemes shall also have the flexibility to revise their original tenure, subject to the consent of all the investors of the scheme. Such LVF schemes shall submit an undertaking to SEBI on or before November 18, 2024, stating that consent of all the investors of the scheme has been obtained for revising the original tenure.

It must be noted that the compliance test report prepared by the manager of AIF shall include compliance with the provisions of the AIF Circular.

To read the AIF Amendment Regulations click here & to read the AIF Circular click here

For any queries, please contact yatin@vaishlaw.com