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CDSL/OPS/RTA/POLCY/2024/234 **December 16, 2024**

SEBI CIR - PRO-RATA AND PARI-PASSU RIGHTS OF INVESTORS OF AIFS

Issuers / RTAs are advised to refer to the SEBI Circular no.**SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/175 dated December 13, 2024,** regarding **Pro-rata and pari-passu rights of investors of AIFs [refer Annexure].**

Issuers / RTAs are advised to take note of the same.

Queries regarding this communiqué may be addressed to: CDSL – Helpdesk Emails may be sent to: dprtasupport@cdslindia.com and connect through our **IVR Number 022-62343333**.

For and on behalf of
Central Depository Services (India) Limited

sd/-

Nilesh Shah
Asst. Vice President

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/175 December 13, 2024

To,

All Alternative Investment Funds (AIFs)

Sir/Madam,

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

1. Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") have been amended and notified on November 18, 2024, with respect to maintaining pro-rata and pari-passu rights of investors in a scheme of an AIF. Copy of the aforesaid notification is available at *link*.

A. Pro-rata rights of investors of AIFs -

2. Regulation 20(21) of AIF Regulations states as under –

"The investors of a scheme of an Alternative Investment Fund shall 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 the Board from time to time:

Provided that the rights of the investors of a scheme of Alternative Investment Fund issued prior to the notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024, which are not pro-rata to their commitment to the scheme and not exempted by the Board, shall be dealt with in the manner specified by the Board."

3. In this regard, it is specified that the requirement of maintaining investors' rights pro-rata to their commitment to the scheme, shall not be applicable in an investment of a scheme and distribution of proceeds of the investment to the extent –

3.1. an investor has been excused or excluded from participating in the said investment; or,

3.2. an investor has defaulted on providing his/her pro-rata contribution for the said investment.

4. Further, the requirement of maintaining pro-rata rights of investors in distribution of proceeds of investments of a scheme, shall not be applicable to the extent returns or profit on the investments is shared by an investor with the manager or

sponsor of the AIF (by whatever name it is called, such as carried interest/additional return), in terms of contribution agreement executed between them.

5. Additionally, to provide flexibility in fund raising from investors with varied risk appetite, the following entities may accept returns lesser or share losses more than their pro-rata rights in investments of an AIF/scheme of an AIF, i.e., may subscribe to classes of units which are junior/subordinate to other class(es) of units of the AIF/scheme of AIF -

   a. Manager or sponsor of the AIF;

   b. Multilateral or Bilateral Development Financial Institutions;

   c. State Industrial Development Corporations;

   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.

6. In case manager or sponsor of an AIF subscribes to junior / subordinate class(es) of units of the AIF/scheme of the AIF, it shall be ensured that the amount invested by the AIF/scheme of the AIF is not utilized by an investee company, directly or indirectly, to repay any of its obligations or liabilities towards the manager or sponsor of the AIF or their associates.

Applicability on existing AIFs/schemes of AIFs -

7. Vide SEBI circular dated November 23, 2022, schemes of AIFs that had adopted priority distribution model (i.e., schemes that issued senior and junior / subordinate classes of units) were directed to neither accept any fresh commitment nor make investment in a new investee company, until a view is taken by SEBI in this regard.

8. Further, in terms of proviso to Regulation 20(21) of AIF Regulations, as referred at para 2 above, rights of investors of AIFs/schemes of AIFs issued prior to the date of notification of the aforesaid amendment to AIF Regulations (i.e., November 18, 2024), that are not pro-rata to their commitment to the AIF/scheme and not exempted by SEBI, shall be dealt with in the manner specified by SEBI.

9. Accordingly, it is hereby specified that existing AIFs/schemes of AIFs that have adopted priority distribution model and not falling under the exemption at para 5 above, shall neither accept any fresh commitment nor make investment in a new investee company, directly or indirectly.

10. As a consequence of compliance with the clause at para 9 above or the SEBI circular dated November 23, 2022 as mentioned in para 7 above, if the

investment limits specified under AIF Regulations are breached by any AIF/scheme of AIF, such breach may not be considered as non-compliance with applicable provisions of AIF Regulations or circulars issued thereunder, to that extent. However, the same shall be recorded in writing in the 'Compliance Test Report' prepared by the manager in terms of Chapter 15 of SEBI Master Circular for AIFs dated May 07, 2024.

B. Pari-passu rights of investors of AIFs -

11. Regulation 20(22) of AIF Regulations states as under –

"The rights of investors of a scheme of an Alternative Investment Fund, other than that specified in sub-regulation (21) of this regulation, shall be pari-passu in all aspects:

Provided that differential rights may be offered to select investors of a scheme of an Alternative Investment Fund, in the manner as may be specified by the Board, without affecting the interest of other investors of the scheme:

Provided further that the requirement under sub-regulation (22) of this regulation shall not apply to Large Value Fund for Accredited Investors:

Provided further that any differential right already issued by an Alternative Investment Fund prior to the notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024, not falling within the first proviso of sub-regulation (22) of this regulation, shall be dealt with in the manner as specified by the Board."

12. Accordingly, in terms of first proviso to Regulation 20(22) of AIF Regulations, it is specified that differential rights may be offered by AIFs to select investors without affecting the rights of other investors, based on the following guiding principles:

12.1. Any such right shall not result in any investor bearing liability accrued or accruing to other investors of the AIF/scheme of AIF;

12.2. Any such right with respect to non-monetary / non-commercial terms shall not provide control to an investor on the decision making of the AIF/scheme of AIF, except in cases where investor/its nominee is part of any committee set up in terms of Regulation 20 (7) of AIF Regulations;

12.3. Any such right shall not alter the right(s) available to other investors under their respective agreements with the AIF/manager; and,

12.4. Any such right and eligibility to avail the same shall be transparently disclosed in the PPM of the AIF/scheme of the AIF.

13. In this regard, it has been decided that the Standard Setting Forum for AIFs ('SFA') shall, in consultation with SEBI, formulate the implementation standards

for compliance with the aforesaid provision, prescribing the positive list of specific differential rights that may be offered by AIFs. Such list may be reviewed and updated by SFA, whenever necessary, in consultation with SEBI.

14. The implementation standards formulated by SFA shall be published on the websites of the industry associations which are part of SFA, i.e., Indian Venture and Alternate Capital Association (IVCA), PE VC CFO Association and Trustee Association of India, on or before January 15, 2025.

15. AIFs, Managers of AIFs and their Key Management Personnel shall ensure the following while issuing differential rights to select investors –

15.1. The differential rights shall be provided only in accordance with the implementation standards formulated by SFA.

15.2. The following shall be disclosed in the PPM -

(a) Eligibility criteria for an investor to avail each differential right; and,

(b) Any investor meeting the specified eligibility criteria for a differential right may opt to avail such right.

Applicability on existing AIFs/schemes of AIFs -

16. In terms of standard template for PPMs prescribed by SEBI vide its circular dated February 05, 2020, AIFs are required to disclose to investors in their PPM that any differential right offered to an investor(s), through separate classes of units or side letters/agreements, shall not have any adverse impact on the economic rights or any other rights of other investors.

17. AIFs/schemes of AIFs whose PPMs were filed with SEBI post applicability of the aforesaid circular, i.e., on or after March 01, 2020, shall comply with the following –

17.1. The manager shall report the details of differential right(s) which do not fall under the implementation standards formulated by SFA, to SEBI in the format as given at ***Annexure I***, by emailing to aifreporting@sebi.gov.in, on or before February 28, 2025.

17.2. Out of the rights reported to SEBI as per para 17.1. above, the manager shall immediately terminate/discontinue those differential rights which are ascertained to be affecting the rights of other investors.

18. Further, Large Value Fund for Accredited Investors (LVFs), whose PPMs are filed with SEBI for launch of scheme post the date of issuance of this circular, may avail exemption from the requirement of maintaining pari-passu rights among investors, subject to the following -

18.1. Making appropriate disclosure in the PPM of the scheme; and,

18.2. Obtaining undertaking from accredited investor at the time of on-boarding to LVF in terms of para 4.1 of Annexure 8 of SEBI Master Circular for AIFs dated May 07, 2024, with the following clause inserted for waiver to this effect –

"The prospective investor is aware that LVFs may avail exemption from the requirement of maintaining pari-passu rights among investors and therefore, may offer differential rights to select investors which might affect interest of others investors of the LVF."

19. Existing LVFs may avail exemption from the requirement of maintaining pari-passu rights among investors, subject to each investor of the scheme specifically providing the waiver to this effect as mentioned in para 18.2 above.

20. The trustee/sponsor of AIF, as the case may be, shall ensure that the 'Compliance Test Report' prepared by the manager in terms of Chapter 15 of SEBI Master Circular for AIFs dated May 07, 2024, includes compliance with the provisions of this circular.

21. This circular shall come into force with immediate effect.

22. This circular is issued with the approval of the competent authority.

23. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with Regulations 20(21), 20(22) and 36 of AIF Regulations, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

24. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

Yours faithfully,

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Annexure I

Format for reporting differential rights issued to investors

(in terms of para 17.1 of this circular)

S. No.	Particulars	Information submitted by the AIF
(i)	Name of AIF	
(ii)	Registration no. of AIF	
(iii)	Name of scheme	
(iv)	Name of manager	
(v)	List of differential rights and the terms under which such differential rights have been issued by the AIF/scheme of AIF	

Details of differential rights issued to select investors, which are not covered in the implementation standards formulated by Standard Setting Forum for AIFs ('SFA') -

S. No.	Differential rights which are not covered in implementation standards formulated by SFA	Whether the differential right disclosed in the PPM of the AIF/scheme of AIF (State 'Yes or No')	Whether the differential right affects the rights of other investors of AIF/scheme of AIF (State 'Yes or No')	Remarks, if any

(The aforesaid information, separately given for each scheme of AIF, shall be sent in MS Excel format by emailing the same to aifreporting@sebi.gov.in, with the subject *'Information of differential rights issued to investors').*