New SEBI Regulations Impacting Alternative Investment Funds in India

By: Akil Hirani, Managing Partner, Majmudar & Partners, India

The Securities and Exchange Board of India (the "**SEBI**") has issued two (2) circulars, dated November 17, 2022 (the "**SEBI November 17 Circular**") and November 23, 2022, (the "**SEBI November 23 Circular**"), respectively, in furtherance of the SEBI (Alternative Investment Funds) Regulations, 2012 (the "**AIF Regulations**") to protect investor interests and to better regulate the securities market. The amendments made by the SEBI are discussed below.

The SEBI November 17 Circular

Regulations 12 and 13 of the AIF Regulations empower the SEBI to issue rules as to when a fund must declare the first close of the scheme of an Alternate Investment Fund ("**AIF**") (i.e., the deadline by which investors must commit to investing a specified amount of capital in a fund) as also how to calculate and/or modify the tenure of a close ended scheme.

- The SEBI November 17 Circular stipulates that the first close of a scheme must be declared within twelve (12) months from the date on which the SEBI communicates to the AIF applicant that the SEBI has taken on record the private placement memorandum (the "**PPM**").

- In the case of open-ended schemes of Category III AIFs (i.e., schemes which allow investors to enter or exit at any time and buy additional units in the scheme after the scheme has opened), the close of the initial offer period will be considered as the first close.

- In the case of a Large Value Fund ("**LVF**") (an AIF scheme in which every investor is an accredited investor and invests a minimum sum of INR 700,000,000), for Accredited Investors (individuals or business institutions who are permitted to deal in securities that are not available to the general public), the twelve (12) month period will commence either on the date on which the AIF is registered by the SEBI or the date of filing of the PPM, whichever is later.

- Existing schemes (including LVF schemes) which are yet to declare their first close must do so within twelve (12) months from the date of issue of the SEBI November 17 Circular, i.e., on or before November 17, 2023.

- Existing AIF schemes where the PPMs have been taken on record prior to twelve (12) months from the date of issue of the SEBI November 17 Circular, and have not declared the first close, must submit an updated PPM to the SEBI in a prescribed procedure and circulate the updated PPM to their investors before declaring the first close.

Raheja Chambers, 2nd floor, Free Press Journal Road, Nariman Point, Mumbai 400 021, India
Tel: +91 22 6123-7272; Fax: 6123-7252; E-mail: mailbox@majmudarindia.com
Other Office – Bangalore | Integrated Network Offices – Chennai, Hyderabad and New Delhi
www.majmudarindia.com

- At the time of declaring the first close, the scheme must meet the minimum corpus requirements prescribed in the AIF Regulations for the corresponding category/sub-category of AIF. The commitment provided by a sponsor/manager to meet the minimum corpus requirement at the time of declaring the first close cannot be reduced, withdrawn or transferred after the first close. If the first close is not declared within the applicable prescribed timeline, the AIF must file a fresh application to launch the scheme.

- The tenure of a close ended scheme (schemes which have a fixed maturity and permit investors to buy units only during the new fund offer period) will be calculated from the date of declaration of the first close.

- The tenure of a scheme may be modified by the AIF at any time before the first close is declared, and an investor can withdraw or reduce his/her/its commitment to the AIF scheme prior to the declaration of first close.

- Existing schemes which have declared their first close can calculate their tenure from the date of final close.

- Existing schemes which have not yet declared their final close must declare the final close as per the timeline provided in the PPM without any discretion to extend the timeline.

- In case there is a change in sponsor or manager, or change in control of the sponsor, manager or of the AIF, prior SEBI approval must be taken.

The SEBI November 23 Circular

Certain AIF schemes have adopted a distribution waterfall in such a way that one class of investors (other than sponsor/manager) share loss more than *pro rata* to their holding in the AIF vis-à-vis other classes of investors/unit holders, since the latter have priority in distribution over former (the "**Priority Distribution Model**"). The SEBI is examining such schemes and has directed that AIF schemes which have adopted such a Priority Distribution Model must not accept any fresh commitment or make investment in a new investee company until a view is taken by SEBI in this regard.

Raheja Chambers, 2nd floor, Free Press Journal Road, Nariman Point, Mumbai 400 021, India
Tel: +91 22 6123-7272; Fax: 6123-7252; E-mail: mailbox@majmudarindia.com
Other Office – Bangalore | Integrated Network Offices – Chennai, Hyderabad and New Delhi
www.majmudarindia.com