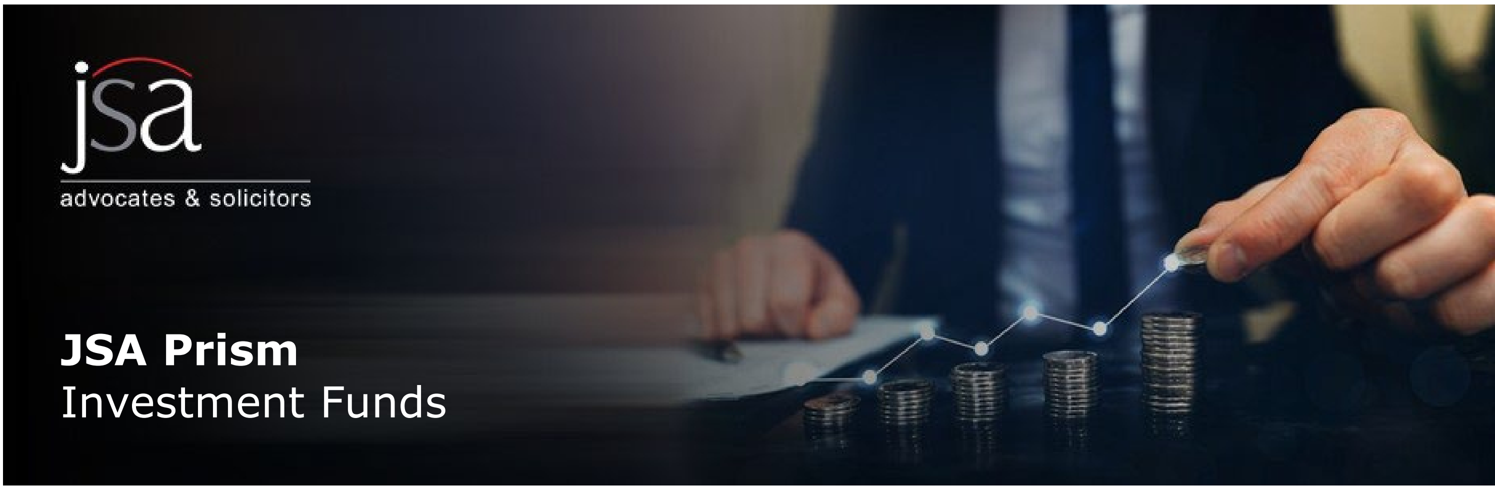

June 2022

Guidelines issued for 'large value funds' for accredited investors

Introduction

In 2021, the Securities and Exchange Board of India ("**SEBI**") amended the SEBI (Alternative Investment Funds) Regulations, 2012 (the "**AIF Regulations**") to provide certain relaxations to a large value fund for accredited investors ("**LVF**"). The AIF Regulations define a "large value fund for accredited investors" as an alternative investment fund ("**AIF**") or scheme of an AIF in which each investor (other than the manager, sponsor, employees or directors of the AIF or employees or directors of the manager) is an accredited investor[1] and invests not less than INR 70 crore.

Under the AIF Regulations, the existing relaxations for a LVF for accredited investors inter alia included (a) an exemption from filing the placement memorandum with SEBI prior to launch of a scheme, (b) an exemption from obtaining approval of two-thirds of the unit holders by value of their investment in the AIF for extension of the tenure of the close ended AIFs for upto two years, and (c) relaxed thresholds for investment of investable funds in investee companies, as compared to other AIFs.

Recent Amendments

SEBI has issued a circular on June 24, 2022 ("**SEBI Circular**") pursuant to which it provided certain guidelines for LVFs and also certain requirements for AIFs in general.

The key provisions of the SEBI Circular are set out below.

1. **Filing of an undertaking along with the placement memorandum for an LVF**

   (a) As per the AIF Regulations, the requirement of filing of the placement memorandum with SEBI (through a merchant banker) at least 30 days prior to launch of the scheme, and thereafter incorporating SEBI comments, is not applicable to LVFs. The launch of the scheme can be intimated to SEBI.

   (b) As per the SEBI Circular, SEBI now requires that along with the filing of the placement memorandum with SEBI, an undertaking must also be submitted with SEBI ("**LVF Undertaking**"). The LVF Undertaking should be duly stamped and signed by (i) the CEO of the manager to the AIF (or person holding equivalent role or

[1] The AIF Regulations define an "accredited investor" as any person (such as an individual, Hindu undivided family, partnership, body corporate and sole proprietorship), who is granted a certificate of accreditation by an accreditation agency and meets the income and net worth criteria as set out under the AIF Regulations. Please note that Central Government and the state governments, developmental agencies and funds set up by the central/state governments, qualified institutional buyers, category I foreign portfolio investors, sovereign wealth funds and multilateral agencies and any other entity specified by SEBI, are deemed to be accredited investors and do not require a certificate of accreditation.

position depending on the legal structure of the manager) and (ii) the compliance officer of the manager to the AIF.

(c) The LVF Undertaking must be in the format prescribed by the SEBI Circular. The SEBI Circular requires the signatories to undertake that (i) they have independently exercised due-diligence regarding information given in the placement memorandum, (ii) the AIF, its sponsor and manager are fit and proper persons as per the applicable SEBI regulations, (iii) they are not debarred from functioning by any regulatory authority, (iv) they have satisfied themselves that the proposed activities of the scheme are bona fide, fall within the objectives of the fund as specified in its constitutional documents, (v) all material disclosures have been made in the placement memorandum and they are based on latest available information and are true, fair and necessary to enable the investors to make an informed decision, (vi) they have satisfied themselves about the ability of the sponsor/manager to maintain the minimum continuing interest as per the AIF Regulations, and (vii) they will obtain an accreditation certification and undertaking from prospective investors.

(d) The LVF Undertaking also has to be accompanied by details of disclosures in the placement memorandum in prescribed tabular formats.

(e) Each LVF will now need to obtain an undertaking from a prospective investor must be to the effect that (i) the investor wishes to avail the benefits of the accredited investor ("**AI**") framework, (ii) the investor has the ability to bear financial risks related to the investment, (iii) the investor has the knowledge and means to understand the features and risks of the investment product, and (iv) the investment product is meant for AIs and would not be subject to the same regulatory oversight as other investment products meant for non-AI investors.

(f) All AIFs and investment managers should note that in case of LVF schemes already filed with SEBI, the LVF Undertaking should be submitted to SEBI on or before July 31, 2022.

2. Process for extension of the tenure of a LVF beyond two years

(a) The AIF Regulations permit LVFs to extend its tenure for upto two years by approval of two-thirds of unitholders by value, and beyond two years, subject to its contribution agreement, fund documents and any SEBI imposed conditions. Under the SEBI Circular, SEBI has now specified the following:

(i) The placement memorandum, contribution agreement or other fund documents of the LVF must lay down the terms for extension of the tenure beyond two years.

(ii) If the conditions specified in the placement memorandum, contribution agreement or other fund documents of the LVF for extension of tenure are not fulfilled, then the LVF will be required to liquidate and wind up in accordance with AIF Regulations and circulars issued thereunder; and

(iii) For extending the tenure beyond two years, the LVF must obtain approval from its trustee (in case the AIF is a trust), board of directors (in case the AIF is a company) or designated partners (in case the AIF is a limited liability partnership), at least one month before expiration of the fund tenure or extended tenure.

3. Compliance officer for managers of all AIFs

Each AIF has to ensure that its manager designates an employee or director (other than CEO, or equivalent, of the manager) as a 'compliance officer'. The compliance officer will be responsible for monitoring compliance with the SEBI Act, 1992 AIF Regulations and circulars issued thereunder.

Conclusion

The SEBI Circular has introduced these amendments in the interest of investors.

Going forward, an LVF should ensure that its placement memorandum contains all the disclosures specified in the tabular formats prescribed by SEBI, to the extent applicable to it. It must also obtain separate undertakings from their investors as required by SEBI. Since all existing LVFs also need to submit the LVF undertaking by July 31, 2022, fund managers must commence work on this at the earliest.

The SEBI Circular is unclear on whether the constitutional documents for existing LVFs / existing schemes of LVFs need to be modified for including the process on extension beyond two years, or whether this requirement is applicable only prospectively for new LVFs or new schemes of LVFs. If this is intended to apply for existing LVFs / existing schemes of LVFs, then fund managers must commence this process at the earliest as such amendments may require consents of existing investors in the LVF / scheme.

SEBI also needs to provide clarity on the timeline within which a compliance officer needs to be appointed by an AIF. Since the LVF Undertaking must be signed by a compliance officer, it is assumed that all existing LVFs will have to appoint such a compliance officer before July 31, 2022. Further, while SEBI has not prescribed any specific eligibility criteria for the compliance officer to be appointed by AIFs (other than that the person should be an employee or director of the manager), it is important for managers to appoint a suitable person in this position given the importance of the role and possible consequences of non-compliance.

Investment Funds Practice

JSA advises fund managers as well as investors in funds. It has advised fund managers on structuring and establishment of a range of funds, both onshore and offshore with varied investment objectives and for investment in various types of asset classes. JSA has also advised domestic and foreign investors that invest in Indian alternative investment funds. We have been involved in the establishment of, or investments in, onshore alternate investment funds registered with SEBI, as well as offshore foreign venture capital investors and offshore private equity funds set up to make investments under the foreign direct investment route to invest in India. We have also advised on foreign portfolio investor funds established outside India which are registered with the Indian securities regulator. We advise clients on the structuring of their funds, including the choice of domicile and vehicle, having regard for the need to achieve optimum tax efficiency for the investors and the manager, marketing and regulatory considerations and any specific issues arising because of the proposed asset class(es) in which the fund will invest. We also assist our clients in their applications with SEBI for various types of fund registrations.

This Prism has been prepared by:

Aashit Shah
Partner

Arrchana A Panchall
Partner

Gail Pereira
Associate

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For more details, please contact km@jsalaw.com

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