

ALTERNATIVE INVESTMENT FUND



STANDARD SETTING FORUM FOR AIFs RELEASES IMPLEMENTATION STANDARDS FOR OFFERING OF DIFFERENTIAL RIGHTS TO AIF INVESTORS

SEBI, *vide* its notification dated November 18, 2024, had notified the SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024 (“**AIF Amendment Regulations**”), thereby amending SEBI (Alternative Investment Funds) Regulations, 2012 (“**AIF Regulations**”). The amendments were introduced with respect to maintaining pro-rata and pari-passu rights of investors in a scheme of an Alternative Investment Fund (“**AIF**”).

SEBI, *vide* its circular dated December 13, 2024 (“**AIF Circular**”) had further laid down the guidelines in respect of granting pro-rata and pari-passu rights of investors of AIFs.

The AIF Circular has 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:

1. Any such right shall not result in any investor bearing liability accrued or accruing to other investors of the AIF/scheme of AIF;
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 the Investment Committee constituted by the manager;
3. Any such right shall not alter the right(s) available to other investors under their respective agreements with the AIF/manager; and
4. Any such right and eligibility to avail the same shall be transparently disclosed in the Private Placement Memorandum (“**PPM**”) of the AIF/scheme of the AIF.

In this regard, Standard Setting Forum for AIFs (“SFA”) has formulated the below mentioned implementation standards, prescribing the positive list of specific differential rights that may be offered by AIFs.

S. No.	Term of the PPM	Differential Right that may be offered
1.	Fund Expenses	For waiving off or reducing the expenses charged to select investors or for the manner or basis of charging the expenses. However, any increase in expenses attributed/attributable to other investors due to such differential right offered to select investors, shall be charged to manager/sponsor of the AIF and not to the other investors of the fund.
2.	Management Fees	For difference in quantum, manner or basis of charging management fee to select investors.
3.	Hurdle rate of return	For having different hurdle rates of return for select investors.
4.	Carried Interest	For having different carried interest calculations for select investors.
5.	Co-investment rights	For offering co-investment opportunities to select investors. However, the common expenses with respect to the co investment shall be shared proportionately between the AIF and the co-investors.
6.	Reporting and Information Rights	For providing/sharing additional information and on a higher frequency to select investors, over and above the information required to be disclosed to all investors under AIF Regulations or as disclosed in the PPM. This shall not include: (i) sharing/providing any information that would be in breach of any applicable law; (ii) any information which should be provided/available to all investors of the fund. Any cost associated with sharing of such information to select investors, shall be charged only to respective investors or to manager/sponsor of the AIF and not to the fund or its other investors.
7.	Representation on committees constituted by the AIF/Scheme	For select investors to nominate/appoint a member on the committees of the AIF/Scheme, including conditions relating to term, tenure, remuneration, attendance requirements, information to be provided, voting rights, resignation, subject to applicable provisions of AIF Regulations, if any.
8.	Most Favoured Nation	For select investors to elect superior beneficial terms/rights provided to other investors of the fund.
9.	Confidentiality of Investors’ details/information	For sharing details/information of other investors to select investors, subject to specific and explicit consent of respective investors whose details/information are to be shared.
10.	Representation and warranties	For giving representation and warranties to select investors in the nature of providing certain undertakings and confirmations with respect to the fund or manager or applicable law, etc. subject to representation/warranty not resulting in any right being provided to such investors.

Further, (i) any information provided to select investors which elaborates fund documents in line with AIF Regulations and circulars, (ii) right in the nature of providing specific treatment to select investors to comply with laws or regulations applicable to them, will not be considered as a differential right.

To read the AIF Amendment Regulations [click here](#), to read the AIF Circular [click here](#) and to read the SFA Implementation Standards [click here](#)

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