



**TRANSIQUE**  
YOUR TRANSACTION CATALYST

# Regulatory Update: November'22

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SEBI (Alternative Investment Funds), 2012

## SEBI (Alternate Investment Funds) (Fourth Amendment) Regulations 2022

Effective from 15<sup>th</sup> November 2022

Ever since the introduction of regulations for Alternative Investment Funds in 2012, SEBI has been curating the same to match the dynamic trends and environment. An active concern for a more regulated mechanism can be witnessed with every amendment introduced. In its recent update, SEBI vide its notification No. SEBI/LAD-NRO/GN/2022/105 (**“the Notification”**) followed by circular number SEBI/HO/AFD-1/PoD/P/CIR/2022/155 (**“the Circular”**), illustrated the new guidelines for Alternative Investment Funds.

With a view to maintaining a stricter check on Alternative Investment Funds, SEBI has clarified the following changes, effective immediately. With these amendments, more discretion and flexibility is granted to the SEBI Board to regulate and monitor AIFs activities and suggest changes from time to time as may be needed.

1. **Amendment in the calculation of Tenure:** The explanation to the definition of “Investible funds” (*Regulation 2(1)(p)*) explaining the term “Tenure”; is amended and now to calculate the tenure of an investible fund, AIFs will have to consider duration from the date of the first close till the last date of the term as specified in the fund documents. Earlier, the above tenure was calculated from the day of its launch to the last day.
2. **Amendment to the provisions of the requirement of declaring the first close of the scheme:** As a new insertion to the provisions of “Filing of the scheme with SEBI” (Regulation 12(4)&(5)), it is now provided that an AIF must define the “first close of the scheme” in its scheme document and it further provides that the same shall be declared in the manner as may be provided by SEBI from time to time. The provision thus gives discretion to SEBI to not only provide the manner for declaration of the first close but also to modify the same according to the changing requirements. The amended provisions also specify that if an AIF fails to declare the first close in the manner specified, then it will be required to file a fresh application with fresh fees for the launch of the scheme to SEBI.

In furtherance to the powers so accorded, vide the aforementioned circular, SEBI has further provided the timelines for declaring the first close in the following manner:

- a. The first Close of a scheme shall be declared not later than 12 months from the date of SEBI communication for taking the PPM of the scheme on record. Further, the existing schemes, who have yet not declared their first close, shall so declare their first close within 12 months from the date of notification, i.e., 17<sup>th</sup> November 2022.
- b. It is also provided that schemes whose PPMs were taken on record prior to 12 months (from the date of the Circular) and who have not yet declared their first close; shall re-submit their PPM (along with Merchant Banker due diligence certificate).
- c. For an open-ended scheme (Category III), the first close shall be considered as the close of their initial offer period.
- d. Corpus at the time of declaring the first close shall not be lower than the minimum corpus prescribed for the respective fund.

- e. It is further provided that the commitment provided by the sponsor or manager at the time of declaration of first close to meet the minimum corpus requirement, shall not be reduced post the declaration of first close.
  - f. For a Large Value Fund for Accredited Investor, the first close shall be declared not later than 12 months from:
    - i. Date of grant of registration
    - ii. Date of filing of PPM of the scheme with SEBI (Whichever is later)
3. **Amendments to the provisions of Tenure:** The Notification also amends the provisions w.r.t. Tenure of an AIF by inserting a new provision (Regulation 13(4)); whereby further discretion has been provided to SEBI to provide the manner of calculation of tenure for a close-ended scheme and the manner for the modification of the same.
- In furtherance to the powers so accorded, vide the aforementioned circular, SEBI has provided that:
- a. the Tenure of a close-ended scheme is to be calculated from the date of declaration of the first close.
  - b. *Further an* AIF can modify the tenure of the scheme anytime only before proclaiming the first close of the scheme.
  - c. It is also specifically provided now that before the first close, an investor may withdraw or reduce the commitment provided by them in the said scheme.
  - d. It is also clarified that the existing schemes which have declared their first close may continue to calculate their tenure from the date of final close (*in terms with an earlier circular dated October 1<sup>st</sup> 2015*); although the scheme which is yet to declare their final close, will do so as provided them in the PPM but AIF/manager shall not have any discretion to extend the said timelines.
4. **Approval of SEBI for Changes in AIF:** vide the Notification, it is now provided that only any material changes in the information provided by AIF at the time of application for registration will be informed to SEBI (*Regulation 20(12)*) and it is now further mandated that any proposed change of sponsor or manager or change in control of AIF/sponsor/manager shall only be with the prior approval of SEBI (*Regulation 20(13)*). It is further provided that any such change will be subject to the levy of such fees and other conditions as may be specified by the board from time to time. Consequently, vide the aforementioned circular, SEBI has provided that:
- a. **In case of change in manager/sponsor or in case of change in control of manager/sponsor**, the fee shall be equal to the registration fee levied on the specific category/sub-category of the AIF. It is further clarified that if a change in both the manager and sponsor is happening simultaneously then also the fee shall be equal to the single registration fees.
  - b. However, no **fee shall be payable** in the following cases:
    - i. Manager acquiring the control or replacing the sponsor
    - ii. Exit of sponsors (in case when AIF has multiple sponsors)
  - c. The fees is to be paid within **15 days** of effecting the proposed change.

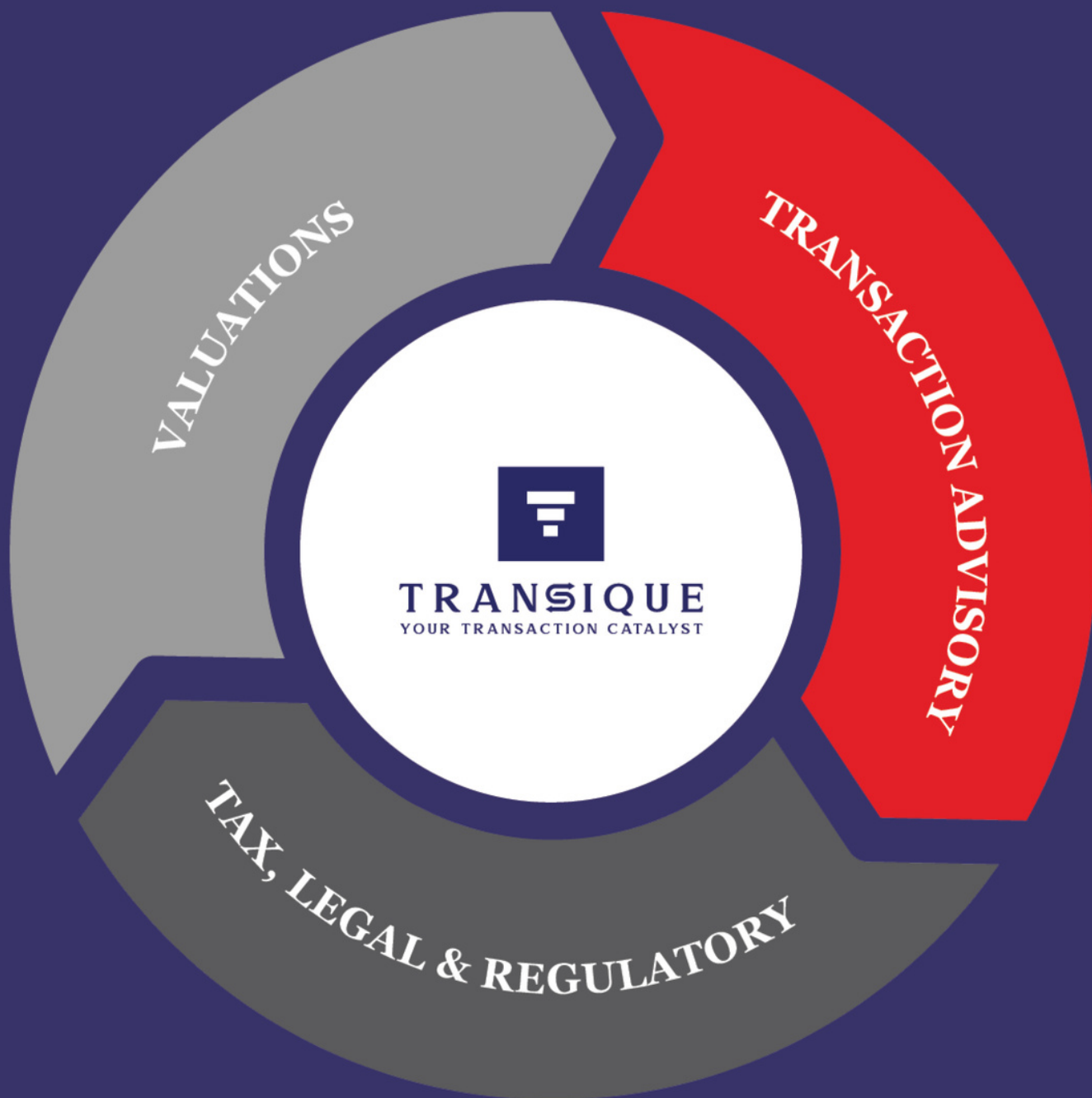
- d. It is now specifically provided that the cost incurred towards such change, shall not be passed on to the investors of AIF in any manner.
  - e. It is also provided that in case of any pending application for aforesaid changes, the fees will be payable only if none of the schemes of AIFs have declared their first close.
5. **Ring Fencing of each Scheme:** Vide the Notification, SEBI also adds (*Regulation 20(16)*) that the manager and the trustee/board of directors/designated partners shall ensure that the assets and liabilities of every scheme of an AIF are segregated and ring-fenced from other schemes. It clarifies further that the bank accounts and securities accounts of each such scheme must be segregated and ring-fenced.

## Transique Corporate Advisors

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