

## **Implementation Standards for offering of differential rights to select investors of an AIF**

A. With reference to SEBI circular no. SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/175 dated December 13, 2024 on 'Pro-rata and pari-passu rights of investors of AIFs' (hereinafter referred as SEBI circular)<sup>1</sup>, para 12 and 13 of the said circular states as under –

12. *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.*

B. Accordingly, the implementation standards prescribing list of specific differential rights that may be offered by AIFs to select investors, as formulated by the Standard Setting Forum for AIFs ('SFA'), are given below.

<b>S. No.</b>	<b>Term of the PPM</b>	<b>Differential Right may be offered -</b>
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

<sup>1</sup> Upon update to SEBI Master Circular for AIFs for FY24-25, the said reference to circular to be read as reference to corresponding chapter in the updated Master Circular for AIFs

<b>S. No.</b>	<b>Term of the PPM</b>	<b>Differential Right may be offered -</b>
		the co-investment shall be shared proportionately between the AIF and the co-investors.
6.	Reporting and Information Rights	<p>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.</p> <p>This shall not include –</p> <ul style="list-style-type: none"> <li>• Sharing/providing any information that would be in breach of any applicable law;</li> <li>• Any information which should be provided/available to all investors of the fund.</li> </ul> <p>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/other investors of the fund.</p>
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 various 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.

C. Further, the following may be noted –

- (i) Any information provided to select investors which is in the nature of elaborating on terms/disclosures in PPM or contribution agreement/fund documents, in line with AIF Regulations and circulars issued thereunder, is not to be construed as a differential right.
- (ii) Right in the nature of providing specific treatment to select investors, in order for the investors to comply with laws or regulations applicable to them shall not be considered as a differential right.

D. As stated in para 13 of the SEBI Circular, the list provided at para B above may be reviewed and updated by SFA, in consultation with SEBI, whenever necessary. Accordingly, any differential right not covered in para B above, which meets conditions specified at para 12 of the SEBI circular, may be shared with the Standard Setting Forum for AIFs (SFA) or the respective industry associations for AIFs for updating the Para B above, after due consultation with SEBI.