



SEBI puts new AIFs and scheme launch on hold where ICs may have not resident Indian citizens | SCORES - only promoter shares to be frozen | Recovery Expense Fund to be created

INSIGHTS

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SEBI has introduced series of changes as follows:

- Processing of applications for registration of Alternative Investment Fund (AIF) and launching of new schemes, where investment committee of an AIF consists of external members who may be resident Indian citizens or not resident Indian citizens;
- Amendment to the Standard Operating Procedure issued for handling of SCORES complaints by stock exchanges and non-redressal of grievances by listed companies to clarify that only promoters' securities will be frozen and not the entire "promoter and promoter group"
- Creation of 'Recovery Expense Fund' to deal with defaults in relation to listed debt securities.

Key changes are provided below:

▪ Processing of applications for registration of AIFs and launching of new schemes

In view of the recent amendments introduced vide SEBI (Alternative Investment Funds) (Amendment) Regulations, 2020 dated October 19, 2020 ([available here](#)) providing that the fund manager may constitute an Investment Committee (IC) to approve investment decisions of the AIF, SEBI has written to the Government and RBI seeking clarity on whether the investment made by an AIF whose IC approves investment decisions and consists of external members who are not 'resident Indian citizens', would fall under clause (4) of Schedule VIII under FEM (Non-debt Instruments) Rules, 2019 and accordingly be reckoned as indirect foreign investment. Till clarification is received from Government/ RBI, SEBI has stated that the applications for registration of AIFs and launch of new schemes will be dealt as under:

- The applications wherein IC proposed to be constituted to approve investment decisions of AIF includes external members who are 'resident Indian citizens', shall be duly processed;
- The applications wherein IC proposed to be constituted to approve investment decisions of AIF includes external members who are not 'resident Indian citizens', the same shall be considered only after receipt of clarification from the Government and RBI.

The aforesaid clarification has been provided vide SEBI Circular dated October 22, 2020 ([available here](#)).

▪ Amendment to the Standard Operating Procedure issued for handling of SCORES complaints by stock exchanges – Only promoters' securities to be frozen and not the entire "promoter and promoter group"

SEBI had recently provided the procedure for handling of complaints by the stock exchanges, as well as standard operating procedure for actions to be taken against listed companies for failure to redress investor grievances through SCORES platform vide SEBI Circular dated August 13, 2020 ([available here](#)). As per the circular, in case of non-compliance by listed entity and/ or failure to pay fine levied within the stipulated period as per the notices, the designated stock exchange was empowered to issue intimation to depositories to freeze the entire shareholding of the promoters and promoter group in the concerned listed entity as well as all other securities held in the demat account of the promoter and promoter group.

SEBI has now revised the aforesaid provision to remove "promoter group" and accordingly, the securities of only the promoter(s) will be frozen. The aforesaid amendment has been made vide SEBI Circular dated October 22, 2020 ([available here](#)).

▪ Creation of 'Recovery Expense Fund'

Vide recent amendments, SEBI had directed that the issuer is obligated to create a recovery expense fund (REF) and the debenture trustee is to ensure the implementation of recovery expense fund. Now, in order to enable the Debenture Trustee(s) to take prompt action for enforcement of security in case of 'default' in listed debt securities, SEBI has provided the manner of creation, utilization and refund of REF. The requirements will come into force w.e.f. January 01, 2021 and all the applications for listing of debt securities made on or after January 01, 2021 will be required to comply with the condition of creation of REF. The existing issuers whose debt securities are already listed on Stock Exchange(s) shall be given additional time period of 90 days to comply with the requirements for creation of REF.

SEBI Circular dated October 22, 2020 ([available here](#)) lays further detail in relation to the aforementioned.

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