

## SEBI proposes new rules for obtaining consent from investors in AIFs

A consultation paper issued on June 30, 2026, by SEBI (**Consultation Paper**) proposes to amend the SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**) to rationalize (i) the manner and threshold for obtaining investor consent, and (ii) replace the current narrow “associate”-based test with a broader “related party” framework (based on the definition in Section 2(76) of the Companies Act, 2013) for transactions involving material conflicts of interest. Public comments have been invited until July 21, 2026. This Update addresses the proposals relating to investor consent set out in the Consultation Paper. We shall deal with the second topic, namely the replacement of “associate” with “related party”, in our next Update.

### A UNIFORM THRESHOLD FOR OBTAINING CONSENT

Currently, the AIF Regulations mandate two approval thresholds, approval of either 2/3rd or 3/4th (75%) of investors by value of their investment, for different activities. SEBI notes that there is no rationale for requiring different thresholds of approval of investors for different activities / transactions under the AIF Regulations. Therefore, the Consultation Paper proposes a single threshold of 3/4th (75%) of investors by value wherever a different threshold is currently prescribed.

### STANDARDIZATION OF THE CONSENT MECHANISM

AIFs have adopted diverse market practices for obtaining investor consent, with the result that identical approval thresholds may yield different outcomes depending on the voting methodology followed. Divergent practices result in disputes or misinterpretation, particularly in situations involving conflicts of interest.

SEBI has proposed in the Consultation Paper that an AIF be required to elect one of three prescribed methodologies for obtaining and calculating investor consent, and to apply the elected methodology consistently at the scheme or fund level. The methodologies are as follows and differ principally in their treatment of investors who do not respond:

- Deemed Consent Methodology;
- Present and Voting Methodology; and
- Express voting for approval Methodology

The Consultation Paper further explains each methodology by an illustration involving a fund of 100 investors holding equal interests, in which 30 investors vote in favour, 10 vote against and 60 abstain. It demonstrates that the same vote produces investor consent of 90%, 75% or 30% respectively:

METHODOLOGY	HOW CONSENT IS MEASURED	EXAMPLE: IN AN ELECTION, 30% VOTE FOR, 10% VOTE AGAINST, 60% ABSTAIN)
<b>Deemed consent</b>	Absence of any response is treated as approval, measured against the total value of the fund. This is the model most AIFs currently follow.	If deemed consent is applied to the example, it will tantamount to approval by 90% since the 60% who abstained will be counted as having voted in favour of the proposal.
<b>Present and voting</b>	Only votes actually cast are counted, measured against the value of participating investors. This mirrors the practice under	If present and voting method is applied, this will tantamount to 75 percent approval (30% in favour out of 40% who voted).

	the mutual fund, listed company, REIT and InvIT frameworks.	
<b>Express voting for approval</b>	Only explicit votes in favour are counted, measured against the total value of the fund. This offers the highest investor protection but is hardest to meet where participation is low.	If express voting for approval method is applied, this will tantamount to 30% percent approval.

The Consultation Paper proposes that elected methodology must be applied uniformly to all investors within a scheme and states that the AIF may not adopt the deemed consent methodology for the general body of investors while according express consent rights to select investors.

The Consultation Paper also couples the above methods with a set of procedural safeguards:

- disclosure in the PPM of the chosen methodology, the related policy and procedures, and the associated risks, including the manner of contacting investors, the conduct of meetings and voting, and the notice and reminder timelines;
- a requirement that every investor be given an opportunity to vote on each proposal, with disclosure of the proposal and its rationale, the provision that triggers the consent requirement, the applicable threshold, and the treatment of non-response;
- responsibility on the manager to ensure transparency, fair access and adherence to the policy, to respond to investor queries within a reasonable time, and to maintain records of all communications, meetings and votes; and
- grandfathering of the methodologies currently used by existing schemes, with the new policy applying only prospectively.

### ELP Comments

- *Many AIFs use the “deemed consent” route when they feel that their investors may not respond in time. However, in the absence of any formal regulatory approval, such usage always been under a cloud. Once the proposed new rules are implemented, the “deemed consent” route will be formalized.*
- *Once the proposals in the Consultation Paper are implemented, this threshold will increase to 75% for the following activities:*
  - *The extension of the tenure of a close ended scheme under Regulation 13(5);*
  - *Extension of the tenure of a migrated venture capital fund permitted up to two years.*
- *Currently, a material alteration of the fund strategy under Regulation 9(2) requires the consent of 2/3<sup>rd</sup> of investors by value. Surprisingly, the draft amendment to the AIF Regulations which is given in Annexure D of the Consultation Paper (**Draft amendment to the AIF Regulations**) shows that this threshold remains unchanged.*
- *Regulation 18(c) of the AIF Regulations presently states that investor consent is required if a Category III AIF wants to engage in leverage or borrow. However, Regulation 18(c) does not stipulate a threshold for this consent. The Draft amendment to the AIF Regulations shows that the proposal to prescribe a uniform seventy-five per cent threshold will not apply to Regulation 18(c) of the AIF Regulations. In any event, it is common practice for PPMs of Category III AIFs to state that the AIF shall leverage or borrow to the maximum extent permitted by SEBI, which is currently 2 times the NAV of the AIF. Inserting the aforementioned language in the PPM of a scheme binds all investors in the scheme and obviates the need for taking consent.*
- *It is unclear from the Consultation Paper if an AIF could specify a combination of the three options (or a variation thereof) for obtaining approval from investors. For example, an AIF could state that it shall seek investor consent through the “present and voting” option or the “express voting for approval”, provided at least 80% of its investors by value participate in the election process. If less than 80% of its investors by value participate in the election process, the votes will be calculated using the deemed consent process. Another option for AIFs would be to specify one methodology (say the “express voting for approval” process) when*

*seeking investor consent for critical changes such as any change of investment manager or change in control of investor manager and another methodology (say the “deemed consent” process or the “present and voting” process) when seeking approval from investors for any other change in the terms of the PPM.*

The consultation paper dated June 30, 2026 can be found [here](#).

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

**Vinod Joseph, Partner** – [vinodjoseph@elp-in.com](mailto:vinodjoseph@elp-in.com)

**Paridhi Jain, Senior Associate** – [paridhijain@elp-in.com](mailto:paridhijain@elp-in.com)

**Disclaimer:** *The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice.*