

December 21, 2023

Reserve Bank of India Guidelines to Regulated Entities on AIF Investments

On December 19, 2023, the Reserve Bank of India (“**RBI**”) released circular bearing no. RBI/2023-24/90, which pertains to the apprehensions surrounding Regulated Entities¹ (“**REs**”) investments in Alternative Investment Funds (“**AIFs**”). The circular acknowledges that REs commonly involve themselves in AIF investments as part of their regular operations. However, the circular raises regulatory concerns specifically related to transactions involving AIFs. These transactions involve replacing the direct loan exposure of REs to borrowers with an indirect exposure achieved through investments in units of AIFs.

This circular has been issued pursuant to the authority vested in accordance with Sections 21 and 35A read with Section 56 of the Banking Regulation Act, 1949, Chapter IIIB of the Reserve Bank of India Act, 1934 and Sections 30A, 32, and 33 of the National Housing Bank Act, 1987. The provisions of this circular will take immediate effect.

To mitigate concerns regarding potential evergreening through this method, the following guidelines have been recommended:

1. REs are restricted from investing in any AIF scheme that has downstream investments, whether directly or indirectly, in a debtor company of the RE. For clarification, the debtor company of the RE pertains to any entity to which the RE currently has or had a loan or investment exposure at any point within the preceding 12 months.
2. If an AIF scheme, in which an RE is already an investor, undertake a downstream investment in any such debtor company, the RE is obligated to divest its investment in the scheme within 30 days from the date of the AIF's downstream investment. For REs already holding investments in such schemes with downstream investments in their debtor companies as of the circular's issuance date, the 30-day liquidation period commences from the circular's issuance date.
3. If REs are unable to liquidate their investments within the stipulated timeframe, they are required to make a 100 percent provision on such investments.
4. Furthermore, the investment by REs in the subordinated units of any AIF scheme employing a 'priority distribution model' will be subject to complete deduction from the RE's capital funds.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

¹REs includes All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks), All Primary (Urban) Co-operative Banks/State Co-operative Banks/ Central Co-operative Banks, All All-India Financial Institutions, All Non-Banking Financial Companies (including Housing Finance Companies)

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AWARDS & RECOGNITIONS



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