

Virtual AGM/EGM extension | AIF Investor Charter & Grievance Mechanism | SEBI details delisting process through open offer | AIF co-investment norms clarified

Dear Reader

Following significant changes have recently been introduced by MCA and SEBI:

A. MCA permits holding of annual general meeting (AGMs) and extraordinary general meetings (EGMs) through video conferencing (VC) or other audio-visual means (OAVM) till June 30, 2022

B. Co-investment by investors of AIF through portfolio managers

- Registered Portfolio Manager to give prior intimation while unregistered Portfolio Managers to seek registration from SEBI;
- Revised formats prescribed for reporting;
- Exemption from fees and charges;
- Direct on-boarding of clients by Portfolio Managers – exemptions.

C. Disclosure by Alternative Investment Funds (AIFs) and investor grievance mechanism

- Investor Charter containing details of grievance redressal mechanism, responsibilities of the investors etc., to be disclosed in the PPM;
- AIFs to disclose data on investor complaints received against AIFs and each of their schemes and the redressal status of these schemes.

D. Delisting pursuant to an Open Offer- Amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code)

Key changes include the following:

- Declaration of Intention to delist to be made in public announcement;
- Eligibility requirements for delisting;
- Disclosure of open offer price; delisting threshold to be met;
- Compliances in case of an unsuccessful delisting offer- Public announcement and reduction in withdrawal period for shareholders, and opportunity for acquirers to make a further delisting attempt in case of an unsuccessful delisting;
- Prohibition on delisting offer in case of a competing offer under the Takeover Code;
- Reduction of shareholding of the acquirer where the shareholding of the acquirer exceeds the maximum permissible non-public shareholding.

The aforesaid changes have been analyzed in detail below:

A. Relaxation in holding of AGM and EGM through VC/OAVM

In furtherance of the earlier relaxation granted by MCA in respect of holding of AGM through VC/OAVM,

MCA has now permitted companies whose AGMs are due in the year 2021, to conduct their AGMs before **June 30, 2022**, through VC/OAVM. It has been clarified that this relaxation should not be construed as conferring any extension of time for holding of AGMs by the companies under Companies Act, 2013 (**CA2013**). The relaxation has been granted vide General Circular No. 19/2021 dated December 8, 2021 ([available here](#)).

MCA has further [vide General Circular No. 21/2021 dated December 14, 2021 ([available here](#))], permitted companies who are proposing to organize AGMs in 2022 for the financial year ended/ending any time before/on March 31, 2022, to use VC/OAVM as per the respective due dates by **June 20, 2022**. It has been clarified that this relaxation should not be construed as conferring any extension of time for holding of AGMs by the companies under CA2013.

In case of EGMs, MCA has permitted companies to hold EGMs through VC/OAVM or transact items through postal ballot till **June 30, 2022**. The extension has been given vide General Circular No. 20/2021 dated December 8, 2021 ([available here](#)).

B. Co-investment by investors of AIF through portfolio managers

SEBI had recently amended (Portfolio Managers) Regulations, 2021 (**PMS Regulations**) to facilitate co-investment by investors of Alternative Investment Funds (**AIF**) through the portfolio management route. In this regard, SEBI has issued the following clarification:

<p>Procedure for undertaking of Co-investment portfolio management services Registered Portfolio Manager to give prior intimation while unregistered Portfolio Managers to seek registration</p>	<ul style="list-style-type: none"> ▪ A Manager of an AIF who is also a SEBI registered Portfolio Manager, and who intends to offer Co-investment services through portfolio management route, shall do so only under prior intimation to SEBI. ▪ Any other Manager who is not a SEBI registered Portfolio Manager, and who intends to offer Co-investment services through portfolio management route, shall seek registration from SEBI as a Portfolio Manager in terms of the PMS Regulations. Pursuant to grant of registration, if this Portfolio Manager would like to offer portfolio management services other than Co-investment, the same shall be subject to compliance with all provisions of the PMS Regulations including eligibility criteria, and with the prior approval of SEBI.
<p>Periodic reporting by Portfolio Managers Revised formats prescribed for reporting</p>	<ul style="list-style-type: none"> ▪ Portfolio Managers to submit a monthly report regarding their portfolio management activity, on SEBI Intermediaries Portal within 7 working days of the end of each month, as per the revised format provided by SEBI. This includes details of Co-investment offered by Portfolio Manager. ▪ Portfolio Managers shall furnish a report to their clients on a quarterly basis, as per the revised format provided by SEBI, which includes details of Co-investment offered by Portfolio Manager. This includes details of Co-investment offered by Portfolio Manager. <p>The reporting requirements as per the revised formats will be applicable for monthly reports to SEBI and quarterly reports to clients, from the month of April 2022 onwards.</p>

Fees and charges Exemption from fees	In respect of co-investment services, Portfolio Managers have been exempted from fees and charges specified under SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020.
Direct on-boarding of clients by Portfolio Managers	The provisions with respect to direct on-boarding of clients by Portfolio Managers as specified under Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020, will not be applicable to Co-investment services.

The aforesaid procedure has been laid down vide SEBI Circular dated December 10, 2021 ([available here](#)), effective from the date of enforcement of SEBI (Portfolio Managers) (Fourth Amendment) Regulations, 2021 (i.e. thirtieth day from November 9, 2021).

C. Disclosure by AIFs and investor grievance redressal mechanism

With a view to providing relevant information to investors about the various activities pertaining to AIFs, an Investor Charter has been prepared by SEBI. This Investor Charter is a brief document containing details of services provided to investors, details of grievance redressal mechanism, responsibilities of the investors etc., in one single place, for ease of reference.

Disclosure of Investor Charter:

- In case of new schemes, Investor Charter to be disclosed in the Private Placement Memorandum (**PPM**).
- In case of existing schemes, as a one-time measure, Investor Charter to be disclosed to the investors on their registered e-mail.

Investor Grievance Redressal Mechanism:

In order to bring about further transparency in the Investor Grievance Redressal Mechanism, AIFs will be required to disclose data on investor complaints received against AIFs and each of their schemes and redressal status thereof. This has to be given as per the prescribed format, in the following manner:

- For new schemes, as a separate chapter in the PPM;
- For existing schemes, by way of updating the PPM within one month of end of each financial year in terms of SEBI Circular No. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549 dated April 7, 2021.

Further, AIFs are required to maintain data on investor complaints as per the prescribed format, which is to be compiled latest within 7 days from the end of quarter.

The aforesaid changes have been introduced vide SEBI Circular dated December 10, 2021 ([available here](#)), effective from **January 1, 2022**.

D. Delisting pursuant to an open offer

SEBI notified the following significant revised compliances relating to delisting pursuant to an open offer under the Takeover Code:

Amendments	Details
Declaration of intention to delist to be made in public announcement	<i>Intention to delist to be disclosed in the public announcement:</i> Where the acquirer intends to delist the target company, the intention of the acquirer to delist shall be disclosed at the time of making such public announcement of

Amendments	Details
	<p>an open offer as well as at the time of making the detailed public statement.</p> <p><u>Intention to delist in case of an indirect acquisition:</u> If the open offer is for an indirect acquisition that is not a deemed direct acquisition under Regulation 5(2) of the Takeover Code, the declaration of the intent to so delist is to be made initially only in the detailed public statement.</p>
Eligibility Requirements	<p>Acquirers seeking delisting of the target company during the 2 years preceding from the date of the public announcement of an open offer, shall not be:</p> <p>(a) a promoter/promoter group/person(s) in control, or</p> <p>(b) directly/indirectly associated with the promoter or any person(s) in control, or</p> <p>(c) a person(s) holding more than 25% shares or voting rights.</p> <p><u>Prohibition on joint control:</u> The acquirer shall not acquire joint control along with an existing promoter/person in control of the company.</p>
Fulfilment of Delisting Offer Obligations	<p>Following delisting offer obligations to be fulfilled by the acquirer:</p> <p>(a) <u>Open offer price to be disclosed:</u> The public announcement, the detailed public statement and the letter of offer shall mention the open offer price determined in accordance with Regulation 8 (<i>Offer Price</i>) of the Takeover Code and the indicative price for delisting.</p> <ul style="list-style-type: none"> ▪ <u>Open offer for indirect acquisition:</u> Where the open offer is for an indirect acquisition that is not a deemed direct acquisition under Regulation 5(2) of the Takeover Code, the open offer price and indicative price shall be notified at the time of making the detailed public statement and in the letter of offer. ▪ <u>Indicative price to include premium:</u> Indicative price for delisting shall include a suitable premium which shall reflect the price that the acquirer is willing to pay for the delisting offer with full disclosures of the rationale and justification for the indicative price so determined. This can also be revised upwards before the start of the tendering period which shall be duly disclosed to the shareholders. <p>(b) <u>Delisting threshold if met:</u> Where the response to the offer leads to the delisting threshold as provided under Regulation 21 of the SEBI (Delisting of Equity Shares) Regulations, 2021 (Delisting Regulations) (<i>Minimum number of equity shares to be acquired</i>) all shareholders who tender their shares shall be paid the indicative price. If the delisting threshold is not met, all shareholders who tender their shares shall be paid the open offer price.</p>
Unsuccessful Delisting	<p>In case of an unsuccessful delisting offer, the acquirer shall make an</p>

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<p>Offer Announcement of such failure in execution of Delisting Offer</p>	<p>announcement in all the newspapers in which the detailed public statement was made, within 2 working days in respect of such failure. This shall be done where such failure was a result of:</p> <ul style="list-style-type: none"> (a) the non-receipt of the prior approval of shareholders in terms of Regulation 11 of the Delisting Regulations (<i>Approval by shareholders</i>); or (b) the non-receipt of the prior in-principle approval of the relevant stock exchange in terms of Regulation 12 of the Delisting Regulations (<i>In-principle approval of the stock exchange</i>); or (c) the threshold as specified under Regulation 21 of the Delisting Regulations (<i>Minimum number of equity shares to be acquired</i>) is not achieved.
<p>Unsuccessful Delisting Offer Reduction in Withdrawal Period for shareholders</p>	<p>Where the delisting offer has been unsuccessful, shareholders who have tendered their shares in acceptance of the delisting offer shall be entitled to withdraw such shares so tendered within 5 working days of the date of the announcement by the acquirer of an unsuccessful delisting offer (as opposed to the earlier period of 10 working days).</p>
<p>Prohibition on Delisting in case of a Competing Offer</p>	<p>Where a competing offer is made in terms of Regulation 20 of the Takeover Code (<i>Competing Offer</i>):</p> <ul style="list-style-type: none"> (a) the acquirer shall not be entitled to delist the target company; (b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to the competing offer; and (c) the acquirer shall make an announcement in this regard, within 2 working days from the date of public announcement made as per Regulation 20(1) of the Takeover Code, in all the newspapers where the detailed public statement was made.
<p>Opportunity to further attempt to delist in case of an Unsuccessful Delisting Offer</p>	<p>Where the target company fails to get delisted pursuant to a delisting offer, but which results in the shareholding of the acquirer exceeding the maximum permissible non-public shareholding threshold:</p> <ul style="list-style-type: none"> (a) <i>Further attempt to delist:</i> The acquirer may undertake a further attempt to delist the target company in accordance with the Delisting Regulations during the period of 12 months from the date of completion of the open offer (Further Delisting Period), subject to the acquirer continuing to exceed the maximum permissible non-public shareholding in the target company. (b) <i>Conditionalities for further delisting attempt:</i> <ul style="list-style-type: none"> (i) The delisting threshold provided under Regulation 21 of the Delisting Regulations to be met (<i>i.e. ninety percent of the total issued shares of that class, excluding certain classes of shares as provided therein</i>); and

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	<p>(ii) 50% percent of the residual public shareholding is acquired.</p> <p>(c) <u>Failure of further delisting attempt</u>: If the further delisting attempt fails, the acquirer shall ensure compliance of the minimum public shareholding requirement of the target company under the Securities Contract (Regulation) Rules, 1957 (SCRR) within a period of 12 months from the end of the Further Delisting Period.</p> <p>(d) <u>Floor price for a further delisting attempt</u>: The floor price shall be higher of the following:</p> <ul style="list-style-type: none"> (i) the indicative price offered under the first delisting attempt; (ii) the floor price determined under the Delisting Regulations as on the relevant date of the subsequent attempt; and (iii) the book value of the company as computed based on the method provided under the Takeover Code.
<p>Reduction of shareholding of acquirer where its shareholding exceeds the maximum permissible non-public shareholding</p>	<p>Where, on the completion of the open offer, the shareholding of the acquirer taken together with persons acting in concert with him exceeds the maximum permissible non-public shareholding, the acquirer is required to reduce the same to the level specified and within the time permitted under SCRR.</p> <p>This reduction in the shareholding is now subject to the following:</p> <p>(a) <u>Proportionate reduction of shares pursuant to an underlying agreement for acquisition/subsorption of shares</u>: Where the acquirer has stated upfront his intention to retain the listing of the target company in the public announcement and the detailed public statement issued pursuant to an open offer, the acquirer may alternatively undertake a proportionate reduction of the shares or voting rights to be acquired pursuant to the underlying agreement for acquisition/subsorption of shares or voting rights and the purchase of shares so tendered. This will be done upon the completion of the open offer process to ensure that the limit provided under SCRR is not breached.</p> <p>(b) <u>Open offer triggered by a preferential allotment</u>: Where an open offer is triggered by a preferential allotment pursuant to a share subscription agreement as envisaged above, the board resolution and shareholder resolution shall be appropriately worded, so as to include the effective date of allocation/allotment and the quantum thereof.</p> <p>(c) <u>Time period for allotment of shares pursuant to scaling down undertaken as per a share subscription agreement</u>: In case of undertaking a scale down of subscription of shares or voting rights from the agreement, the period of 15 days for allotment of shares shall be counted from the date of the closure of the tendering period for the open offer.</p>

Amendments	Details
	<p>(d) <i>Eligibility requirements for acquirer undertaking a scale down:</i> An acquirer undertaking a scale down in a target company during the preceding 2 years from the date of the public announcement, shall not be:</p> <ul style="list-style-type: none"> (i) a promoter/promoter group/person(s) in control, or (ii) directly/indirectly associated with the promoter or any person(s) in control, or (iii) a person(s) holding more than 25% shares or voting rights. <p>Further, the acquirer undertaking a scale down shall not acquire joint control along with an existing promoter/person in control of the company.</p>
<p>Time period of making a voluntary delisting offer where acquirer's shareholding exceeds maximum permissible non-public shareholding,</p>	<p>The acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer, will not be eligible to make a voluntary delisting offer under the Delisting Regulations, unless a period of 12 months has elapsed from the date of the completion of the offer period.</p>
<p>Additional information in Public Announcement</p>	<p>Public announcements to contain the intention of the acquirer to either delist or retain the listing of the target company along with the proposed open offer price and indicative price (including an explanation setting out the rationale and basis thereof).</p>

The aforementioned changes to the Takeover Code have been made vide the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 dated December 6, 2021 ([available here](#)).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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