



# **Recap of Recent Regulatory & Legal Updates**

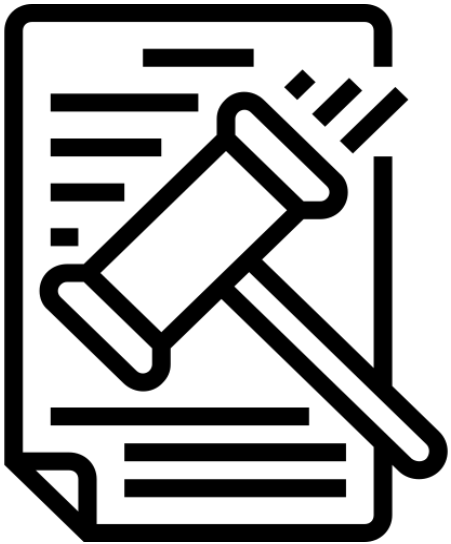
**(December, 2023)**



# **Securities Laws:** **Consultation** **Paper** on **Trading Plan**



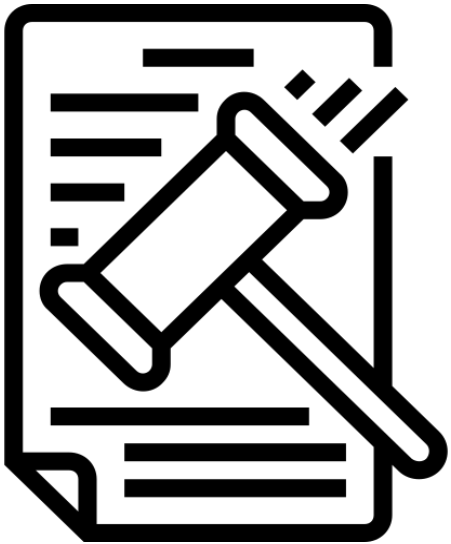
## Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015



The Consultation Paper revolves around the review and proposed amendments to the regulations concerning Trading Plans (TP) under the SEBI (Prohibition of Insider Trading) Regulations, 2015 in India. Insider trading, or trading based on Unpublished Price Sensitive Information (UPSI), is prohibited, but insiders, such as senior management or key managerial personnel (KMP), face constraints due to possessing UPSI most of the time.



## Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015



To address these constraints, the concept of Trading Plans was introduced, allowing insiders to trade in a compliant manner while perpetually in possession of UPSI. However, since their introduction in 2015, the usage of Trading Plans has been limited due to perceived onerous regulatory requirements.

SEBI formed a Working Group comprising officials, stock exchanges, and market participants to review and suggest changes to the Trading Plan framework.



# Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015

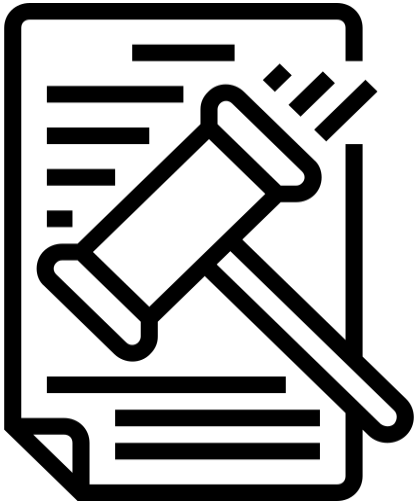
The Working Group submitted its recommendations to SEBI, proposing several amendments:



- 1. Cool-off period reduction:** From six months to four months between disclosure and implementation of the Trading Plan.
- 2. Minimum coverage period reduction:** From twelve months to two months.
- 3. Elimination of black-out period:** No requirement for a black-out period for trading under a Trading Plan.



# Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015



**4. Price limit flexibility:** Insiders can set price limits (+/-20%) for buy and sell trades in the Trading Plan. Trades outside these limits won't be executed.

**5. Contra-trade restrictions:** Trades under a Trading Plan will be subject to contra-trade restrictions.

**6. Timeline for disclosure:** Disclosure of TP to stock exchanges within two days from approval.

**7. Format for reporting TP details:** A standardized reporting format in consultation with market participants.



## Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015

The Consultation Paper also deliberates on the disclosure of personal details (Name, Designation, PAN) of insiders in the Trading Plan. It explores three alternatives:



**1. Continuing with full disclosure:** Personal details of insiders will be disclosed along with the Trading Plan for informed decision-making and monitoring by the stock exchanges.

**2. Masking personal details:** Protecting insider privacy by concealing their personal details in the TP.

**3. Dual disclosure:** Insiders make separate filings - one with personal details to the stock exchange (kept confidential) and one without personal details made public. A unique identifier is suggested for reconciliation between these filings.



# Consultation Paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (PIT) Regulations, 2015



SEBI seeks feedback and comments from stakeholders on these proposed amendments and alternatives for the Trading Plan framework under SEBI regulations latest by **December 15, 2023.**





# Regulatory & Legal Updates: **Limited Liability Partnership**

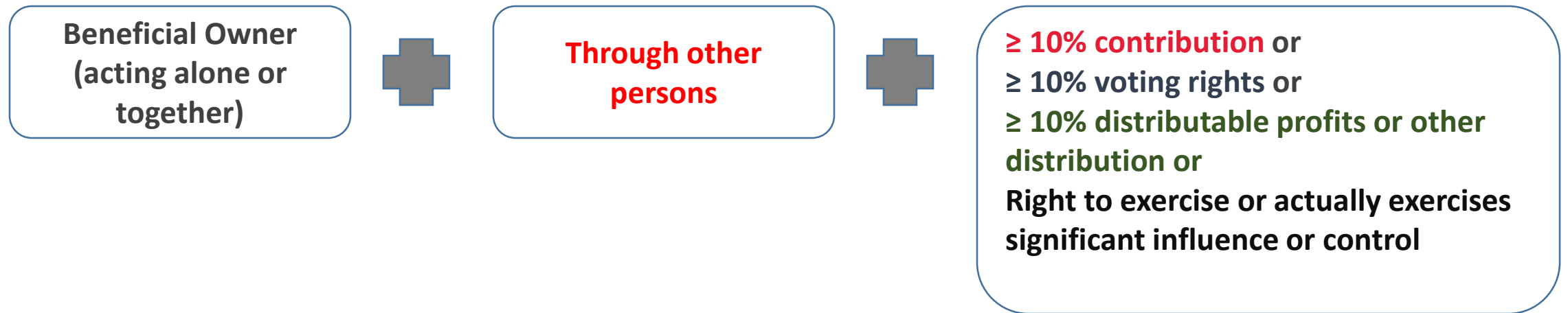


## MCA notifies SBO Rules in LLP



MCA has notified the SBO Rules in LLP in the similar line as applicable on Companies.

# Significant Beneficial Owner (SBO)



10% contribution/voting rights/distributable profits includes direct + indirect holdings

But

To determine significant influence or control , direct and indirect holdings are not necessary

# Exercising Rights or Entitlements ACTING TOGETHER

If an individual is acting through

- Any person or
- Trust

and act with common intent or purpose of

- exercising any rights or entitlements or
- exercising control or significant influence over a reporting LLP

pursuant to an agreement or understanding, formal or informal,

**such individual or individuals, acting through any person or trust shall be deemed to be acting together**

## Permutations and Combinations

No

Direct  
holding

-

Yes

-

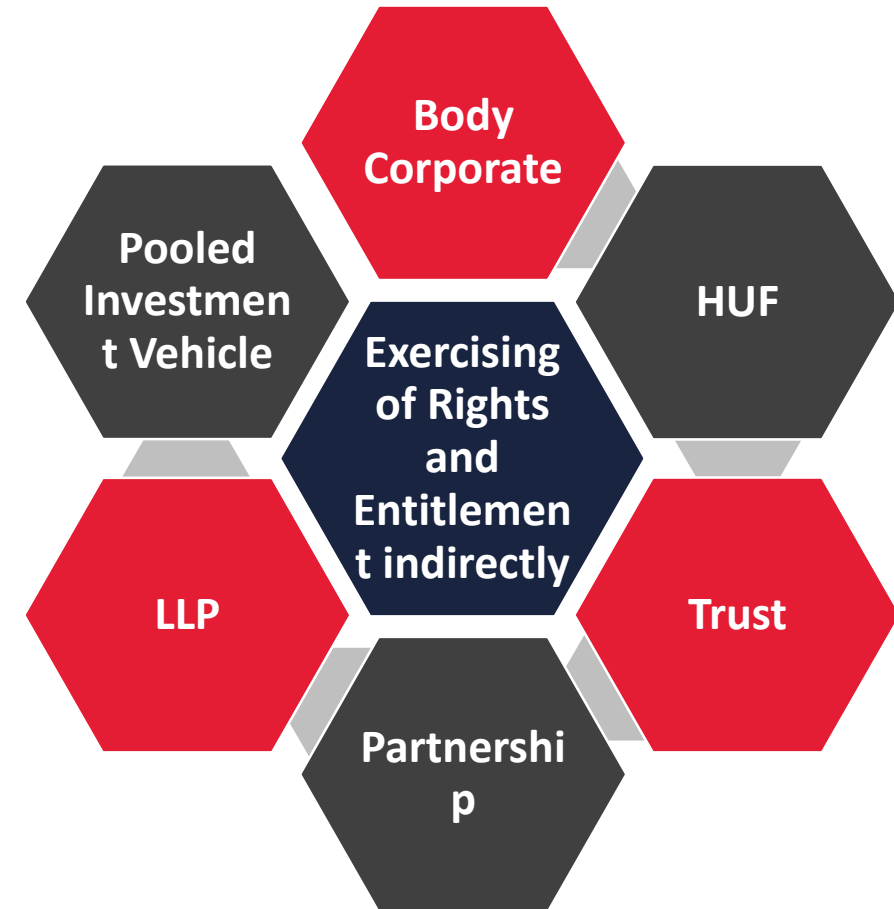
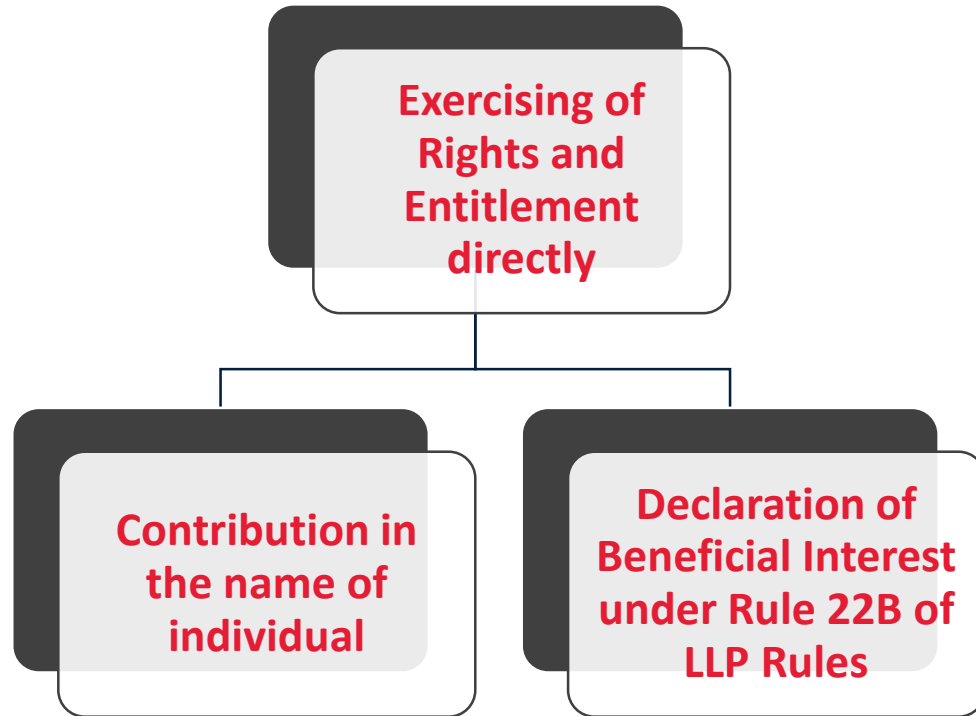
Indirect  
holding

Yes

Direct  
Holding

Indirect  
holding

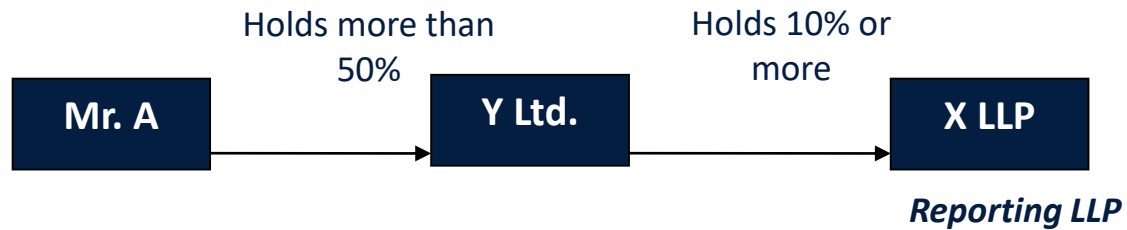
# Exercising of Rights and Entitlement DIRECTLY & INDIRECTLY



# Body Corporate

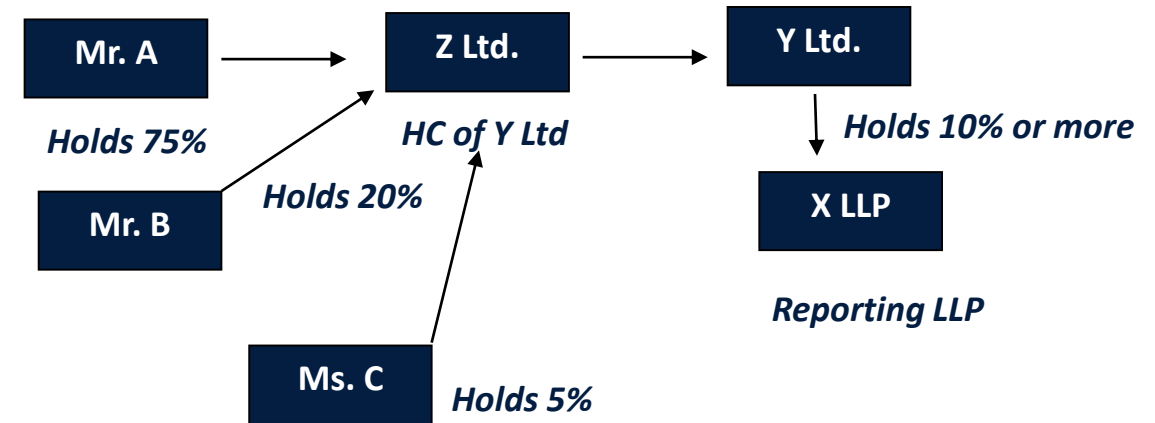
How rights and entitlements will be deemed to be held by an individual indirectly, when the partner of the Reporting LLP is a Body Corporate?

Such Individual holds **majority stake** in that partner of such Body Corporate



*Mr. A shall be the SBO*

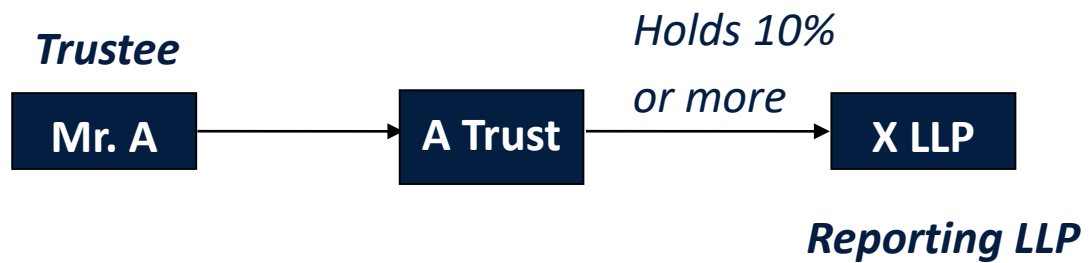
Such Individual holds **majority stake** in Ultimate Holding Company ("UHC") of that partner



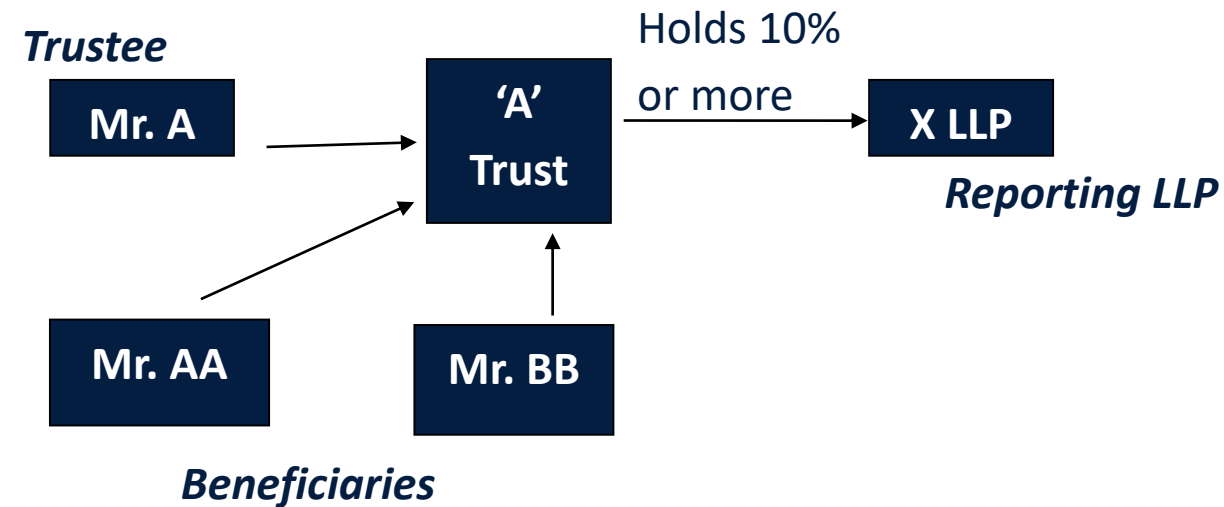
*Mr. A shall be the SBO*

# Trust

How rights and entitlements will be deemed to be held by an individual indirectly, when the partner of the Reporting LLP is a Trust?



*Mr. A will be SBO i.e. such Individual is a Trustee, in case of discretionary trust or charitable trust*



*Mr. AA and Mr. BB will be SBO i.e. such individual is a beneficiary in case of specific trust*

# Trust

How SBO, will be determined where the Trustee is a Body Corporate?



*'A' is a discretionary Trust , where the trustee is a Body Corporate*

## Partnership / LLP

**How rights and entitlements will be deemed to be held by an individual indirectly,  
when the partner of the Reporting LLP is a Partnership / LLP?**

An individual shall be deemed to be exercising rights or entitlements in the Reporting LLP indirectly, where the partner of the Reporting LLP is a Partnership or LLP and

- a) such Individual is a **partner** of the Partnership/LLP;
- b) such Individual holds **majority stake** in the body corporate which is the partner of such partnership entity;
- c) such Individual holds **majority stake in the UHC** of body corporate which is the partner of such partnership entity.



# Pooled Investment Vehicle

A) Where the partner of the reporting LLP is:

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle,

based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle-

(i) is a **general partner**; or

(ii) is an **investment manager**; or

(iii) is a **Chief Executive Officer** where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

B) In case the partner of the reporting LLP is:

(a) a pooled investment vehicle; or

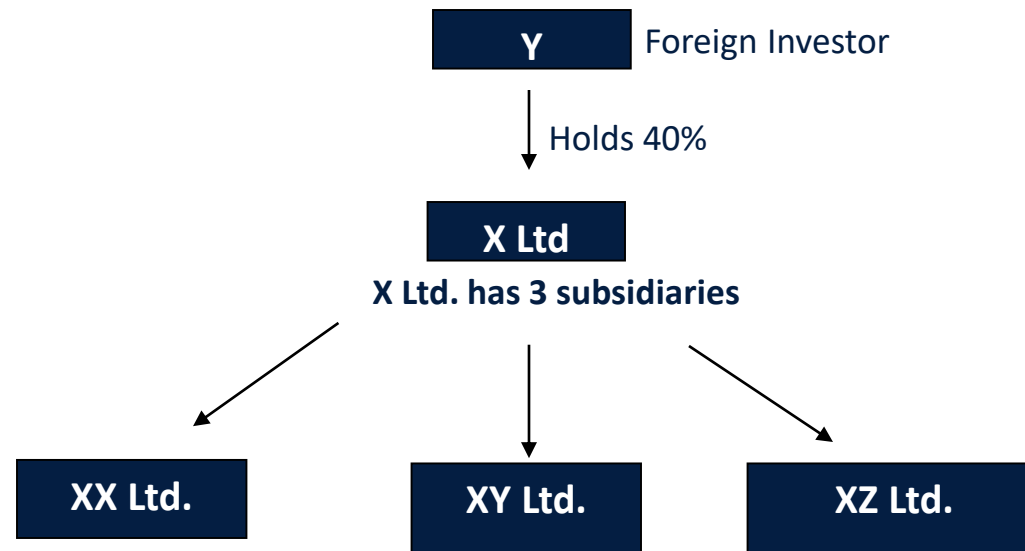
(b) an entity controlled by the pooled investment vehicle

based in a jurisdiction which **does not fulfil the requirements referred above under (A)**, the provisions **applicable in case member is Body Corporate/ Partnership / LLP/ Trust/ HUF**, as the case may be, shall apply.



# Significant Influence

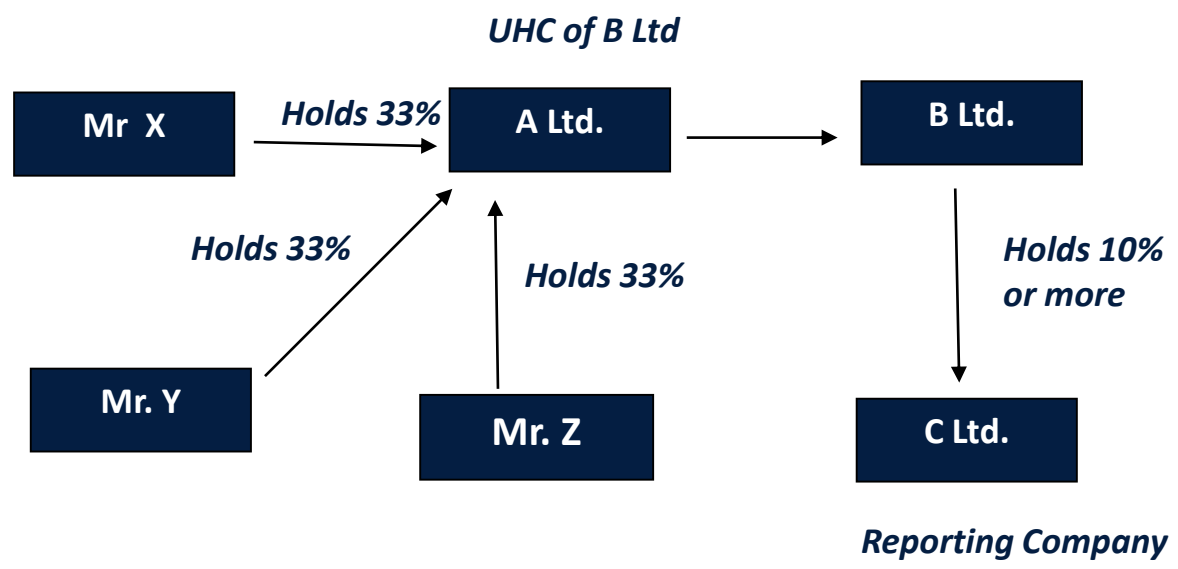
- ✱ **Significant influence** - power to participate directly or indirectly in the financial and operating policy decision of a reporting LLP but not control or joint control of those policies.



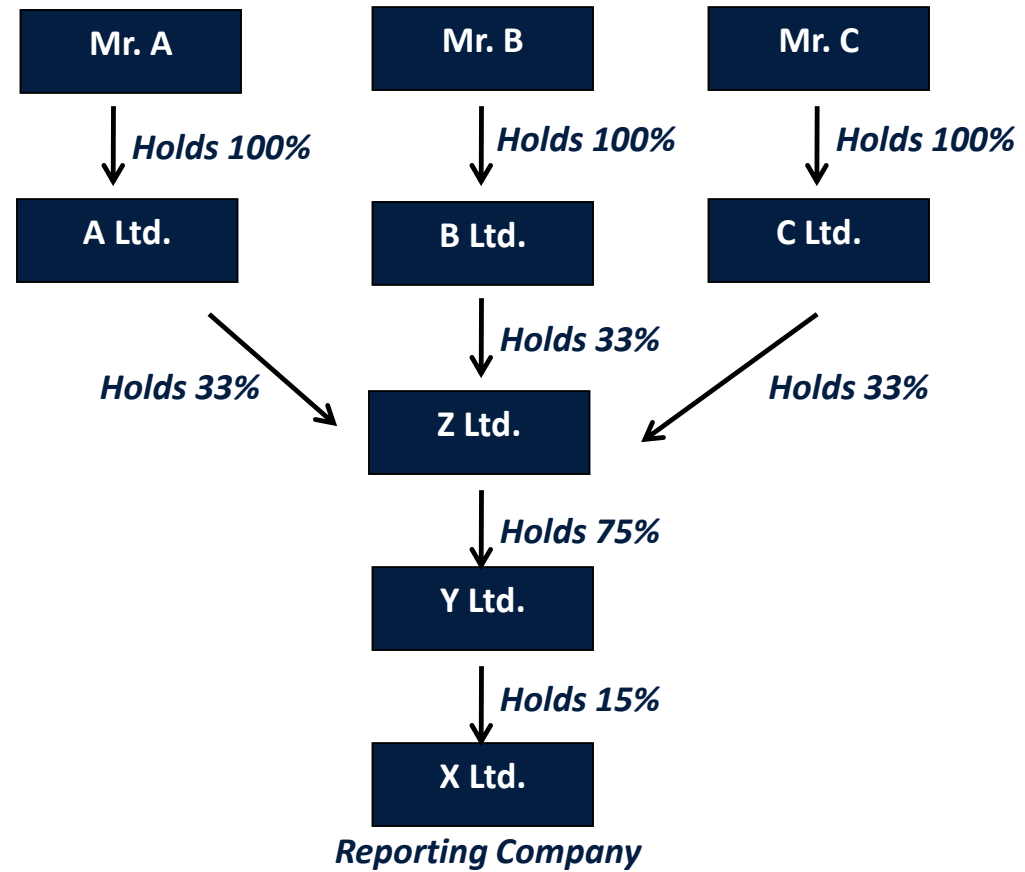
Y Ltd has a right to appoint one Director in subsidiaries and his presence is necessary to form quorum

*Y exercises significant influence over the three subsidiaries of X Ltd., and will file BEN-1*

# Concept of Holding Beneficial Interest ALONG WITH any person

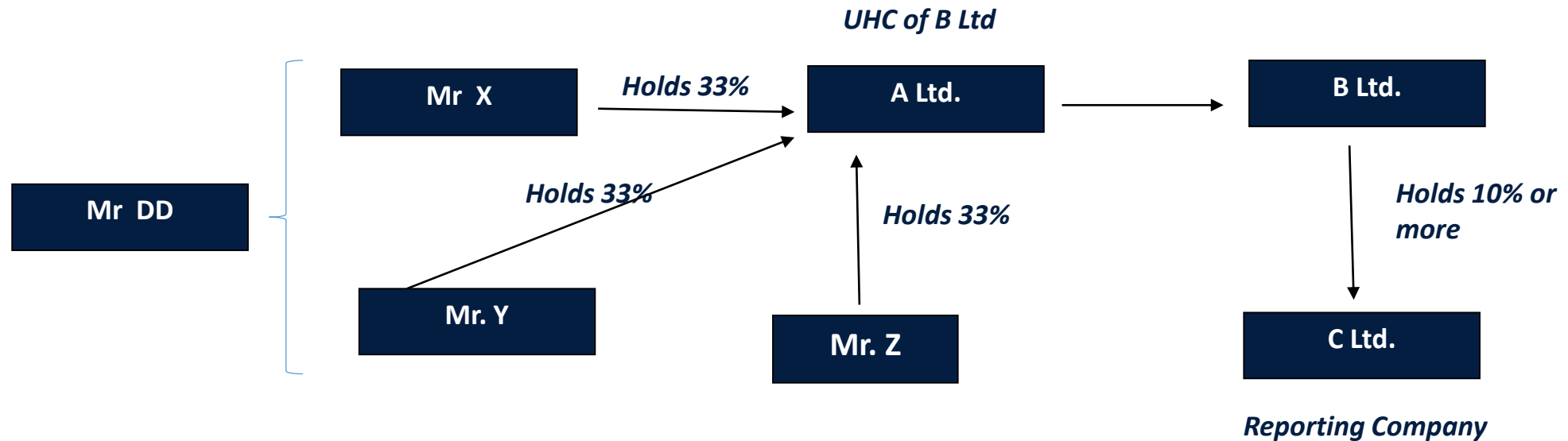


**Situation : X , Y and Z are Business Partners**  
Unless it can be established that X , Y and Z are not acting together , it shall be deemed that they are acting together and X, Y and Z shall be the SBO.



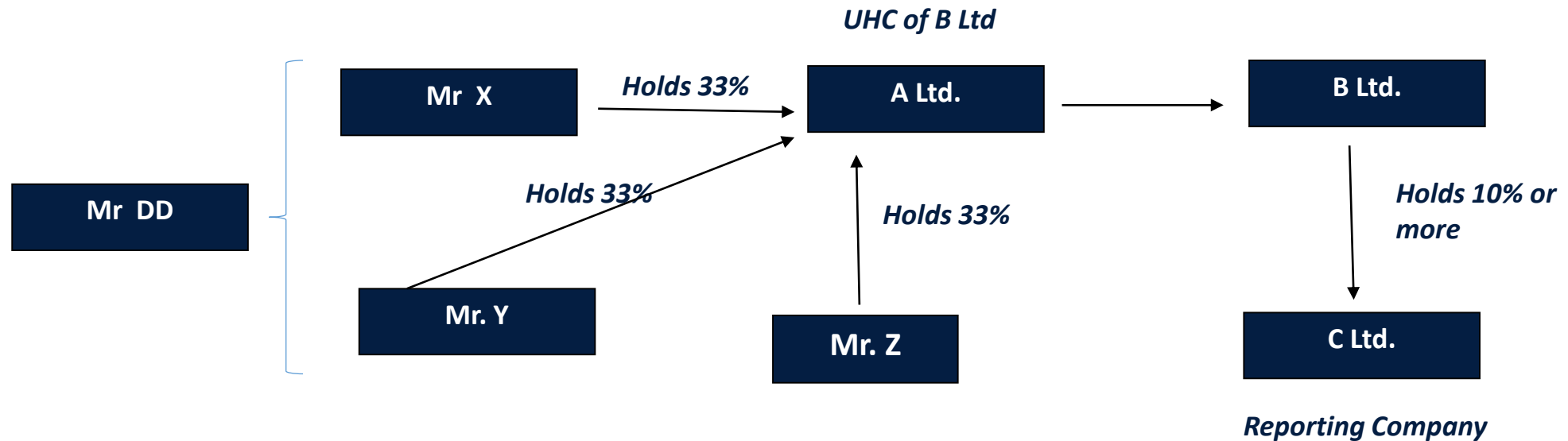
Mr. A , Mr. B and Mr. C shall be the SBO for X Ltd. as they shall they shall be deemed to be the person acting in concert

# Concept of Holding Beneficial Interest THROUGH any person



Situation : X , Y and Z are shareholders in the Company but all the funds put by them in A Ltd belongs to Mr. DD and they also act according to instructions of Mr. DD. If this can be established , Mr. DD will be SBO

# Concept of Holding Beneficial Interest THROUGH any person



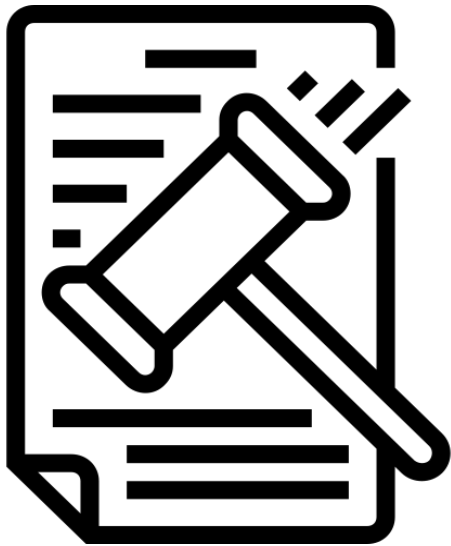
Situation : X , Y and Z are shareholders in the Company but they have borrowed the funds put by them in A Ltd from Mr. DD under a loan agreement and dividend received from A Ltd is being paid to Mr. DD towards interest expenses. In this case, Mr. DD will not be a SBO unless contrary is established

# Identification and Declaration by Reporting LLPs



- Reporting LLPs are required to identify if there exists any individual who qualifies as an SBO and have them declare their status using **Form LLP BEN-1**.
- If a partner other than an individual holds **at least 10%** of the contribution, voting rights, or right to receive distributable profits, the LLP must notify such partner using **Form LLP BEN-4** to obtain necessary information.

# Filing Declarations by SBOs



- SBOs must file a declaration using **Form LLP BEN-1** to the reporting LLP within 90 days (**by February 7, 2024**) of the notification.
- Any subsequent acquisition of SBO status or changes therein must be declared within 30 days of such occurrence.

# Deemed Date for SBO Status Change



- If an individual becomes an SBO or undergoes any SBO change before **February 7, 2024**, the deemed date for the change will be **February 7, 2024**. The 30 day filing period will be calculated accordingly.

# Filing Returns and Maintenance of register



- Upon receiving declarations from SBOs, the reporting LLPs must file returns (**Form LLP BEN-2**) with the Registrar **within 30 days** from receiving such declarations.
- LLPs are required to maintain a register of SBOs in **Form LLP BEN-3**.

## Exemption from applicability

The SBO Rules will not be applicable to the holding of shares of the Reporting Company by the following:

Central Government or State Government or any local authority

Reporting LLP or body corporate or any other entity , owned or controlled by Central Government or State Government(s) or partly by Central Government and partly by State Government(s)

SEBI registered vehicles such as mutual funds, Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InVITs) and alternate investment funds

Investment vehicles regulated by Reserve Bank of India

Investment vehicles regulated by Insurance Regulatory and Development Authority of India

Investment vehicles regulated by Pension Fund Development and Regulatory Authority.





# Regulatory & Legal Updates: **Securities Law**



## SEBI expands the scope of achieving minimum public unitholding requirements in InvITs



SEBI has revised methods for achieving minimum public unitholding requirements for infrastructure investment trusts (InvITs).



# SEBI expands the scope of achieving minimum public unitholding requirements in InvITs

## Overview of InvITs



- InvITs are investment vehicles pooling money from investors for investment in income-generating infrastructure assets like roads, bridges, power plants, and airports.
- The primary goal of InvITs is to generate income through rental and toll income from these infrastructure assets.
- Managed by an asset management company (AMC), InvITs operate similarly to Real Estate Investment Trusts (REITs), acquiring assets from sponsors or developers and distributing income to investors in the form of dividends.



# SEBI expands the scope of achieving minimum public unitholding requirements in InvITs

## Existing and New Methods



- As of the master circular dated July 6, 2023, there are already nine methods outlined for meeting minimum public unitholding requirements for InvITs.
- A new method i.e. issuance of units through preferential allotment for privately placed InvITs has been inserted. Only units issued to the public will be considered for compliance with minimum unitholding requirements under this new method.



## Procedural framework for dealing with unclaimed amounts lying with REITs/ InvITs and manner of claiming such amounts by unitholders



SEBI (REITs) Regulations, 2014/ SEBI (InvITs) Regulations, 2014 mandates that unitholders of REITs/ InvITs should receive not less than 90% of Net Distributable Cash Flows (NDCFs) and that distributions shall be made not less than once every 6 months for publicly offered REITs/ InvITs (not less than once every year for privately placed InvITs). However, unclaimed amounts have arisen due to various reasons, including unitholders failing to update their account details.



## Procedural framework for dealing with unclaimed amounts lying with REITs/ InvITs and manner of claiming such amounts by unitholders



SEBI vide its two separate circulars has stipulated the procedural framework for dealing with unclaimed amounts lying with REITs/InvITs and manner of claiming such amounts by unitholders. The framework defining the procedure to be followed by REITs or InvITs for the transfer of unclaimed amounts, initially to an Escrow Account and subsequently, to the IPEF and claim thereof by a unitholder, has been provided as Annex - A to this Circular. This shall come into force from **March 01, 2024.**



# Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors

Reg 61A(2) of SEBI (LODR) Regulations, 2015 mandates the transfer of unclaimed interest/dividend/redemption amounts to an Escrow Account within 7 days from the expiry of 30 thirty days from the due date.



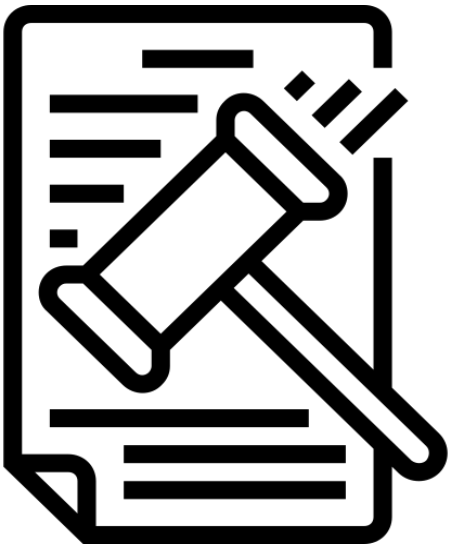
- In the line, SEBI has created a framework to define the process for transferring the unclaimed amounts to the Escrow Account by listed entities and for investors to claim these amounts; and framework outlining the procedure for listed entities (not companies) to transfer unclaimed amounts from the Escrow Account to the IPEF and the process for investors to claim these amounts.



# Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors

## Brief of Framework for transfer of unclaimed amounts by the listed entities to Escrow Accounts and claim thereof by investors:

- **Transfer of unclaimed amounts to Escrow Account** to be opened by it in any scheduled bank.
- ***Interest in case of default:*** @12% p.a. The said interest amount shall accrue to the investors in proportion to the amount remaining unclaimed.
- **Designating Nodal Officer:** Director/CFO/ CS/ Compliance Officer of the listed entity.
- **Display of information** w.r.t. unclaimed amounts by listed entity on its website within 30 days.
- To provide a **search facility** on its website for investors.
- To **formulate a policy** specifying the process to be followed by investors for claiming their unclaimed amounts



# Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors



# Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors



- The provisions of the circular are effective from **March 1, 2024**. Listed entities with unclaimed amounts for less than 7 years, as of **February 29, 2024**, must start computing interest from March 1, 2024.
- Entities with unclaimed amounts for more than 7 years must transfer the amounts to IPEF by **March 31, 2024**, in compliance with the circular.





## **Key Decisions from SEBI's Board Meeting**



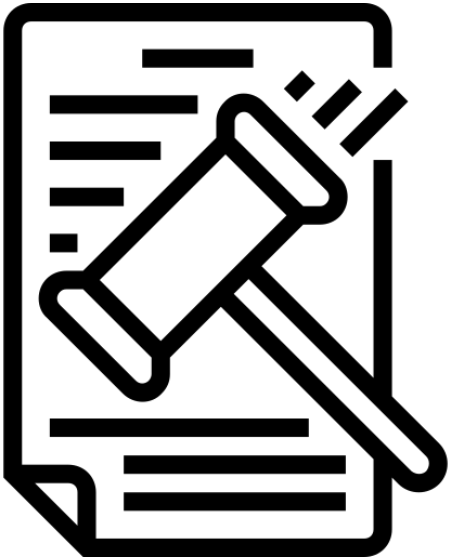


## Flexibility in the framework for Social Stock Exchange (SSE)

- **Reduction in minimum issue size** in case of public issuance of Zero Coupon Zero Principal Instruments (ZCZP) by NPOs on SSE from Rs.1 Crore to Rs. 50 lakh.
- **Reduction in minimum application size** in case of public issuance of ZCZP by NPOs on SSE from Rs 2 lakh to Rs. 10,000 for wider retail participation.
- Changing the nomenclature of “Social Auditor” with “Social Impact Assessor.”
- NPOs permitted to disclose past social impact reports in fundraising documents.
- More NPOs to be made eligible for registration and fund raising through issuance and listing of ZCZP on SSE **by permitting entities registered under Sections 10(23C) and 10(46) of the Income Tax Act, 1961.**



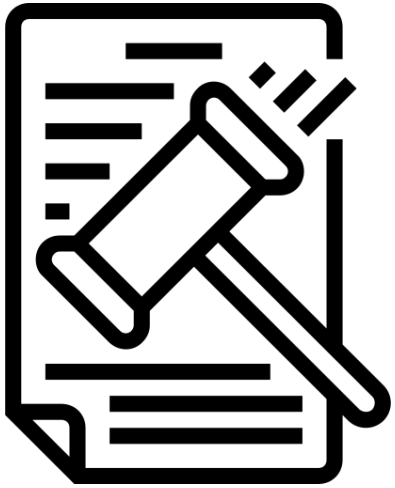
## Facilitation of Small & Medium REITs (S&M REITs)



- To **create a regulatory framework** for facilitation of S&M REITs, with an asset value of at least Rs. 50 crore vis-à-vis minimum asset value of Rs. 500 crore for existing REITs.
- S&M REITs shall have the **ability to create separate scheme(s)** for owning real estate assets through special purpose vehicle(s).



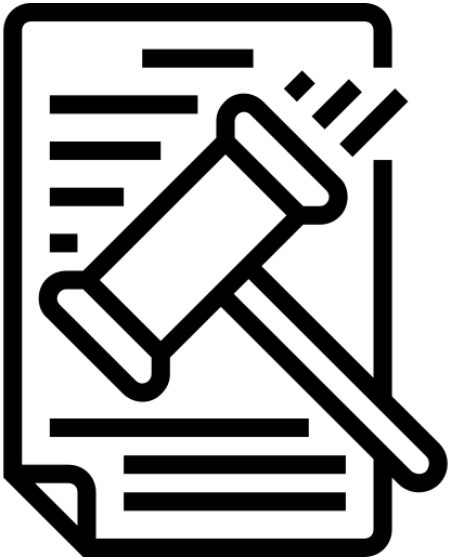
## Facilitation of ease of compliance and strengthen protection of interest of investors in Alternative Investment Funds (AIFs)



- **Mandate for fresh AIF investments**, after September 2024, to be held **in dematerialized form**.
- The existing investments made by AIFs have been **exempted from** the said requirement, **except in cases where** –
  - a. Investee company has been mandated under applicable law to facilitate dematerialisation of its securities; and,
  - b. Investments where the AIF, on its own, or along with other SEBI registered intermediaries/entities which are mandated to hold their investment in dematerialised form, has control in the investee company.



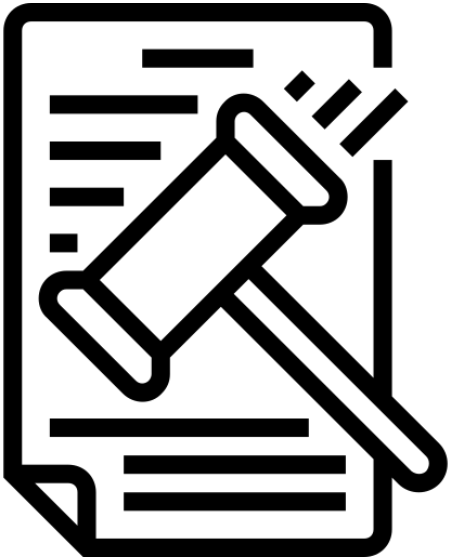
## Facilitation of ease of compliance and strengthen protection of interest of investors in Alternative Investment Funds (AIFs)



- Further, this requirement is **exempted for investments held by:**
  - Liquidation schemes of AIFs;
  - **Schemes of an AIF whose tenure ends within one year** from the date of issuance of necessary notification in this regard; and
  - Schemes of an AIF which are in extended tenure as on the date of issuance of the notification.



## Facilitation of ease of compliance and strengthen protection of interest of investors in Alternative Investment Funds (AIFs)



- The **mandate for appointment of custodian**, currently applicable to category III AIFs and to schemes of category I and II AIFs with a corpus more than Rs. 500 Crore, **shall be extended to all AIFs.**
- **AIFs may appoint a custodian:** who is an associate of manager or sponsor of the AIF, subject to conditions similar to those prescribed under SEBI (Mutual Funds) Regulations, 1996 for permitting related party of sponsor of a Mutual Fund to act as its custodian.





# **Securities Laws:** **Consultation** **Paper on AIFs**



## Consultation Paper on Special Situation Funds in AIFs

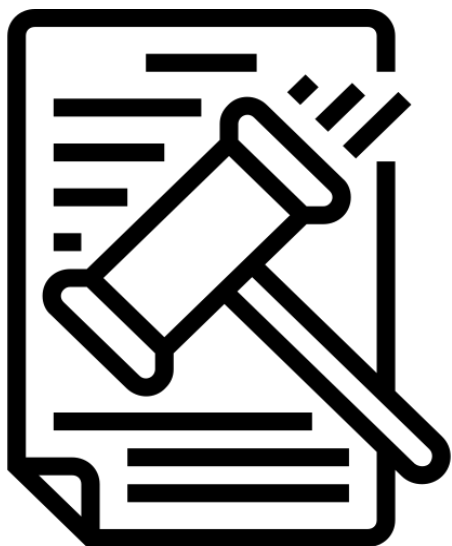


- SEBI recently issued a Consultation Paper seeking feedback on SEBI (Alternative Investment Funds) Regulations, 2012, specifically **targeting Special Situation Funds (SSFs).**
- India's financial ecosystem is witnessing a pivotal shift with the emergence of Alternative Investment Funds (AIFs) playing a substantial role in the resolution of stressed loans.
- These potential regulatory changes aim to streamline the framework for SSFs, enabling them to acquire stressed loans as part of the Reserve Bank of India's (RBI) Master Directions.



# Consultation Paper on Special Situation Funds in AIFs

## Proposals for Consideration



### ***Proposal A: Redefining 'Special Situation Asset'***

The amendment suggests altering the definition to include **securities of companies with acquired stressed loans,** rather than those 'available for acquisition'. This shift clarifies the eligibility of SSFs without disqualifying prior investments in securities of stressed companies.

### ***Proposal B: Investor Eligibility Criteria***

To ensure compliance with Section 29A of IBC Code, there's a proposal for stringent due diligence on investors. Thus, enhancing regulatory coherence.



# Consultation Paper on Special Situation Funds in AIFs

## Proposals for Consideration



### ***Proposal C: Restrictions on Investment in Connected Entities***

Expanding the definition of **'related party'** to align with the Companies Act, 2013, aims to mitigate conflicts of interest. Prohibiting SSFs from investing in these 'related parties' will foster transparency and integrity.

### ***Proposal D: Minimum Holding Period and Loan Transfer***

The proposal mandates **a minimum lock-in period** for stressed loans and restricts their transfer/sale only to entities listed in the Annex of RBI Master Directions. This will ensure responsible transfer practices post-lock-in.



# Consultation Paper on Special Situation Funds in AIFs

## Proposals for Consideration

### *Proposal E: Monitoring and Reporting Mechanism*

Establishing comprehensive data-sharing mechanisms between SEBI and RBI and mandating reporting specific information on a designated platform bolsters transparency and regulatory oversight.

### *Proposal F: Dedicated Supervisory Framework*

It is proposed to have a dedicated supervisory framework, ensuring specialized oversight aligned with RBI's considerations for entities dealing with stressed loans.



## Consultation Paper on Special Situation Funds in AIFs



SEBI is inviting suggestions and comments from stakeholders on proposals A, B, C, D, E, and F. The deadline for submitting feedback is **December 27, 2023**.



# THANK YOU