

Investment Funds: Monthly Digest

April 30, 2024

DECODING AIF DISSOLUTION: ANALYSIS OF THE DISSOLUTION PERIOD FRAMEWORK

SEBI introduces Dissolution Period framework for AIFs to manage unliquidated investments.

AIFs are no longer permitted to launch liquidation schemes.

Dissolution Period to initiate, subject to investor consent and other procedural requirements, post the liquidation period for a period not greater than the original tenure of the AIF.

Mandatory in-specie distribution upon expiry of Dissolution Period.

In response to numerous industry representations regarding the practical issues faced by Alternative Investment Funds ("AIFs") in liquidating their investment portfolio within the tenure specified in the private placement memorandum ("PPMs"), the Securities and Exchange Board of India ("SEBI") released a consultation paper proposing a dissolution period framework wherein an AIF was able to transfer its unliquidated investment to a separate scheme.

However, this liquidation scheme framework was saddled with practical difficulties. We had undertaken an in-depth analysis of the liquidation scheme framework [here](#). To address the industry's concerns, SEBI had released a consultation paper proposing a dissolution period framework wherein AIFs would be allowed to extend their tenure beyond the limit specified in their PPM. Our in-depth analysis of the consultation paper on dissolution period is available [here](#).

SEBI has now promulgated the SEBI (AIF) (Second Amendment) Regulations, 2024 ("AIF Amendment") and issued a circular on 'Flexibility to AIF and their investors to deal with unliquidated investments of their schemes'¹ ("Dissolution Circular") providing a revised framework for AIFs to better manage unliquidated investments and replacing the erstwhile liquidation scheme framework.

In this issue of the monthly digest, we examine the AIF Amendment and the Dissolution Circular.

WHAT HAPPENS TO LIQUIDATION SCHEMES?

The AIF Amendment provides that-

AIFs are not permitted to launch a liquidation scheme post April 25, 2024; and

Existing liquidation schemes shall continue to be governed by the provisions of the SEBI (AIF) Regulations, 2012 ("AIF Regulations") till such schemes are wound up.²

WHAT DOES DISSOLUTION PERIOD MEAN?

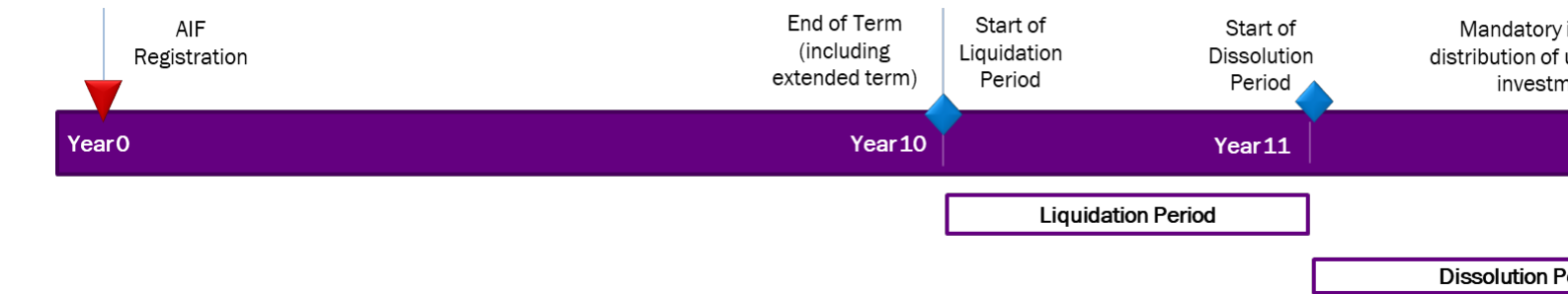


Figure 1: Snapshot of an AIF lifecycle

Dissolution Period has been defined to mean the period which follows the expiry of the liquidation period of the fund for the purpose of liquidating the unliquidated investments of the fund ("Dissolution Period").³ The timeline of a fund including dissolution period is depicted below.

Procedure for entering Dissolution Period





Figure 2: Procedure for entering Dissolution Period

The procedure by which an AIF may enter into a dissolution period during the liquidation period is pictographically provided under figure 2 above. Please note that the modalities of the bidding mechanism remains consistent with that provided under the liquidation scheme framework (the same hereinafter referred to as the "Liquidation Scheme Framework"). It should be noted that the investment manager, trustee and key management personnel of AIF and investment manager are responsible for compliance with the above procedure.

Conditions for entering Dissolution Period

An AIF may enter into a Dissolution Period subject to certain conditions as provided under the AIF Amendment and the Dissolution Circular, which are as follows:

- ¹ The scheme is not to accept any fresh commitment from any investor during the Dissolution Period;⁴
- ² The scheme is to not make any new investment during the Dissolution Period;⁵
- ³ No management fee is charged during the Dissolution Period;⁶
- ⁴ The tenure of the Dissolution Period is to not be more than the original tenure of the scheme and shall not be extended in any manner upon expiry of the Dissolution Period;⁷ and
- ⁵ The investment manager communicates the value of the unliquidated investments of the scheme to performance benchmarking agencies for appropriately capturing the track record of performance of the manager. Here, the value of such unliquidated investments shall be:
 - ^a Calculated based on the bid value if the investment manager successfully raises bids for a minimum of 25% of the value of unliquidated investments;
 - ^b INR 1, if otherwise.⁸

It may be noted that an AIF may enter into a Dissolution Period even if the investment manager fails to arrange for any bids for its unliquidated investments; provided, however, that the investment manager tries to raise bids for the same and has obtained the requisite investor consent.⁹

Instances where Mandatory In-specie Distribution are Triggered

Certain investors, by way of their internal policies or otherwise, are prohibited from receiving in-specie distribution of assets. Nevertheless, the AIF Regulations provide multiples instances that trigger a mandatory in-specie distribution of unliquidated investments. The same are as follows-

- ¹ At the expiry of the liquidation period if the investment manager does not obtain 75% consent of investors by value to enter into a Dissolution Period;¹⁰
- ² At the expiry of the Dissolution Period.¹¹

Further, the Dissolution Circular clarifies that no further extension or liquidation period shall be available to any AIF/scheme of an AIF after the expiry of Dissolution Period.¹²

CONCLUSION

The dissolution period framework improves upon the liquidation scheme framework by providing a more viable solution for AIFs to manage unliquidated investments. There are no negative tax or regulatory externalities. Further, leeway for funds to internally manage unliquidated investments is provided, which provides additional comfort to foreign investors as they deal with a more familiar framework of winding up a fund.

The current need of the hour is to include the AIF Standards Setting Forum in templating the information memorandum that is to be filed with SEBI for the launch of the Dissolution Period.¹³ Herein, it is also recommended that the requirement of filing such an information memorandum through an information memorandum is not to be added to the operation costs of the winding up at a stage where the fund is under the highest amount of financial stress.

Athul Kumar and Nandini Pathak

You can direct your queries or comments to the authors.

¹Flexibility to Alternative Investment Funds (AIFs) and their investors to deal with unliquidated investments of their schemes, SEBI circular SEBI/HO/AFD/POD-I/P/CIR/2024/026 dated April 26, 2024

²Regulation 29A(8) of the AIF Regulations

³Regulation 2(1)(a) of the AIF Regulations

⁴Regulation 29B(4) of the AIF Regulations

⁵Ibid

⁶Clause 2.3.10 of the Dissolution Circular

⁷Regulation 29B(3) of the AIF Regulations

⁸Clause 2.3.7 of the Dissolution Circular

⁹Clause 2.3.5 of the Dissolution Circular

¹⁰Clause 3.1.1 of the Dissolution Circular

¹¹Clause 2.3.9 of the Dissolution Circular

¹²Ibid

¹³Regulation 29B(2) of the AIF Regulations

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since this is a US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail is marked as Spam, please do not click on the "Mark as Spam" button from mailing list.