

Insights and Commentary from Dentons

The combination of Dentons and Link Legal offers our clients access to 12,700+ lawyers in 200+ locations and 80+ countries around the world.

This document was authored by representatives of Link Legal prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

Grow | Protect | Operate | Finance

April 2023

CORPORATE LEGAL DEVELOPMENTS

NEWSLETTER JUNE 2022

Weekly Insights & Updates

30 June 2022

RBI

1. Draft Master Direction on Outsourcing of IT Services

June 23, 2022: RBI vide its press release RBI/2022-23/xx DoS.CO.CSITG/SEC. xx/31.01.015/2022-23 has released the Reserve Bank of India (Outsourcing of IT Services) Directions, 2022 ("**Draft Master Directions**"). The said Draft Master Directions is applicable to identified regulated entities, which includes non-banking financial companies in top, upper and middle layers ("**REs**"). The underlying principle of the Draft Master Directions is that the RE should ensure that outsourcing arrangements neither diminish its ability to fulfil its obligations to customers nor impede effective supervision by the supervising authority. REs desirous of outsourcing of Information Technology (IT) and IT enabled services shall not require prior approval from RBI. However, such arrangements shall be subject to on-site/ off-site monitoring and inspection/ scrutiny by the supervising authority. The Draft Master Directions shall apply to Material Outsourcing of IT Services arrangements entered by the REs.

'*Material Outsourcing of IT Services*' arrangements are such arrangements, which if disrupted / compromised, have the potential to (i) either significantly impact the RE's (a) business operations, reputation, strategic plans or profitability; or (b) ability to manage risk and comply with applicable laws and regulations; OR (ii) in the event of any unauthorised access, loss or theft of customer information may have material impact on the RE's customers.

The highlights of the Draft Master Directions are as follows:

- REs shall ensure that in the Outsourcing of IT Services engagement, wherein such outsourcing services support the RE's financial services, the applicable directions/ circulars issued by RBI on managing risks and the code of conduct in outsourcing of financial services are adhered to.
- RE intending to outsource any of its IT activities shall put in place a comprehensive Board approved IT outsourcing policy.
- A Risk Management framework for Outsourcing of IT Services shall comprehensively deal with the processes and responsibilities for identification, measurement, mitigation/ management and reporting of risks associated with Outsourcing of IT Services arrangements.
- REs shall require their service providers to develop and establish a robust framework for documenting, maintaining and testing Business Continuity Plan (BCP) and Disaster

Recovery Plan (DRP) commensurate with the nature and scope of the outsourced activity as per extant BCP/ DRP requirements.

- REs shall have in place a management structure to monitor and control its Outsourced IT activities.
- RE may outsource any IT activity/ IT enabled service within its business group/ conglomerate, provided that such an arrangement is backed by the Board-approved policy and appropriate service level arrangements/ agreements with its group entities are in place.
- The Outsourcing of IT Services policy shall contain a clear exit strategy with regard to outsourced IT activities/ IT enabled services, while ensuring business continuity during and after exit.
- In case of engagement of a Service Provider based in a different jurisdiction, RE shall closely monitor the service provider's country's government policies and its political, social, economic and legal conditions on a continuous basis, and establish sound procedures for mitigating the country risk. This includes, inter alia, having appropriate contingency and exit strategies; such arrangements shall only be entered into with parties operating in jurisdictions generally upholding confidentiality clauses and agreements; governing law of such arrangement shall be clearly specified; the jurisdiction of the courts outside India, where data is stored and/ or processed, shall not extend to the operations of the RE in India, on the strength of the fact that the RE's data is being stored and/ or processed there, even though the actual transactions are undertaken in India; the right to conduct audit/ inspection of the Service Provider based in a different jurisdiction shall be ensured. The arrangement shall comply with law/ regulations issued by RBI from time to time.
- The Outsourcing Agreement between REs and the Service Providers should cover the following:
 - a. definition of the IT activity being outsourced, including appropriate service and performance standards including for the sub-contractors, if any;
 - b. effective access by the RE to all data, books, records, information, logs, alerts and business premises relevant to the outsourced activity, available with the service provider;
 - c. continuous monitoring and assessment of the service provider by the RE, so that any necessary corrective measure can be taken immediately; including termination clause and minimum period to execute such provision, if deemed necessary;
 - d. type of material adverse events (e.g., data breaches, denial of service, service unavailability etc.) and incident reporting requirements to the RE to take prompt risk mitigation measures and ensure compliance with statutory and regulatory guidelines;
 - e. compliance with the provisions of Information Technology Act, 2000, other applicable legal requirements and standards to protect the customer data;
 - f. the deliverables, including Service-Level Agreements (SLAs) formalising performance criteria to measure the quality and quantity of service levels;
 - g. storage of data (as applicable to the concerned REs) only in India as per extant regulatory requirements;
 - h. clauses requiring the service provider to provide details of data (related to RE and its customers) captured, processed and stored;
 - i. controls for maintaining confidentiality of data of RE's and its customers', and incorporating service provider's liability to RE in the event of security breach and leakage of such information;
 - j. types of data/ information that the service provider (vendor) is permitted to share with RE's customer and / or any other party;

- k. specifying the resolution process, events of default, indemnities, remedies, and recourse available to the respective parties;
- l. contingency plan(s) to ensure business continuity and testing requirements;
- m. right to conduct audit of the service provider by the RE, whether by its internal or external auditors, or by agents appointed to act on its behalf, and to obtain copies of any audit or review reports and findings made about the service provider in conjunction with the services performed for the RE;
- n. right to seek information from the service provider about the third parties (in the supply chain) engaged by the former;
- o. recognising the authority of regulators to perform inspection of the service provider and any of its sub-contractors. Adding clauses to allow RBI or person(s) authorised by it to access the RE's IT infrastructure, applications, data, documents, and other necessary information given to, stored or processed by the service provider and/ or its sub-contractors in relation to the outsourcing arrangement;
- p. including clauses making the service provider contractually liable for the performance and risk management practices of its sub-contractors;
- q. obligation of the service provider to comply with directions issued by the RBI in relation to the activities of the RE outsourced to the service provider;
- r. clauses requiring prior approval /consent of the RE for use of sub-contractors by the service provider for all or part of an outsourced activity;
- s. termination rights of the RE, including the ability to orderly transfer the proposed IT-outsourcing arrangement to another service provider, if necessary or desirable.
- t. obligation of the service provider to co-operate with the relevant authorities in case of insolvency/ resolution of the RE;
- u. provision to consider resources of service provider who provide core services as "essential personnel" so that a limited number of staff necessary to operate critical functions can work on-site during exigencies (including pandemic situations); and
- v. clause requiring suitable back-to-back arrangements between service providers and the original equipment manufacturers.

For more details, please click on the link below.

Link [here](#).

SEBI

1. SEBI issues guidelines for Large Value Fund for Accredited Investors and requirement of Compliance Officer for Managers of all AIFs

June 24, 2022: The Securities and Exchange Board of India ("SEBI") vide circular no. SEBI/HO/AFD/RAC/CIR/2022/088 has set out guidelines for Large Value Fund for Accredited Investors ("LVFs") under the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") and the requirement of compliance officer for managers of all Alternative Investment Funds ("AIFs").

I. Guidelines for Large Value Fund for Accredited Investors

Pursuant to introduction of the framework for "Accredited Investors", the AIF Regulations have been amended to provide for certain relaxations from regulatory requirements applicable to LVFs.

a) Filing of LVF Schemes with SEBI

In terms of the proviso to Regulation 12 of the AIF Regulations, LVFs are permitted to launch their

scheme under intimation to SEBI and are not required to file their placement memorandum with SEBI *through the Merchant Banker* and to incorporate any comments received from SEBI on the same.

At the time of filing the placement memorandum for LVF schemes with SEBI, a duly signed and stamped undertaking is required to be provided by the Chief Executive Officer (“**CEO**”) of the manager to the AIF (*or person holding equivalent role or position depending on the legal structure of manager*) and the compliance officer of manager to the AIF in the format specified for this purpose. This undertaking specifies, *inter alia*, that an independent due diligence has been conducted in respect of the information in the placement memorandum, the activities of the proposed scheme are *bona fide* and that the disclosures made in the placement memorandum are true, fair and necessary for investors to make an informed decision.

For LVF schemes already filed with the SEBI, a similar duly signed and stamped undertaking as above is required to be submitted to SEBI by the CEO of the manager to the AIF (*or person holding equivalent role or position depending on the legal structure of manager*) and the compliance officer of manager to the AIF on or before **July 31, 2022**.

b) Extension of tenure beyond two years

In relation to the ability of closed ended funds to increase their fund life in terms of Regulation 13(4) of the AIF Regulations, the circular specifies as under:

- In order to enable the investors to take an informed decision, the placement memorandum, contribution agreement or other fund documents of the LVF shall lay down terms and conditions for extension of the tenure beyond two (2) years.
- LVF shall be required to obtain approval from its trustee/ board of directors/designated partners (depending upon the legal structure of the LVF) for extending the tenure beyond two (2) years, at least one month before expiration of the fund tenure or extended tenure. This is an elaboration of the conditions for grant of such extension in terms of the proviso to Regulation 13(4) of the AIF Regulations, which stipulates, *inter alia*, that SEBI may, from time to time, specify other conditions in relation to the grant of approval for extension of tenure.
- In case requisite conditions specified in the placement memorandum, contribution agreement or other fund documents of LVF for extension of tenure beyond two (2) years are not fulfilled, LVF shall liquidate and wind up in accordance with AIF Regulations and circulars issued thereunder.

II. Requirement of Compliance Officer for Managers of all AIFs

All AIFs are now required to ensure that the manager to AIF designates an employee or director as its compliance officer. The compliance officer so appointed shall be a person other than the CEO of the manager (*or such equivalent role or position depending on the legal structure of manager*), and will be responsible for monitoring compliance with the provisions of the Securities and Exchange Board of India Act, 1992, the AIF Regulations and circulars issued thereunder.

Link [here](#).

Authors

Nusrat Hassan
Co-Managing Partner
nusrat@linklegal.in

Ambuj Sonal
Associate Partner
ambuj.sonal@linklegal.in

Abhinav Anand
Senior Associate
abhinav.anand@linklegal.in

Sayantani Dutta
Partner
sayantani.dutta@linklegal.in

Tanvi Pande
Senior Associate
tanvi.pande@linklegal.in

Meghna Punjabi
Associate
meghna.punjabi@linklegal.in

FIRM'S RECOGNITION



BWLEGAL
WORLD



ASIA-PACIFIC 2022



OUR OFFICES

DELHI

Aiwan-e-Ghalib Complex,
Mata Sundri Lane,
New Delhi 110 002, India
Tel: +91 11 4651 1000

MUMBAI

21/22, Second Floor,
Free Press House,
Free Press Journal Road,
215, Nariman Point,
Mumbai – 400 021, India
Tel: +91 22 6633 6791/6625 2222

BENGALURU

#10, First Floor, 12th Main,
Palace Road,
Vasanth Nagar,
Bengaluru – 560 052, India
Tel: +91 80 4123 1072

HYDERABAD

1st Floor, MC Design House,
Plot No. 27, Rohini Layout,
HITEC City, Madhapur,
Hyderabad – 500 081, India
Tel: +91 40 3516 8987, +91 40 3516 8988

CHENNAI

1B, First Floor 17-A,
Diamond Business Center,
Kalakshetra Road,
Chennai – 600 041, India
Tel: +91 44 4271 9731

NEW YORK

57 West, 57th Street,
4th Floor, New York,
NY 10019
Tel: (212) 389-6290/ (212) 389-6281/
(212) 381-1057



ABOUT DENTONS

Dentons is designed to be different. As the world's largest global law firm with 21,000 professionals in over 200 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you.

www.dentons.com

© 2023 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.