BASILSTONE
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Basilstone Consulting is pleased to present to you the **November 2021** issue of atharv, covering regulatory insights as well as discussion papers. This issue covers the following areas:

I. Regulatory updates & its expected impact

1.1. Securities & Exchange Board of India

1.1.1. Clarification regarding Amendment to SEBI (Alternative Investment Funds) Regulations, 2012

Fund managers desirous of facilitating Co-investments for contributors, sponsors or themselves, in connection with their Category I or Category II AIFs ("Cat I and/or II AIFs"), shall be required to register themselves with SEBI as 'Co-investment Portfolio Manager' (as defined below) i.e. a new category of portfolio managers under SEBI (Portfolio Managers) Regulations, 2020 ("SEBI PM Regulations"), effective from December 9, 2021.

Key features to the ammendment as follows:

1. Co-investment" means investment made by a Manager or Sponsor or investor of Category I and II Alternative Investment Fund(s) in investee companies where such Category I or Category II Alternative Investment Fund(s) make investment:

   Provided that Co-investment by investors of Alternative Investment Fund shall be through a Co-investment Portfolio Manager as specified under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020."

2. 'Co-investment Portfolio Manager' is defined under the SEBI PM Regulations as:

   "Co-investment Portfolio Manager" means a Portfolio Manager who is a Manager of a Category I or Category II Alternative Investment Fund(s); and:

   (i) provides services only to the investors of such Category I or Category II Alternative Investment Fund(s); and

   (ii) makes investment only in unlisted securities of investee companies where such Category I or Category II Alternative Investment Fund(s) make investments:

   Provided that the Co-investment Portfolio Manager may provide services to investors from any other Category I or Category II Alternative Investment Fund(s), which are managed by them and are also sponsored by the same Sponsor(s)."

3. The manager will not provide advisory services to any investor other than the clients of co-investment portfolio manager for investment in securities of investee companies where the AIF managed by it makes investment.

4. Terms of Co-investments – Investment by the co-investor should be on the same terms as Cat I or II AIF. Timing of exit by the co-investor has to be the same as that of the Cat I or II AIF.

Impact: The changes will allow the investment managers of AIF to provide portfolio investment services to the investors in the AIF for co-investment in investee companies of AIF directly thereby opening new avenue for such investment managers.

1.1.2. Sebi Informal Guidance – SV Capital – An investment Adviser registered with SEBI

SEBI has clarified that proposed services by SV Capital i.e., creating and rebalancing stacks for a US Company which provides an online platform for customers, including Indian Customers, to purchase and invest in foreign securities, and receiving compensation for the same in the form of commission or fixed monthly retainer does not appear to be an activity for providing 'investment advice' as envisaged under the IA Regulations. ''Consequently, the proposed services to be provided by SV capital shall not come under the purview of IA Regulations. Hence, in the capacity of a SEBI registered investment adviser, SV Capital cannot provide the proposed services.

1.2. Reserve Bank of India

1.2.1. The Reserve Bank Integrated Ombudsman Scheme, 2021

The Scheme integrates the existing three Ombudsman schemes of RBI namely,

(i) the Banking Ombudsman Scheme, 2006;
(ii) the Ombudsman Scheme for Non- Banking Financial Companies, 2018; and
(iii) the Ombudsman Scheme for Digital Transactions, 2019

Some of the salient features of the Scheme are:

i) It will no longer be necessary for a complainant to identify under which scheme he/she should file complaint with the Ombudsman.
ii) The Scheme defines 'deficiency in service' as the ground for filing a complaint, with a specified list of exclusions. Therefore, the complaints would no longer be rejected simply on account of "not covered under the grounds listed in the scheme".
iii) The Scheme has done away with the jurisdiction of each ombudsman office.
iv) A Centralised Receipt and Processing Centre has been set up at RBI, Chandigarh for receipt and initial processing of physical and email complaints in any language.
v) The responsibility of representing the Regulated Entity and furnishing information in respect of complaints filed by customers against the Regulated Entity would be that of the Principal Nodal Officer in the rank of a General Manager in a Public Sector Bank or equivalent.
vi) The Regulated Entity will not have the right to appeal in cases where an Award is issued by the ombudsman against it for not furnishing satisfactory and timely information/documents.

Impact: It will provide cost free redress of customer complaints involving deficiency in services rendered by entities regulated by RBI, if not resolved to the satisfaction of the customers or not replied within a period of 30 days by the regulated entity.

1.2.2. Internal Ombudsman for Select NBFCs

Deposit-taking NBFCs (NBFCs-D) with 10 or more branches and Non-Deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above having public customer interface to appoint Internal Ombudsman (IO) at the apex of their internal grievance redress mechanism within a period of six months from the date of issue of the direction, except for certain type of NBFC viz standalone Primary Dealers (PDs), NBFC - Infrastructure Finance Companies (NBFC-IFCs), Core Investment Companies (CICs), Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFCs), Non-Banking Financial Company – Account Aggregators (NBFC-AAs), NBFCs under Corporate Insolvency Resolution Process, NBFCs in liquidation and NBFCs having only captive customers.

1.3. International Financial Services Authority

1.3.1. Guidelines on Operations of IFSC Insurance Intermediary Offices

A framework to address operational issues for the International Financial Services Centres Insurance Intermediary Office (IIIO) in the International Financial Services Centre (IFSC) have been put in place. The guidelines are on the following:

i. Fee Structure,
ii. Fit & Proper Criteria,
iii. Qualification, Training & Examination Requirements
iv. Format for Maintenance of Records
v. Manner of Change in Beneficial Ownership of Shares or Contribution and Control
vi. Payment of Remuneration, Reward, Fee or any other Payment to an IIIO
vii. Segregation Of Insurance Money
viii. Outsourcing Of Activities
ix. Amalgamation, Merger & Acquisition and Transfer of Business
x. Sale of Insurance Business through **Digital** Modes

1.3.2. The IFSCA Banking Handbook: Conduct of Business Directions- V 2.0

The directions are aimed at ensuring that IFSC Banking Units (IBUs) meet the minimum standards of conduct expected, particularly with regard to the treatment of their clients, their dealings with counterparties and other market participants. It also includes directions to ensure that the behaviour of IBUs contributes to fostering and maintaining the integrity of financial markets in the IFSC and will assist the International Financial Services Centres Authority (IFSCA -referred as the 'Authority') to meet the regulatory objectives, including and particularly those related to:

(a) protecting the interests of investors and users of financial services; and

(b) ensuring that the financial markets under IFSCA's purview are fair, efficient, transparent and orderly; and

(c) fostering and maintaining confidence in the IFSC's financial system and regulatory regime.

1.3.3. The IFSCA Banking Handbook: General Directions- v 2.0

i. The IFSCA Banking Handbook ('Handbook') contains the directions of the Authority to the Banking Units (BUs) operating as branch of a Banking Company (also referred to as 'parent bank' in the IFSCA Banking Regulations). Unless generally or specifically exempted, the BUs are required to comply with the directions in this Handbook without fail.

ii. The Authority may, where it feels necessary to do so, issue "Guidance" on the directions for the purpose of amplifying and clarifying the requirements of the directions. BUs are required to take note of the Guidance while complying with the Directions. However, strict compliance of the requirements of the Guidance is not expected as long as the IBU has complied with requirements of the Directions

iii. The Handbook has three components – General directions, Conduct of Business directions and Prudential Directions applicable to BUs

2. Discussion Paper

ESG Reporting – A Paradigm Shift

In the backdrop of global societal shifts such as the climate change, environmental crises, Covid–19 pandemic and other risks to the global order, there is a strong push to rebuild a better business ecosystem and develop resilience for the future. The global community is negotiating ways to manage climate change and mitigate its impact while ensuring that no adverse effect is felt on employment, food security, and living standards of the masses. Addressing climate change is one the most urgent tasks before us, particularly for India, due to rising threats from drastic physical events, such as floods, droughts, hurricanes, rising temperatures, and other climate change related events. In line with the policies adopted by Indian regulators over the past few years, India has started making move towards decarbonization, by nudging as well as mandating market players to adopt sustainable ways of doing business. Organizations and their leaders have taken cognizance of the same and are implementing tangible steps in the short, medium, and long terms. Also there has been shift in the mindset of investors, with priorities expanding to include sustainable growth along with the primary goal of wealth creation. The corporates have taken note of the same and accordingly the businesses today are expected to have an extra layer of ethics and moral duty towards the society and the corporate have started embedding practices to ensure to meet with the requirements on environmental, social and governance norms.

Of equal importance in this changing paradigm is the need to create in-depth, meaningful, decision worthy disclosures with impactful analytics that establish a continuous dialogue between internal and external stakeholders. Across the world, organizations are integrating Environment, Social and Governance (ESG) into their business models and strategies. The Companies Act, 2013 introduced one of the first ESG disclosure requirements for companies. Section 134(m) mandates companies to include a report by their Board of Directors on conservation of energy, along with annual financial statement. This requirement is further detailed under Rule 8(3)(A) of the Companies (Accounts) Rules, 2014, which mandates the board to provide information regarding conservation of energy. Security Exchange Board of India (SEBI) has introduced new environment, social, and governance (ESG) reporting requirements for the top 1,000 listed companies based on by market capitalization. In respect of other companies, the Security Exchange Board of India indicated that the business responsibility and sustainability report may be furnished voluntarily. The requirement of the business responsibility reporting is that the report is required to state the initiatives taken by the companies from an ESG perspective, as per the specified format by the SEBI. However, such disclosure requirements do not seek details about the metrics and processes adopted by companies to identify such opportunities or risks nor mandates the companies to chart its progress over the course of time.

The ESG reports or sustainability reporting done by the companies is through publication of annual sustainability reports which form part and parcel of the annual financial statements. The ESG reporting is based on the Global Reporting Initiatives (GRI) standards and the integrated reporting framework respectively. The GRI standards are a set of interrelated reporting standards, enabling organizations to report publicly on their economic, environmental and social impacts and contribution towards sustainable development covering the universal standards, sector standards and topic standards. The GRI Standards are issued by the Global Sustainability Standards Board (GSSB), an independent operating entity of GRI.

To further strengthen the ESG disclosure regime in India, SEBI amended Regulation 34(2)(f) of the LODR Regulations to introduce the Business Responsibility and Sustainability Reporting (BRSR) framework in May 2021. This will replace the existing Business Responsibility Report (BRR). BRSR is aligned with nine principles of National Guidelines for Responsible Business Conduct (NGBRC) and it will be mandatory for the top 1,000 listed companies to annually disclose ESG-related information from financial year 2022-23. Apart from introducing a relatively comprehensive disclosure framework, BRSR bring sustainability reporting to global standards and includes the following aspects:

- Implementation of the NGRBC principles to address ESG-related concerns;
- Disclosure of adequate policies and mechanism that a company implements to remain ESG-compliant. BRSR lays considerable emphasis on quantifiable metrics for ensuring comparison across sectors, companies, and time periods;
- Enhanced disclosures on climate and social related issues;
- Segregation of disclosures into essential and leadership indicators, the former being the mandatory requirement. The leadership indicators, inter alia, also emphasizes disclosures related to the value chain of eligible entities;
- BRSR allows interplay for organisations that are already publishing sustainability reports under other internationally recognized frameworks.

The format specified by SEBI is much wider compared to the existing format on business responsibility reporting. The disclosures are designed in such a way; the recipient would be able to have an easy measurement and comparison across companies, sectors and time periods. The format also seeks disclosures on climate and social related issues of the company such as employees, consumers and communities. The format of BRSR is divided under two categories i.e. (a) essential i.e. mandatory and (b) leadership i.e. voluntary indicators. The leadership indicators in the BRSR format seek information on a wider set of attributes, including the conduct of the reporting entity's value chain, which depicts the future path of ESG disclosures in India and also includes disclosures related to the value chain of the listed entities. This is in line with the thrust of the NGRBC on responsibility of businesses to encourage and support their value chain in following the ESG principles. BRSR will aid data collation, which certainly would help even the smaller organisations to identify their sustainability focus area. BRSR is a detailed format including data centric as well as a few narrative inputs on the various concerns handled by the top 1000 companies under the ESG strategy banner. Being more data centric and on the uniform platform, is an attempt by the Regulators to engage larger number of organizations seriously into the ESG strategies.

Though the BRSR framework is an attempt by the regulators to standardise the ESG related disclosures, challenges still remain in terms of alignment with international practices on ESG disclosures, avoidance of multiple format reporting, sector-definite disclosure frameworks, external assurance, etc.

The introduction of BRSR framework indicates that India is fast moving on the path of transparent and responsible business. Companies must, therefore, adopt best practices while disclosing relevant information to not only make themselves aware of transition and physical risks to their businesses but also to avoid potential litigation and reputational risks.

About Basilstone

Basilstone Consulting Private Limited ('Basilstone") has been promoted to partner with the society and its businesses to achieve their true potential and help realize their vision. We work closely with our clients and enrich their growth by offering them solution driven consultancy services in the areas of strategic planning, incubation, impact analysis, idea validation, product validation, feasibility study, synergy evaluations, fund raising, restructuring, transaction advisory, representation – guiding on regulatory / non-regulatory meetings, succession planning, Inbound and outbound investment, due diligence, dealing with regulatory / statutory authorities, etc.

We, at Basilstone aim to position ourselves as the 'Go to Consultants' for **Simple Solutions & Value Creation** recognised by our clients for delivering ultimate desired results.

The Purpose of Basilstone is to provide simple solutions and create value backed by:

Strong Processes	**In-Depth** Knowledge	**Invaluable** Experience	**Deep-Rooted** Values

We clearly resonate ourselves with the ever-growing Basil, inspiring us to imbibe the quality of being natural and pure while we adapt to changing conditions and innovation. The rock-solid Stone is representative of our endurance, stability, permanence and our determination, paving the path of value creation for our clients and our firm allegiance to our principles.

Basilstone is the quintessential blend of traditional values and modern thoughts which are echoed in the experience, enthusiasm and energy of its people and translated in the services rendered to its clients.

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