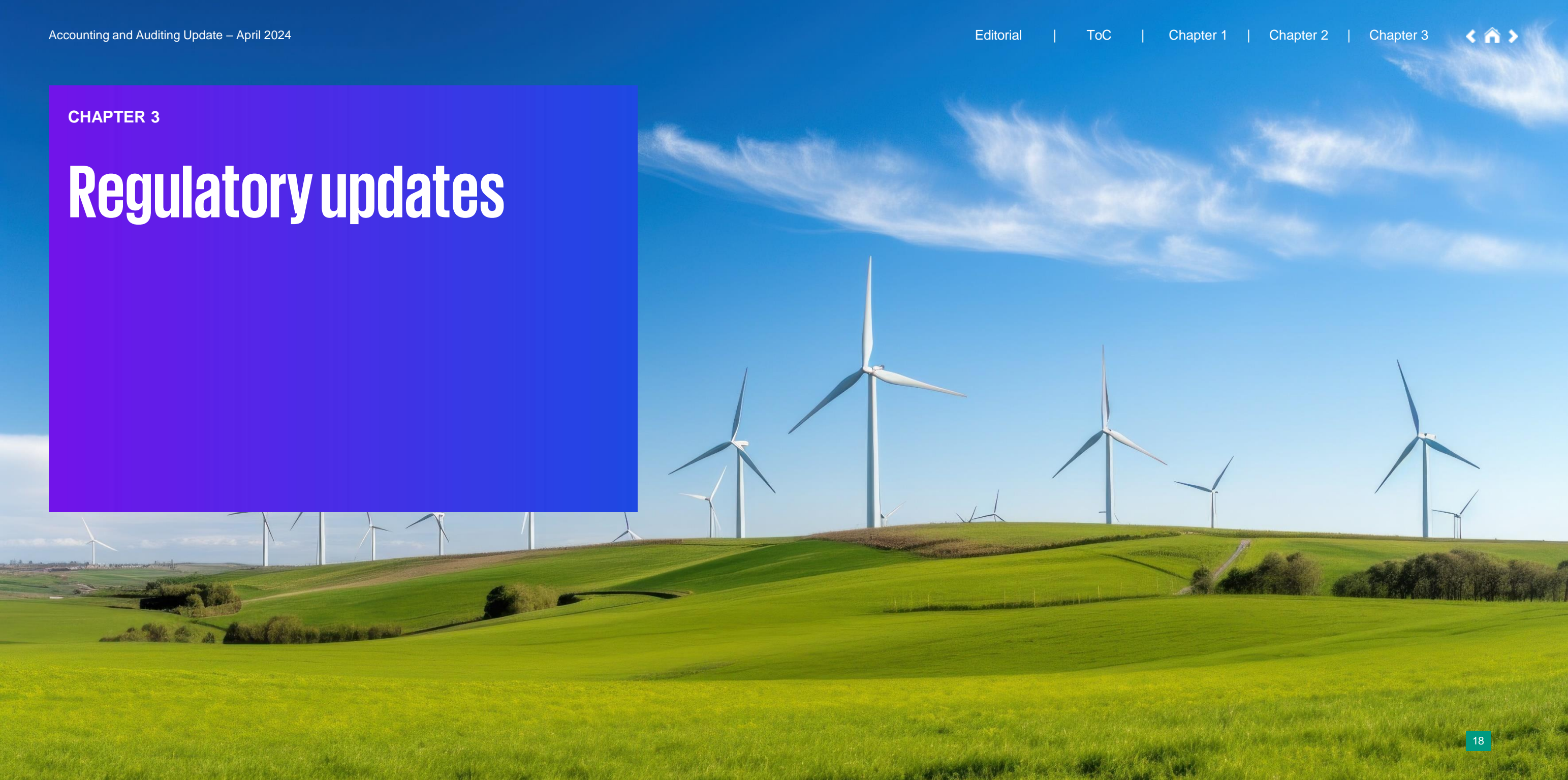


CHAPTER 3

# Regulatory updates





## Clarifications related to investment in AIFs

In order to address certain regulatory concerns relating to investments by Regulated Entities (REs) in Alternative Investment Funds (AIFs), on 19 December 2023<sup>1</sup>, the Reserve Bank of India (RBI) had issued a circular providing a set of instructions for investment in AIFs by REs (the 'Circular'). Subsequently, to address the practical concerns raised by the industry related to the implementation of the Circular, on 27 March 2024, RBI issued certain clarifications with respect to the existing requirements as mentioned below:

**I. Downstream investments:** REs were instructed to not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE. It has now been clarified that downstream investments should exclude investments in equity shares of the debtor company of the RE but include all other investments, including investment in hybrid instruments.

**II. Provision requirement:** In case of a downstream investment by the AIF, the RE is required to liquidate its investment in the scheme within 30 days from the date of such investment. If the REs fail to liquidate the investment within the prescribed timeline, they should make 100 per cent provision on such investments. It has been clarified that provisioning is required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme.

**III. Investment in subordinated units of AIF scheme:** Investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model'<sup>2</sup> shall be subject to full deduction from RE's capital funds. It has been clarified that this would apply only in cases where the AIF does not have any downstream investment in a debtor company of the RE.

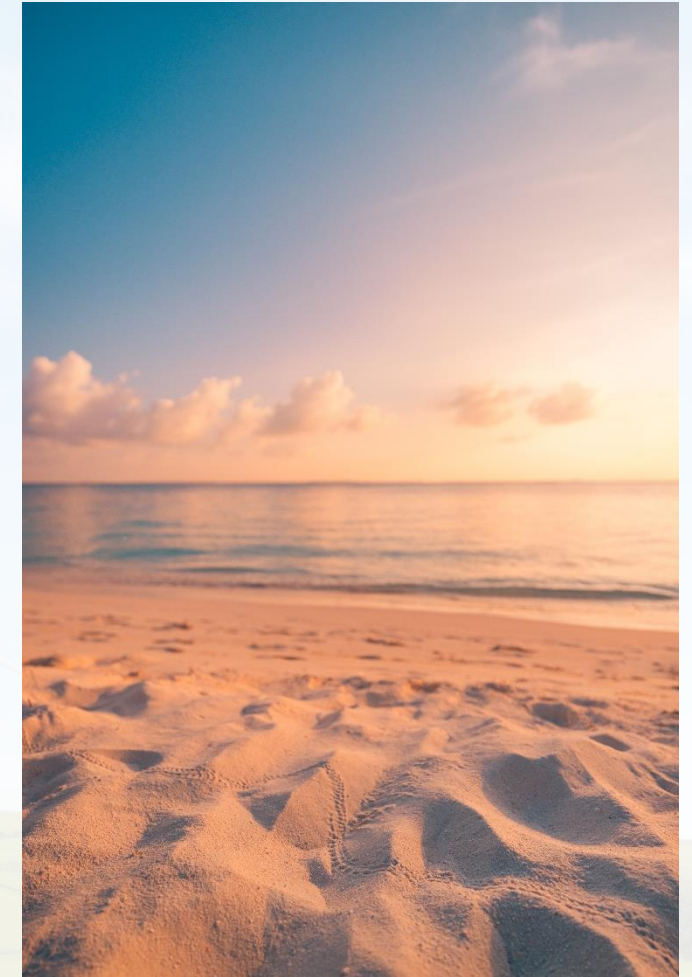
If the RE has investment in subordinated units of an AIF scheme, which also has downstream exposure to the debtor company the RE should comply with paragraph 2 of the Circular issued by RBI (i.e point i and ii above).

Further, with respect to priority distribution model requirements, it has been clarified that:

- The deduction should take place equally from both Tier-1 and Tier-2 capital.
- Reference to investment in subordinated units of AIF Scheme includes all forms of subordinated exposures, including investment in the nature of sponsor units.

**IV. Exclusion:** Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of the Circular.

(Source: RBI circular no. RBI/2023-24/140 dated 27 March 2024)



1. RBI circular no. RBI/2023-24/90 dated 19 December 2023

2. 'Priority distribution model' shall have the same meaning as specified in the SEBI circular SEBI/HO/AFD-1/PoD/P/CIR/2022/157 dated November 23, 2022. 'Priority distribution model' shall have the same meaning as specified in the SEBI circular SEBI/HO/AFD-1/PoD/P/CIR/2022/157 dated November 23, 2022



## Stringent corporate governance framework for insurers

Previously, the Insurance Regulatory and Development Authority of India (IRDAI) had issued a set of guidelines that laid down the corporate governance practices for Indian insurers in addition to the requirements set out in the Insurance Act, 1938, IRDAI Act, 1999 and various other rules and regulations issued under the above laws.

On 20 March 2024, IRDAI notified the IRDAI (Corporate Governance for Insurers) Regulations, 2024 (Corporate Governance Regulations) which replaces the extant guidelines relating to corporate governance practices<sup>3</sup>. Some of the key points of the regulations pertain to the following:

### Board of Directors

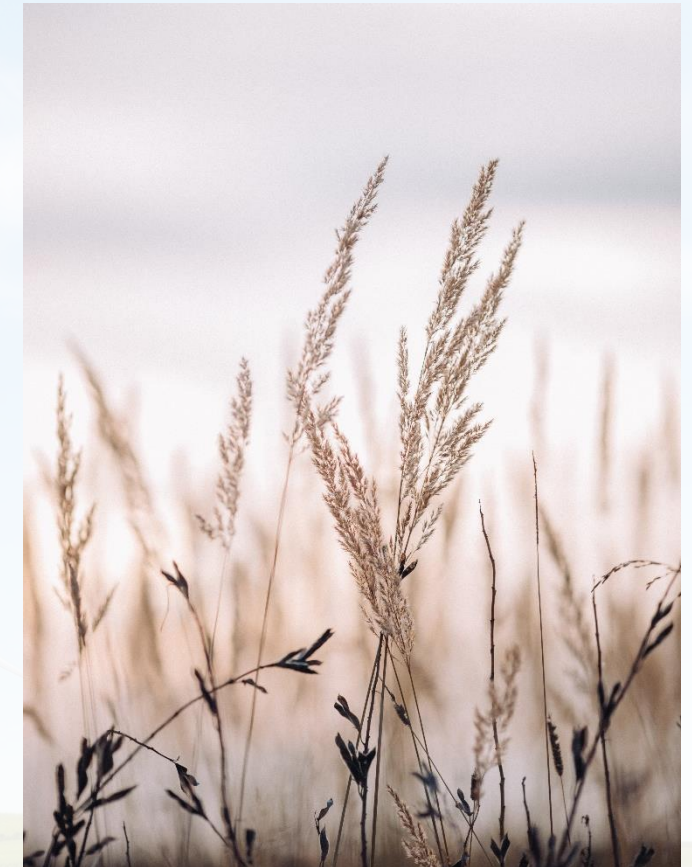
- The board of every insurer should have competent and qualified individuals as

directors, with qualifications and experience that are commensurate with scale, nature, complexity of business and size of the insurer.

- Insurers are required to ensure independence of the Board from the management as well as the promoters and maintain independence of control functions including compliance, risk, audit, actuarial and secretarial function.
- The Board should be responsible for formulating the overall strategy and direction to the insurer and ensure that appropriate systems and procedures for risk management and internal controls are in place.
- The Board can delegate its responsibilities and authority to various committees<sup>4</sup> of the

Board, but such delegation does not absolve the Board from its primary responsibilities.

- The Board should put in place adequate systems, policies and procedures to address potential conflicts of interest and *inter alia* ensure compliance with the provisions of the Companies Act, 2013.
- The Board is required to formulate a policy on related party transactions and review it annually.
- Appropriate measures should be taken by the board towards identification and nurturing of individuals for taking up directorship and KMP positions of the insurer.



3. Circular titled Guidelines for Corporate Governance for Insurers in India dated 18 May 2016

4. The Board shall constitute the following committees, who shall perform such roles and responsibilities as may be specified by the Competent Authority:

- Committees as mandated by the Companies Act
- Risk Management Committee
- Policyholder Protection, Grievance Redressal and Claims Monitoring Committee
- (PPGR&CM Committee)
- Investment Committee
- With Profits Committee



### Key Management Persons (KMPs)

- KMPs should be appointed by the Board on recommendation of the Nomination and Remuneration Committee. Every insurer is required to appoint Managing Director/ Chief Executive Officer or Whole-time Director(s), by whatever name called in accordance with the provisions of Section 34A of the Insurance Act, 1938.
- The minimum fixed tenure of the Chief Compliance Officer (CCO) should not be less than three years.
- The board should fill vacant KMP positions on priority to ensure it does not remain vacant for a continuous period of 180 days.
- Insurers should formulate and adopt a comprehensive board approved remuneration policy in accordance with the framework specified by the Competent

Authority<sup>5</sup> for Chairperson of the Board, Non-Executive Directors and KMPs.

### Appointment of statutory auditors

- Insurers should appoint joint statutory auditors with no conflict of interest in their appointment.
- The appointment should be based on the recommendation of the Audit Committee, subject to the shareholders' approval at the general meeting of insurer.

### Disclosure and reporting requirements

- The CCO should be the designated compliance officer for submitting returns, reports and applications for approvals to the authority<sup>6</sup> and ensuring compliance with the Corporate Governance Regulations.
- The status of compliance with the Corporate Governance Regulations is

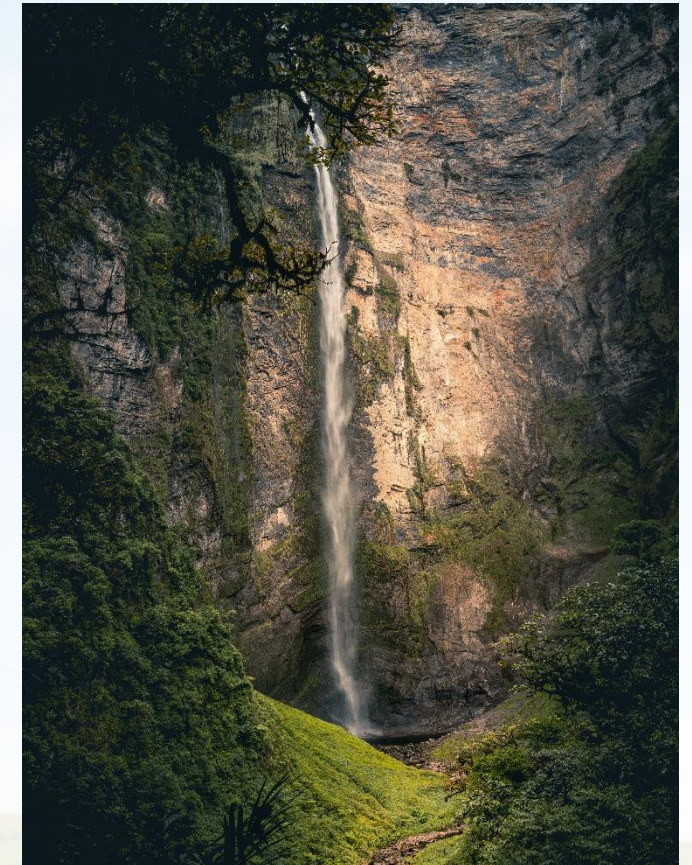
required to be filed on an annual basis within the time and format specified by the competent authority.

- Insurers are required to make disclosures<sup>7</sup> in such a manner and format as required by the competent authority.

### Environment, Social and Governance (ESG)

- Insurers are required to put in place a board approved ESG framework which should be annually reviewed by the board.
- The board is required to establish a comprehensive climate risk management framework based on the size, nature and complexity of operations.

(Source: IRDAI notification no. IRDAI/Reg/7/201/2024 dated 20 March 2024)



5. "Competent Authority"

- i. means Chairperson or
- ii. such whole-time member or committee of the whole-time members or such officer(s) of the Authority, as may be determined by the Chairperson.

6. "Authority" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of Section 3 of the Insurance Regulatory and Development Authority Act, 1999

7. All insurers shall make necessary disclosures about the composition of its Board, meetings of Board & its Committees, details of attendance of meetings by directors and members of Committees, details of remuneration paid, if any, to all directors including Independent Directors, etc.



## ICAI has issued an education material on Ind AS 12, *Income Taxes*

Ind AS 12 provides a structured framework for recognising and measuring income taxes, ensuring that financial statements accurately reflect an entity's tax obligations and the associated impacts on its financial performance and position.

On 13 March 2024, the Institute of Chartered Accountants of India (ICAI) has issued an educational material on Ind AS 12 which provides summary of the standard and discusses fundamental concepts related to exploring the nuances of deferred tax assets and liabilities. Additionally, it includes Frequently Asked Questions (FAQs) to address certain practical issues along with guidance that covers accounting for the interest and penalties related to income taxes, difference between current tax and deferred tax, accounting and presentation of taxes that are scoped out of Ind AS 12, etc.

(Source: ICAI announcement dated 13 March 2024)

