EXECUTIVE PROGRAMME

UPDATES
FOR
CAPITAL MARKETS AND
SECURITIES LAWS
(Relevant for students appearing in June, 2016 examination)

MODULE 2- PAPER 6

Disclaimer-
This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.
Students appearing in June 2016 Examination shall note the following:

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 is applicable.

2. SEBI (Prohibition of Insider Trading) Regulations, 2015 is applicable.

3. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the SEBI, RBI & Central Government on or before six months prior to the date of the examination.

These Updates are to facilitate the students to acquaint themselves with the amendments in securities laws upto December, 2015, applicable for June, 2016 Examination. The students are advised to read their Study Material (2014 Edition) along with these Updates.

In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu
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**(NOTIFICATIONS AND CIRCULARS ISSUED DURING JULY-DECEMBER, 2016)**

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LESSON 6
DEBT MARKET

Right to recall or redeem prior to maturity

An issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject to the following:

a) Such right to recall or redeem debt securities prior to maturity date is exercised in accordance with the terms of issue and detailed disclosure in this regard is made in the offer document including date from which such right is exercisable, period of exercise (which shall not be less than three working days), redemption amount (including the premium or discount at which such redemption shall take place);

b) The issuer or investor may exercise such right with respect to all the debt securities issued or held by them respectively or with respect to a part of the securities so issued or held;

c) In case of partial exercise of such right in accordance with the terms of the issue by the issuer, it shall be done on proportionate basis only;

d) No such right shall be exercisable before expiry of twenty four months from the date of issue of such debt securities;

e) Issuer shall send notice to all the eligible holders of such debt securities at least twenty one days before the date from which such right is exercisable;

f) Issuer shall also provide a copy of such notice to the stock exchange where the such debt securities are listed for wider dissemination and shall make an advertisement in the national daily having wide circulation indicating the details of such right and eligibility of the holders who are entitled to avail such right;

g) Issuer shall pay the redemption proceeds to the investors along with the interest due to the investors within fifteen days from the last day within which such right can be exercised;

h) Issuer shall pay interest at the rate of fifteen per cent. per annum for the period of delay, if any,
i) After the completion of the exercise of such right, the issuer shall submit a
detailed report to the stock exchange for public dissemination regarding the debt
securities redeemed during the exercise period and details of redemption thereof.

**Consolidation and re-issuance**

An issuer may carry out consolidation and re-issuance of its debt securities,
subject to the fulfillment of the following conditions:

a) there is such an enabling provision in its articles under which it has been
incorporated;

b) the issue is through private placement;

c) the issuer has obtained fresh credit rating for each re-issuance from at least one
credit rating agency registered with SEBI and is disclosed;

d) such ratings shall be revalidated on a periodic basis and the change, if any, shall
be disclosed;

e) appropriate disclosures are made with regard to consolidation and re-issuance in
the Term Sheet.

**Securitised Debt Instrument**

The Securities Contracts (Regulation) Act, 1956 was amended in 2007 to include
under the definition of securities any certificate or instrument (by whatever name
it is called) issued to an investor by any issuer who is a special purpose distinct
entity possessing any debt or receivable, including mortgage debt assigned to such
entity, and acknowledging the beneficial interest of the investor in such debt or
receivable, including mortgage debt, as the case maybe.

Securitization involves the pooling of financial assets and the issuance of
securities that are re-paid from the cash flows generated by these assets. Common
assets for securitization include credit cards, mortgages, auto and consumer loans,
student loans, corporate debt, export receivable, and offshore remittances.

Securitised debt instruments are regulated by the Securitization and
Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,
SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 for listing on stock exchanges and the Securitization
Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.

Here, we will discuss SEBI (Public offer and Listing of Securitised Debt Instruments) Regulations, 2008 which is as under:

**Eligibility Criteria**

- A person can not make a public offer of securitized debt instruments or seek listing for such securitized debt instruments unless-
  
  (a) it is constituted as a special purpose distinct entity;

  (b) all its trustees are registered with the SEBI under the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008; and

  (c) it complies with all the applicable provisions of these regulations and the Act.

- The requirement of obtaining registration is not applicable for the following persons, who may act as trustees of special purpose distinct entities:

  (a) any person registered as a debenture trustee with SEBI;

  (b) any person registered as a securitization company or a reconstruction company with the RBI under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

  (c) the National Housing Bank established by the National Housing Bank Act, 1987;

  (d) the National Bank for Agriculture and Rural Development established by the National Bank for Agriculture and Rural Development Act, 1981.

  (e) any scheduled commercial bank other than a regional rural bank;

  (f) any public financial Institution as defined under clause (72) of section 2 of the Companies Act, 2013; and

  (g) any other person as may be specified by SEBI.

However, these persons and special purpose distinct entities of which they are trustees are required to comply with all the other provisions of the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008. However,
these Regulations are not applicable for the National Housing Bank and the National Bank for Agriculture and Rural Development, to the extent of inconsistency with the provisions of their respective Acts.

- An applicant seeking registration to act as a trustee shall,-

(a) have a net worth of not less than two crore rupees.

(b) have in its employment a minimum of two persons who, between them, have at least five years experience in activities related to securitisation and at least one among them shall have a professional qualification in law from any university or institution recognised by the Central Government or any State Government or a foreign university.

However, the above-said requirements are not applicable on the National Housing Bank established by the National Housing Bank Act, 1987 and National Bank for Agriculture and Rural Development established by the National Bank for Agriculture and Rural Development Act, 1981.

### Launching of schemes

1. A special purpose distinct entity may raise funds by making an offer of securitized debt instruments by formulating schemes in accordance with the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008.

2. Where there are multiple schemes, the special purpose distinct entity is required to maintain separate and distinct accounts for each such scheme, and should not combine the asset pools or the realizations of a scheme with those of other schemes.

3. A special purpose distinct entity and the trustees should ensure that the realizations of debts and receivables are held and correctly applied towards the redemption of securitized debt instruments issued under the respective schemes, or towards the payment of the returns on such instruments, or towards other permissible expenditures of the scheme.

4. The terms of issue of the securitized debt instruments may provide for the exercise of a clean-up call option by the special purpose distinct entity, subject to adequate disclosures.

5. No expenses should be charged to the scheme in excess of the allowable expenses as may be specified in the scheme, and any such expenditure, if incurred, should be borne by the trustees.
Transferability of securitised debt instruments

The securitised debt instruments issued to the public or listed on a recognized stock exchange in accordance with these regulations shall be freely transferable.

Rights of investors in securities issued by special purpose distinct entity

The trust deed or other instrument comprising the terms of issue of the securitised debt instruments issued by a special purpose distinct entity shall provide that investors holding such securitised debt instruments have such beneficial interest in the underlying debt or receivables as may have been conferred by the scheme.

In the event of failure of the special purpose distinct entity to redeem any securitised debt instruments offered through an offer document or listed, within the time and in accordance with the conditions stated in the offer document or other terms of issue, the investors holding not less than ten per cent in nominal value of such securitised debt instruments shall be entitled to call a meeting of all such investors.

Mandatory Listing

A special purpose distinct entity desirous of making an offer of securitized debt instruments to the public shall make an application for listing to one or more recognized stock exchanges in terms of Sub-section (2) of Section 17A of the Securities Contracts (Regulation) Act, 1956.

Minimum public offering for listing

For the public offers of securitized debt instruments, the special purpose distinct entity or trustee should satisfy the recognized stock exchange(s) (to which a listing application is made) that each scheme of securitized debt instruments was offered to the public for subscription through advertisements in newspapers for a period of not less than two days, and that the applications received in pursuance of the offer were allotted in accordance with these regulations and the disclosures made in the offer document.

In the case of a private placement of securitized debt instruments, the special purpose distinct entity should ensure that it has obtained credit rating from a
registered credit rating agency for its securitized debt instruments. In the case of a private placement of securitized debt instruments, the special purpose distinct entity should file the listing particulars with the recognized stock exchange(s), along with the application containing such information as may be necessary for any investor in the secondary market to make an informed investment decision related to its securitized debt instruments.

All the credit ratings obtained, including the unaccepted ratings, if any, should be disclosed in the listing particulars filed with the recognized stock exchange(s).

**Continuous listing conditions**

The special purpose distinct entity or its trustee should provide information, including financial information relating to the schemes, to the stock exchanges and investors and comply with such other continuing obligations as may be stipulated in the listing agreement.

**Trading of securitized debt instruments**

The securitized debt instruments issued to the public or on a private placement basis that are listed in recognized stock exchanges shall be traded, and such trades shall be cleared and settled in the recognized stock exchanges, subject to the conditions specified by SEBI.

**Winding up of schemes**

A scheme may be wound up in the event of the following:

- when the securitised debt instruments have been fully redeemed as per the scheme;
- upon legal maturity as stated in the terms of issue of the securitised debt instrument. However, if any debt or receivable is outstanding on legal maturity, the trustees shall dispose off the same in accordance with the scheme and distribute the proceeds; (c) by vote of investors by a special resolution.

**Offer to the public**

- Any reference in these regulations to offering securitized debt instruments to the public shall be construed as including a reference to offering them to any section of the public.
• No offer shall be treated as made to the public, if the offer can properly be regarded, in all the circumstances –

   (a) as not being likely to result, directly or indirectly, in the securitised debt instruments becoming available for subscription or purchase by persons other than those receiving the offer;

   (b) otherwise as being the domestic concern of the persons making and receiving the offer.

   However, these applies only in respect of securitised debt instruments which belong to the same tranche and which are pari passu in all respects.

• Any offer of securitised debt instruments made to fifty or more persons in a financial year shall always be deemed to have been made to the public.

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<th>Submission of draft offer document and filing of final offer document</th>
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<td>• No special purpose distinct entity or trustee thereof shall make an offer of securitised debt instruments to the public unless it files a draft offer document with SEBI at least fifteen working days before the proposed opening of the issue.</td>
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<td>• Such offer document shall be filed along with the minimum filing fee as mentioned in Schedule II of these regulations.</td>
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<td>• However, the balance filing fee provided in Schedule II shall be paid to SEBI within seven days of closure of the public offer.</td>
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<td>• If SEBI specifies any changes to be made in the offer document within the said period of fifteen working days, the special purpose distinct entity and trustee thereof shall carry out such changes in the draft offer document prior to filing it with the designated stock exchange or issuing it.</td>
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<tr>
<td>• The final offer document shall be filed with SEBI and with every recognised stock exchange to which an application for listing of the securitised debt instruments is proposed to be made prior to its issuance to public.</td>
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<th>Arrangements for dematerialisation</th>
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<td>• Prior to submitting the draft offer document with SEBI, the special purpose distinct entity shall enter into an arrangement with a registered depository for</td>
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dematerialisation of the securitised debt instruments that are proposed to be issued to the public.

- The special purpose distinct entity shall give an option to the investors to receive the securitised debt instruments either in the physical form or in dematerialised form.
- The holders of dematerialised instruments shall have the same rights and liabilities as holders of physical instruments.

**Offer period**

A public offer of securitised debt instruments shall not remain open for more than thirty days.

**Minimum subscription**

The offer document shall disclose the minimum subscription it seeks to raise under the scheme.

No securitised debt instruments shall be allotted under the public offer unless subscriptions have been received in respect of the minimum number of securitised debt instruments which will constitute minimum subscription.

Here “minimum subscription” refers to the amount which, in the opinion of the directors of the originator and trustees of the special purpose distinct entity, must be raised by issue of securitised debt instruments.

In the event of non-receipt of minimum subscription or refusal of listing by any recognised stock exchange, all application moneys received in the public offer shall be refunded forthwith to the applicants.

**Allotment and other obligations**

- The securitised debt instruments shall be allotted to the investors within the following time periods:-
  
  (a) in case of dematerialized securitised debt instruments – within five days of closure of the offer;
  
  (b) in case of securitised debt instruments in the physical form – the certificates shall be dispatched within eight days of closure of the offer.
- No special purpose distinct entity shall retain any oversubscription received in any public offer.
• In the event of over-subscription, the allotment shall be made as per the basis of allotment finalized in consultation with the recognized stock exchanges to which an application for listing was made.

• The special purpose distinct entity shall dispatch refund orders to unsuccessful or partially successful applicants within eight days of closure of the offer.

• In a case where the issue proceeds become liable to be refunded in accordance with the disclosures made in the offer document, the special purpose distinct entity shall dispatch refund orders to the applicants within eight days of closure of the offer.

• Where the allotment is not made within the time period mentioned or where the certificates are not dispatched within the time, the special purpose distinct entity and every trustee thereof, and where any such trustee is a body corporate, every director thereof, who is in default shall, on and from the expiry of such period, be jointly and severally liable to pay interest at the rate of fifteen per cent per annum to the concerned applicants.

• Where the refund orders are not dispatched within the time mentioned, the special purpose distinct entity and every trustee thereof, and where any such trustee is a body corporate, every director thereof, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.

• This shall have effect without prejudice to any other provisions of these regulations or any other law.

• Credit to demat accounts of the allottees shall be made by the issuer within two working days from the date of allotment.

Rights of investors in securities issued by special purpose distinct entity

• The trust deed or other instrument comprising the terms of issue of the securitised debt instruments issued by a special purpose distinct entity shall provide that investors holding such securitised debt instruments have such beneficial interest in the underlying debt or receivables as may have been conferred by the scheme.

• In the event of failure of the special purpose distinct entity to redeem any securitised debt instruments offered through an offer document or listed, within the time and in accordance with the conditions stated in the offer document or other terms of issue, the investors holding not less than ten per cent in nominal
value of such securitised debt instruments shall be entitled to call a meeting of all such investors.

- In such meeting, the investors may move a motion to—
  
  (a) call upon the trustee and the special purpose distinct entity to wind up the scheme and distribute the realisations;
  
  (b) remove the trustee;
  
  (c) appoint a new trustee in place of the one removed under clause (b):

However, any such decision shall be taken by means of a special resolution of the investors of the scheme and sections 109 and 114 of the Companies Act, 2013 shall mutatis mutandis apply to such special resolution. However, the new trustee appointed is registered with SEBI under these regulations or is exempted from such registration.

- The trustee and the special purpose distinct entity shall take all reasonable steps to carry out the resolutions passed by the investors.
- Any reasonable expenses incurred in calling and holding a meeting and any reasonable expenses incurred by the trustee or the new trustee, as the case may be, in winding up the scheme and incidental activities shall be met from or reimbursed out of realisations from the asset pool.
- The terms of issue of securitised debt instruments shall not be adversely varied without the consent of the investors.
- The investors shall be deemed to have given their consent to variation if and only if twenty one days notice is given to them of the proposed variation and it is approved by a special resolution passed by them through postal ballot.
- Sections 114 and 117 of the Companies Act, 2013 and the rules framed thereunder shall mutatis mutandis apply to the special resolution referred above.

**Listing Agreement**

Every special purpose distinct entity desirous of listing securitised debt instruments on a recognised stock exchange, shall execute an agreement with such stock exchange.

Every special purpose distinct entity which has previously entered into agreements with a recognised stock exchange to list securitised debt instruments shall execute a fresh listing agreement with such stock exchange within six months of the date of
notification of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

**Municipal Bonds**

The debt market in India for municipal securities has grown considerably since the issuance of Municipal bonds by Ahmedabad Municipal Corporation. Since 1998, other cities that have accessed the capital markets through municipal bonds without state government guarantee include Nashik, Nagpur, Ludhiana, and Madurai. In most cases, bond proceeds have been used to fund water and sewerage schemes or road projects. India’s city governments have thus mobilized about Rs. 4,450 million from the domestic capital market through taxable municipal bonds. The last issuance was done by Greater Vishakhapatnam Municipal Corporation for Rs 30 Crores in 2010.

The Government of India, in order to boost the municipal bond market, allowed the municipalities to issuer tax-free municipal bonds. The central government amended the Income Tax Act (1961 vide the Finance Act 2000), whereby interest income from bonds issued by local authorities was exempted from income tax. The GOI issued guidelines for issue of tax-free municipal bonds in February 2001. These guidelines stipulate eligible issuers, use of funds, essential pre-conditions, maturing period, buy-back, nature of issue and tax benefits, ceiling amount for a project, compulsory credit rating, and external monitoring of the tax-free municipal bond.

Taking into consideration the above, SEBI placed a concept paper on the SEBI website, proposing a framework, governing issuance and listing of debt securities by the Municipalities, along with the draft SEBI (Issue and Listing of Debt Securities by Municipality) Regulations, 2015 for seeking public comments on the same.

After receiving representations and suggestions SEBI approved the draft Regulations on its Board Meeting dated 22 March, 2015 and notified the SEBI (Issue and Listing of Debt Securities by Municipality) Regulations, 2015 on July 15, 2015. The regulations provide for public issuance and listing of privately placed municipal bonds and also provides for disclosure requirements to be made by the prospective issuers. These regulations are in line with the Government of India guidelines for issue of tax-free bonds by Municipalities.

**SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015**

These regulations shall apply to –
(a) public issue of debt securities; and

(b) listing of debt securities issued through public issue or on private placement basis on a recognised stock exchange.

Here, "general obligation bonds" means debt securities where principal and interest are serviced through tax proceeds of the municipality.

"Revenue bonds" means debt securities which are serviced by revenues from one or more projects.

"Municipality" means an institution of self-government constituted under Article 243Q of the Constitution of India.

**General conditions**

An issuer making public issue of debt securities shall only issue revenue bonds.

- No issuer shall make a public issue of revenue bonds unless following conditions are complied with:

(a) it has made an application to one or more recognised stock exchanges for listing of such securities therein. However, where the application is made to more than one recognised stock exchanges, the issuer shall choose one of them as the designated stock exchange. Further, where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;

   Explanation.-For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its revenue bonds on the recognised stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with SEBI and is disclosed in the offer document. However, the revenue bonds intended to be issued shall have a minimum investment grade rating.

Further, where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;
(d) it has entered into an arrangement with a depository registered with SEBI for
dematerialisation of the revenue bonds that are proposed to be issued to the
public, in accordance with the Depositories Act, 1996 and regulations made there
under.

- The revenue bonds shall have a minimum tenure of three years or such period as
  specified by SEBI from time to time.
- The revenue bonds shall have a maximum tenure of thirty years or such period as
  specified by SEBI from time to time.
- The issuer shall appoint one or more merchant bankers at least one of whom shall
  be a lead merchant banker.
- The issuer shall create a separate escrow account for servicing of revenue bonds
  with earmarked revenue.
- The issuer shall appoint a monitoring agency such as public financial institution
  or a scheduled commercial bank to monitor the earmarked revenue in the escrow
  account. However, where the issuer is corporate municipal entity, it shall appoint
  a debenture trustee in accordance with the provisions of SEBI (Debenture

**Advertisements for public issues**

- The issuer may make an advertisement in a national daily with wide circulation,
on or before the issue opening date and such advertisement shall, amongst other
  things, contain the disclosures as per Schedule IV of these regulations.
- No issuer shall issue an advertisement which is misleading in material particular
  or which contain any information in a distorted manner or which is manipulative
  or deceptive.
- The advertisement shall be truthful, fair and clear and shall not contain a
  statement, promise or forecast which is untrue or misleading.
- Any advertisement issued by the issuer shall not contain any matters which are
  extraneous to the contents of the offer document.
- The advertisement shall urge the investors to invest only on the basis of
  information contained in the offer document.
- Any promotional or educative advertisement issued by the issuer during the
  subscription period shall not make any reference to the issue of revenue bonds or
  be used for solicitation.
Minimum subscription

- The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. However, such minimum subscription limit shall not be less than seventy five per cent of the issue size.
- In the event of non-receipt of minimum subscription as specified above, all application moneys received in the public issue shall be refunded forthwith to the applicants, within twelve days from the date of the closure of the issue.
- In the event, there is a delay by the issuer in making the aforesaid refund, then the issuer shall refund the subscription amount along with interest at the rate of ten per cent per annum for the delayed period.

Utilization of issue proceeds

- The funds raised from public issue of debt securities shall be used only for projects that are specified under objects in the offer document.
- The proceeds of the issue shall be clearly earmarked for a defined project or a set of projects for which requisite approvals have been obtained from concerned authorities.
- The issuers shall maintain a bank account in which the amount raised from the issue shall be transferred immediately after the closure of the issue and such amount shall only be utilised for specified project(s). However, where the issuer is a Corporate Municipal Entity, the issue proceeds, net of issue expenses, shall be used only for onward lending to municipalities, as disclosed in the offer document.

Further, where the issuer is a corporate municipal entity, it shall maintain sufficient interest margin while onward lending to the municipalities, to meet its operating expenses and obligations.

- The issuer shall establish a separate project implementation cell and designate a project officer who shall not be below the rank of deputy commissioner, who shall monitor the progress of the project(s) and shall ensure that the funds raised are utilised only for the project(s) for which the debt securities were issued.

However, where the issuer is a corporate municipal entity, such requirement shall be complied by the Municipality which is being financed.
• Issuer’s contribution for each project shall not be less than twenty per cent of the project costs, which shall be contributed from their internal resources or grants.

   However, where the issuer is a corporate municipal entity, contribution of the concerned municipality, which is being financed by the corporate municipal entity, shall not be less than twenty per cent of the project costs, which shall be contributed from its internal resources or grants.

• The issuer shall disclose the schedule of implementation of the project in the offer document in a tabular form and the funds raised by the issuer shall be utilized in accordance with the said schedule.

**Mandatory listing**

An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognised stock exchanges:

However, in case of issuer being corporate municipal entity, such an application shall be made in terms of sub-section (1) of section 40 of the Companies Act, 2013.

**Conditions for listing of debt securities issued on private placement basis.**

An issuer may list its debt securities issued on private placement basis on a recognised stock exchange subject to the following conditions:

(a) an issuer may issue general obligation bonds or revenue bonds;

(b) accounts of municipality being the issuer, shall be prepared in accordance with National Municipal Accounts Manual or in accordance with similar Municipal Accounts Manual adopted by the respective State Government for at least three immediately preceding financial years;

(c) no order or direction of restraint, prohibition or debarment by SEBI against the corporate municipal entity or its directors is in force;

(d) the issuer, being a corporate municipal entity, has issued such debt securities in compliance with the provisions of Companies Act, 2013 and particularly section 42 of the Companies Act, 2013 and rules prescribed there under and other applicable laws;

(e) the issuer shall not solicit or collect funds by issue of debt securities, except by way of private placement;
(f) the minimum subscription amount per investor shall not be less than rupees twenty five lakh or such amount as may be specified by SEBI from time to time;

(g) credit rating has been obtained in respect of such debt securities from at least one credit rating agency registered with SEBI;

(h) the debt securities proposed to be listed are in dematerialized form;

(i) the disclosures as provided in Schedule I of these regulations have been made.

**Trust deed**

- A trust deed for securing the issue of debentures shall be executed by the issuer in favour of the independent trustee or debenture trustee, as applicable, within three months of the closure of the issue.
- The trust deed shall contain such clauses as may be prescribed in Schedule IV of the SEBI (Debenture Trustees) Regulations, 1993.

However, in case of private placement by a corporate municipal entity, the trust deed shall, in-addition, contain such clauses as prescribed under section 71 of the Companies Act, 2013 and Companies (Share Capital and Debentures) Rules 2014.

- The trust deed shall not contain a clause which has the effect of:
  
  (a) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;

  (b) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by SEBI;

  (c) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

**Debenture redemption reserve**

For the redemption of the debentures issued by a corporate municipal entity, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 2013 and the rules made thereunder.

Where the issuer is a corporate municipal entity and the issuer has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.
### Continuous listing conditions

- All the issuers making public issues of debt securities or seeking listing of debt securities issued on private placement basis, shall comply with conditions of listing including continuous disclosure and other requirements specified by SEBI in general and those specified in Schedule V to these regulations.

- Where the issuer is corporate municipal entity, one-third of its Board shall comprise of independent directors, as defined in section 149 of the Companies Act, 2013.

- Every rating obtained by an issuer shall be periodically reviewed by the registered credit rating agency and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the debt securities are listed.

- In the event of credit rating being downgraded by two or more notches below the rating assigned at the time of issue, the issuer shall present to all bondholders, the reasons for fall in rating and the steps, if any, it intends to take to recover the rating.

- Any change in rating shall be promptly disseminated in such manner as the stock exchange where such securities are listed may determine from time to time.

- The issuer, the respective debenture trustees, wherever appointed, and stock exchanges shall disseminate all information and reports regarding debt securities including compliance reports filed by the issuers and the debenture trustees, if appointed, to the investors and the general public by placing them on their websites.

- The information referred shall also be placed on the websites, if any, of the debenture trustee, the issuer and the stock exchanges.

### Trading and reporting of debt securities

- The debt securities issued to the public or on a private placement basis, which are listed in recognised stock exchanges, shall be traded and such trades shall be cleared and settled in recognised Clearing Corporation subject to conditions specified by SEBI.

- The trading lot for privately placed debt securities shall be rupees one lakh or such amount as may be specified by SEBI.

- In case of trades of debt securities which have been made over the counter, such trades shall be reported on a recognised stock exchange having a nationwide
trading terminal or such other platform as may be specified by SEBI from time to time.

- The information in respect of issues such as issuer details, instrument details, ratings, rating migration, coupon, buyback, redemption details, shall be required to be reported to a common database with depositories or any other platform as may be specified by SEBI.

**Compliances under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

### I. Obligation of Listed Entity which has listed its non-convertible debt securities

The Provisions of Chapter V of SEBI (LODR) Regulations, 2015 shall apply only to a listed entity which has listed its ‘Non-convertible Debt Securities’ and/or ‘Non-Convertible Redeemable Preference Shares’ on a recognised stock exchange in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 or Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 respectively.

The provisions of this chapter shall also be applicable to “perpetual debt instrument” and "perpetual non-cumulative preference share” listed by banks.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Regulation No. of SEBI (LODR) Regulations, 2015</th>
<th>Subject</th>
<th>Particulars</th>
</tr>
</thead>
</table>
| 1.     | Regulation 50 | Intimation to stock exchange(s) | - Prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.  
- Intimate the stock exchange(s), its intention to raise funds through new non-convertible debt securities or non-convertible redeemable |
preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities.

- However, the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new non convertible debt securities or non-convertible redeemable preference shares shall be considered.

- Intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non convertible debt securities or any other matter affecting the rights or interests of holders of non convertible debt securities or non convertible redeemable preference shares is proposed to be considered.

<p>| 2. | Regulation 51 | Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive | The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the |</p>
<table>
<thead>
<tr>
<th>3. Regulation 52</th>
<th>Financial Results</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by SEBI within forty five days from the end of the half year to the recognised stock exchange(s).</td>
</tr>
<tr>
<td></td>
<td>The listed entity shall</td>
</tr>
</tbody>
</table>

performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non convertible debt securities or redeemable preference shares.

Explanation.- The expression ‘promptly inform’, shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

- The listed entity who has issued or is issuing non convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III.
comply with following requirements with respect to preparation, approval, authentication and publication of annual and half-yearly financial results:

(a) Un-audited financial results shall be accompanied by limited review report prepared by the statutory auditors of the listed entity or in case of public sector undertakings, by any practising Chartered Accountant, in the format as specified by SEBI. However, if the listed entity intimates in advance to the stock exchange(s) that it shall submit to the stock exchange(s) its annual audited results within sixty days from the end of the financial year, un-audited financial results for the last half year accompanied by limited review report by the auditors need not be submitted to stock exchange(s).

(b) Half-yearly results shall be taken on record by the board of directors and signed by the managing director / executive director.

(c) The audited results for the year shall be submitted to
the recognised stock exchange(s) in the same format as is applicable for half-yearly financial results.

(d) If the listed entity opts to submit un-audited financial results for the last half year accompanied by limited review report by the auditors, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the board of directors.

(e) Modified opinion(s) in audit reports that have a bearing on the interest payment/dividend payment pertaining to non-convertible redeemable debentures/redemption or principal repayment capacity of the listed entity shall be appropriately and adequately addressed by the board of directors while publishing the accounts for the said period.

- The annual audited financial results shall be submitted along with the annual audit report and either Form A for audit report with unmodified opinion, or Form B for audit report with modified opinion.
• The Form B and the accompanying annual audit report submitted shall be reviewed by the stock exchange(s) and the Qualified Audit Report Review Committee in the manner specified in Schedule VIII.

• The listed entity shall on the direction issued by SEBI, carry out the necessary steps, for rectification of modified opinion and/or submission of revised pro-forma financial results, in the manner specified in Schedule VIII.

• The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:

  (a) credit rating and change in credit rating (if any);
  (b) asset cover available, in case of non-convertible debt securities;
  (c) debt-equity ratio;
  (d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non convertible debt securities and
whether the same has been paid or not; and,

(e) next due date for the payment of interest/dividend of non-convertible preference shares /principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

However, the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non banking financial companies registered with the Reserve Bank of India. Further, the disclosure requirement mentioned above shall not be applicable in case of unsecured
debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

- While submitting the information required, the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.

- The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of non convertible debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.

- The listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement, in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

<table>
<thead>
<tr>
<th></th>
<th>Regulation 53</th>
<th>Annual Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td></td>
<td>The annual report of the listed entity shall contain disclosures</td>
</tr>
</tbody>
</table>
as specified in Companies Act, 2013 along with the following:

(a) audited financial statements i.e. balance sheets, profit and loss accounts etc;

(b) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3/Indian Accounting Standard 7, mandated under Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or by the Institute of Chartered Accountants of India, whichever is applicable;

(c) auditors report;

(d) directors report;

(e) name of the debenture trustees with full contact details;

(f) related party disclosures as specified in Para A of Schedule V.

5. Regulation 54 Asset Cover

- In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

However, this shall not be
applicable in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

- The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.

<table>
<thead>
<tr>
<th>Regulation 55</th>
<th>Credit Rating</th>
</tr>
</thead>
</table>
|               | Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by SEBI.

<table>
<thead>
<tr>
<th>Regulation 56</th>
<th>Documents and Intimation to Debenture Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The listed entity shall forward the following to the debenture trustee promptly: (a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised. However, in the case of debentures or preference...</td>
</tr>
</tbody>
</table>
shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

(b) a copy of all notices, resolutions and circulars relating to-

(i) new issue of non convertible debt securities at the same time as they are sent to shareholders/holders of non convertible debt securities;

(ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non convertible debt securities or advertised in the media including those relating to proceedings of the meetings;

(c) intimations regarding:

(i) any revision in the rating;

(ii) any default in timely payment of interest or redemption or both in respect of the non convertible debt
(iii) failure to create charge on the assets;
(d) a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non convertible debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results.

However, submission of such half yearly certificates is not applicable in cases where a listed entity is a bank or non banking financial companies registered with Reserve Bank of India or where bonds are secured by a Government guarantee.

- The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

- The listed entity may, subject to the consent of the debenture trustee, send the information, in electronic form/fax.

8. Regulation 57 Other submissions to stock exchange(s) • The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or
<table>
<thead>
<tr>
<th>9. Regulation 58</th>
<th>Documents and information to holders of non-convertible debt securities and non-convertible preference shares</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The listed entity shall send the following documents to holders of non-convertible debt securities:</td>
</tr>
<tr>
<td></td>
<td>• Hard copies of full annual reports to those, who request for the same.</td>
</tr>
<tr>
<td></td>
<td>• Half yearly communication</td>
</tr>
<tr>
<td></td>
<td>• notice of all meetings specifically stating that the provisions for appointment of proxy as mentioned in Section 105 of the Companies Act, 2013, shall be applicable for such meeting.</td>
</tr>
<tr>
<td>10. Regulation 59</td>
<td><strong>Structure of non convertible debt securities and non convertible redeemable preference shares</strong></td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>

- proxy forms which shall be worded in such a manner that holders of these securities may vote either for or against each resolution.

- The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to:
  
  (a) the structure of the debenture in terms of coupon, conversion, redemption, or otherwise.
  
  (b) the structure of the non-convertible redeemable preference shares in terms of dividend of non-convertible preference shares payable, conversion, redemption, or otherwise.

  The approval of the stock exchange shall be made only after:

  (a) approval of the board of directors and the debenture trustee in case of non-convertible debt securities; and

  (b) after complying with the provisions of Companies Act, 2013 including approval of the consent of
|   | Regulation 60 | Record Date | **The listed entity shall fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.**
|   |             |             | **The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.**

| 12. | Regulation 61 | Terms of non convertible debt securities and non convertible redeemable preference shares | **The listed entity shall ensure timely payment of interest or dividend of non-convertible redeemable preference shares or redemption payment. However, the listed entity shall not declare or distribute any dividend wherein it has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities. However, this requirement shall not be applicable in
case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

- The listed entity shall not forfeit unclaimed interest/dividend and such unclaimed interest/dividend shall be transferred to the ‘Investor Education and Protection Fund’ set up as per Section 125 of the Companies Act, 2013.
- Unless the terms of issue provide otherwise, the listed entity shall not select any of its listed securities for redemption otherwise than pro rata basis or by lot.
- The listed entity shall comply with the requirements for transfer of securities including procedural requirements specified in Schedule VII.

13. Regulation 62  Website

- The listed entity shall maintain a functional website containing the following information about the listed entity:-
  
  (a) details of its business;
  
  (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors
report etc;
(c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
(d) email address for grievance redressal and other relevant details;
(e) name of the debenture trustees with full contact details;
(f) the information, report, notices, call letters, circulars, proceedings, etc. concerning non-convertible redeemable preference shares or non convertible debt securities;
(g) all information and reports including compliance reports filed by the listed entity;
(h) information with respect to the following events:
   (i) default by issuer to pay interest on or redemption amount;
   (ii) failure to create a charge on the assets;
   (iii) revision of rating assigned to the non convertible debt securities:

• The listed entity may also issue a press release with respect to the events specified in the above para.

• The listed entity shall ensure
II. Obligations of Listed Entity which has listed its specified securities and either non-convertible debt securities or both

Applicability

Entity which has listed its ‘specified securities’ and ‘non-convertible debt securities’ or ‘non-convertible redeemable preference shares’ or both on any recognised stock exchange, shall be bound by the provisions in Chapter IV and additionally comply with Chapter V of these regulations.

However, the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on SEBI or the stock exchange or any other authority under any law to seek any such information from the listed entity. Further, the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under chapter VI.

Delisting (Regulation 64)

- In the event specified securities of the listed entity are delisted from the stock exchange, the listed entity shall comply with all the provisions in Chapter V of these regulations.
- In the event that non-convertible debt securities and non-convertible redeemable preference shares’ of the listed entity do not remain listed on the stock exchange, the listed entity shall comply with all the provisions in Chapter IV of these regulations.

III. Obligations of listed entity which has listed its securitised debt instruments

The provisions of chapter VIII of SEBI (LODR) Regulations shall apply to Special Purpose Distinct Entity issuing securitised debt instruments and the trustees of Special Purpose Distinct Entity shall ensure compliance with each of the provisions of these regulations.
<table>
<thead>
<tr>
<th>1. Regulation 82</th>
<th>Intimation and filings with stock exchange(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Prior intimation to the Stock exchange, of its intention to issue new securitized debt instruments either through a public issue or on private placement basis.</td>
</tr>
<tr>
<td></td>
<td>• Intimation to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of trustees, at which the recommendation or declaration of issue of securitized debt instruments or any other matter affecting the rights or interests of holders of securitized debt instruments is proposed to be considered.</td>
</tr>
<tr>
<td></td>
<td>• Submission of such statements, reports or information including financial information pertaining to Schemes to stock exchange within seven days from the end of the month/actual payment date, either by itself or through the servicer, on a monthly basis in the format as specified by SEBI from time to time.</td>
</tr>
<tr>
<td></td>
<td>However, where periodicity of the receivables is not monthly, reporting shall be made for the relevant periods.</td>
</tr>
<tr>
<td></td>
<td>• To provide the stock exchange, either by itself or</td>
</tr>
</tbody>
</table>
through the servicer, loan level information, without disclosing particulars of individual borrowers, in manner specified by stock exchange.

<table>
<thead>
<tr>
<th>Regulation 83</th>
<th>Disclosure of information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• To promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity and price sensitive information.</td>
</tr>
<tr>
<td></td>
<td>• To make the disclosures specified in Part D of Schedule III.</td>
</tr>
<tr>
<td></td>
<td>Explanation.- The expression ‘promptly inform’, shall imply that the stock exchange must be informed must as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Regulation 84</th>
<th>Credit Rating.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year, by a credit rating agency registered by SEBI.</td>
</tr>
<tr>
<td></td>
<td>• Any revision in rating(s) shall be disseminated by the stock exchange(s).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regulation 85</th>
<th>Information to</th>
</tr>
</thead>
</table>
|               | • To provide either by itself or
| Investors                                                                 | through the servicer, loan level information without disclosing particulars of individual borrower to its investors.  
|                                                                       | • To provide information regarding revision in rating as a result of credit rating done periodically to its investors.  
|                                                                       | • The information may be sent to investors in electronic form/fax if so consented by the investors.  
|                                                                       | • To display the email address of the grievance redressal division and other relevant details prominently on its website and in the various materials / pamphlets/ advertisement campaigns initiated by it for creating investor awareness.  

| 5. Regulation 86 | Terms of Securitized Debt Instruments | • To ensure that no material modification shall be made to the structure of the securitized debt instruments in terms of coupon, conversion, redemption, or otherwise without prior approval of the recognised stock exchange(s) and the listed entity shall make an application to the recognised stock exchange(s) only after the approval by Trustees.  
|                   |                                         | • To ensure timely interest/re redemption payment.  

• To ensure that where credit enhancement has been provided for, it shall make credit enhancement available for listed securitized debt instruments at all times.

• The listed entity shall not forfeit unclaimed interest and principal and such unclaimed interest and principal shall be, after a period of seven years, transferred to the Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009.

• Not to select any of its listed securitized debt instruments for redemption otherwise than on pro rata basis or by lot and shall promptly submit to the recognised stock exchange(s) the details thereof.

• To remain listed till the maturity or redemption of securitised debt instruments or till the same are delisted as per the procedure laid down by SEBI.

However, these provisions shall not restrict the right of the recognised stock exchange(s) to delist, suspend or remove the securities at any time and for any reason which the recognised stock exchange(s) considers proper.
in accordance with the applicable legal provisions.

<table>
<thead>
<tr>
<th></th>
<th>Regulation 87</th>
<th>Record Date</th>
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<tbody>
<tr>
<td>6.</td>
<td></td>
<td>• To fix a record date for payment of interest and payment of redemption or repayment amount or for such other purposes as specified by the recognised stock exchange(s).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• To give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the Stock Exchange may agree to or require specifying the purpose of the record date.</td>
</tr>
</tbody>
</table>

**IV. Obligations of Listed Entity which has listed its Convertible Debt Instruments**

For Convertible Debt Instruments, Chapter III along with Chapter IV of SEBI (LODR) Regulations is applicable.

As these both Chapters are also applicable to equity shares.
OVERSEAS INVESTMENT BY ALTERNATIVE INVESTMENT FUNDS

Under Regulation 15(1)(a) of AIF Regulations, "Alternative Investment Fund may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time."

In this regard, Reserve Bank of India (RBI) vide its Circular No.48 dated December 09, 2014 has permitted an Alternative Investment Fund (AIF), registered with SEBI, to invest overseas in terms of the provisions issued under the A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively.

In accordance with the aforesaid RBI circular, it is stated as under:

- AIFs may invest in equity and equity linked instruments only of offshore venture capital undertakings, subject to overall limit of USD 500 million (combined limit for AIFs and Venture Capital Funds registered under the SEBI (Venture Capital Funds) Regulations, 1996).

- AIFs desirous of making investments in offshore venture capital undertakings shall submit their proposal for investment (in the attached format at Annexure) to SEBI for prior approval. It is clarified that no separate permission from RBI is necessary in this regard.

- For the purpose of such investment, it is clarified that “Offshore Venture Capital Undertakings” means a foreign company whose shares are not listed on any of the recognized stock exchange in India or abroad.

- Investments would be made only in those companies which have an Indian connection (e.g. company which has a front office overseas, while back office operations are in India).

- Such investments shall not exceed 25% of the investible funds of the scheme of the AIF.

- The allocation of investment limits would be done on ‘first come first serve’ basis, depending on the availability in the overall limit of USD 500 million.
In case an AIF who is allocated certain investment limit, wishes to apply for allocation of further investment limit, the fresh application shall be dealt with on the basis of the date of its receipt and no preference shall be granted to it in fresh allocation of investment limit.

The AIF shall have a time limit of 6 months from the date of approval from SEBI for making allocated investments in offshore venture capital undertakings. In case the applicant does not utilize the limits allocated within the stipulated period, SEBI may allocate such unutilized limit to other applicants.

These investments would be subject to Notification No. FEMA120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004] including amendments thereof and related directions issued by RBI from time to time.

AIFs shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments.

AIFs shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route.

AIFs shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/Joint Venture /undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF has been contributed by a single NBFC.

It is clarified that from the date of this circular, the tenure of any scheme of the AIF shall be calculated from the date of final closing of the scheme.

**********
EXTERNAL COMMERCIAL BORROWINGS (ECB)

ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB comprises the following three tracks:

**Track I:** Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.

**Track II:** Long term foreign currency denominated ECB with minimum average maturity of 10 years.

**Track III:** Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

FORMS OF ECB

The ECB Framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms:

1. Loans including bank loans;
2. Securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures);
3. Buyers’ credit;
4. Suppliers’ credit;
5. Foreign CurrencyConvertible Bonds (FCCBs);
6. Financial Lease; and
7. Foreign Currency Exchangeable Bonds (FCEBs)

AVAILABLE ROUTES FOR RAISING ECB

Under the ECB framework, ECBs can be raised either under the automatic route or under the approval route. For the automatic route, the cases are examined by the Authorised Dealer Category-I (AD Category-I) banks. Under the approval route,
the prospective borrowers are required to send their requests to the RBI through their ADs for examination.

While the regulatory provisions are mostly similar, there are some differences in the form of amount of borrowing, eligibility of borrowers, permissible end-uses, etc. under the two routes. While the first six forms of borrowing, mentioned above, can be raised both under the automatic and approval routes, FCEBs can be issued only under the approval route.

PARAMETERS FOR ECBs

Various parameters of raising loan under ECB framework are mentioned in the following sub-paragraphs.

1. **Minimum Average Maturity Period:** The minimum average maturities for the three tracks are set out as under:

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. 3 years for ECB up to USD 50 million or its equivalent.</td>
<td>10 years irrespective of the amount.</td>
<td>Same as under Track I.</td>
</tr>
<tr>
<td>ii. 5 years for ECB beyond USD 50 million or its equivalent.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Eligible Borrowers:** The list of entities eligible to raise ECB under the three tracks is set out in the following table:

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Companies in manufacturing and software development sectors.</td>
<td>i. All entities listed under Track I.</td>
<td>i. All entities listed under Track II.</td>
</tr>
<tr>
<td>ii. Shipping and airlines</td>
<td>ii. Companies in infrastructure sector.</td>
<td>ii. All Non-Banking Financial Companies</td>
</tr>
<tr>
<td></td>
<td>iii. Holding</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
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<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>iii.</td>
<td>Small Industries Development Bank of India (SIDBI).</td>
<td></td>
</tr>
<tr>
<td>iv.</td>
<td>Units in Special Economic Zones (SEZs).</td>
<td></td>
</tr>
<tr>
<td>v.</td>
<td>Export Import Bank of India (Exim Bank) (only under the approval route).</td>
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<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>iii.</td>
<td>Companies engaged in miscellaneous activities.</td>
</tr>
<tr>
<td></td>
<td>iv.</td>
<td>Core Investment Companies (CICs).</td>
</tr>
<tr>
<td></td>
<td>v.</td>
<td>Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of SEBI.</td>
</tr>
<tr>
<td></td>
<td>ii.</td>
<td>NBFCs-Micro Finance Institutions (NBFCs-MFIs), Not for Profit companies registered under the Companies Act, 1956/2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multi-level Cooperative Act/State-level mutually aided Cooperative Acts respectively), Non-Government Organisations (NGOs) which are engaged in microfinance activities.</td>
</tr>
</tbody>
</table>
Notes: Entities engaged in micro-finance activities to be eligible to raise ECB: (i) should have a satisfactory borrowing relationship for at least three years with an AD Category I bank in India, and (ii) should have a certificate of due diligence on ‘fit and proper’ status from the AD Category I bank.

3. Recognised Lenders/Investors: The list of recognized lenders / investors for the three tracks will be as follows:

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. International banks.</td>
<td>All entities listed under</td>
<td>All entities listed under</td>
</tr>
<tr>
<td>ii. International capital markets.</td>
<td>Track I but for overseas branches /</td>
<td>Track I but for overseas branches /</td>
</tr>
<tr>
<td>iii. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional</td>
<td>for overseas branches / subsidiaries of Indian banks. In case of</td>
<td></td>
</tr>
</tbody>
</table>
financial institutions and Government owned (either wholly or partially) financial institutions.
iv. Export credit agencies.
v. Suppliers of equipment.
vi. Foreign equity holders.
vii. Overseas long term investors such as:
   a. Prudentially regulated financial entities;
b. Pension funds;
c. Insurance companies;
d. Sovereign Wealth Funds;
e. Financial institutions located in International Financial Services Centres in India
viii. Overseas branches / subsidiaries of Indian banks

subsidaries of Indian banks.

NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations and individuals.

Notes:

1. Overseas branches / subsidiaries of Indian banks can be lenders only under Track I. Further, their participation under this track is subject to the prudential norms issued by the Department of Banking Regulation, RBI. Indian banks are not permitted to participate in refinancing of existing ECBs.

2. Overseas Organizations proposing to lend ECB would have to furnish to the authorised dealer bank of the borrower a certificate of due diligence from an overseas bank, which, in turn, is subject to regulation of host-country regulators and such host country adheres to the Financial Action Task Force (FATF) guidelines on anti-money laundering (AML)/ combating the financing of terrorism (CFT). The certificate of due diligence should comprise the following: (i) that the lender maintains an account with the bank at least for a period of two years, (ii) that the lending entity is organised as per the local laws and held in good esteem by the business/local community, and (iii) that there is no criminal action pending against it.
3. **Individual lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence /documents such as audited statement of account and income tax return, which the overseas lender may furnish, need to be certified and forwarded by the overseas bank. Individual lenders from countries which do not adhere to FATF guidelines on AML / CFT are not eligible to extend ECB.**

4. **All-in-Cost (AIC):** The all-in-cost requirements for the three tracks will be as under:

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. The all-in-cost ceiling is prescribed through a spread over the benchmark as under:</td>
<td>i. The maximum spread over the benchmark will be 500 basis points per annum.</td>
<td>The all-in-cost should be in line with the market conditions.</td>
</tr>
<tr>
<td>• For ECB with minimum average maturity period of 3 to 5 years - 300 basis points per annum over 6 month LIBOR or applicable benchmark for the respective currency.</td>
<td>ii. Remaining conditions will be as given under Track I.</td>
<td></td>
</tr>
<tr>
<td>• For ECB with average maturity period of more than 5 years – 450 basis points per annum over 6 month LIBOR or applicable benchmark for the respective currency.</td>
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<td></td>
</tr>
<tr>
<td>ii. Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest.</td>
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</tr>
</tbody>
</table>
5. **End-use prescriptions:** The end-use prescriptions for ECB raised under the three tracks are given in the following table:

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) ECB proceeds can be utilised for capital expenditure in the form of:</td>
<td>1. The ECB proceeds can be used for all purposes excluding the following:</td>
<td>NBFCs can use ECB proceeds only for:</td>
</tr>
<tr>
<td>• Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods;</td>
<td>• Real estate activities</td>
<td>• On-lending to the infrastructure sector;</td>
</tr>
<tr>
<td>• Local sourcing of capital goods;</td>
<td>• Investing in capital market</td>
<td>• providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and</td>
</tr>
<tr>
<td>• New project;</td>
<td>• Using the proceeds for equity investment domestically;</td>
<td>• providing capital goods/equipment to domestic entities by way of lease and hire-purchases</td>
</tr>
<tr>
<td>• Modernisation /expansion of existing units;</td>
<td>• On-lending to other entities with any of the above objectives;</td>
<td>2. Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ.</td>
</tr>
<tr>
<td>• Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS);</td>
<td>• Purchase of land</td>
<td>3. NBFCs-MFI, other eligible MFIs, NGOs and not for profit</td>
</tr>
<tr>
<td>• Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India;</td>
<td>2. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.</td>
<td></td>
</tr>
<tr>
<td>• Refinancing of existing trade credit raised for import of capital goods;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Payment of capital goods already shipped / imported but unpaid;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Refinancing of existing ECB provided the residual</td>
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<td></td>
</tr>
</tbody>
</table>
maturity is not reduced.

ii) SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector), where MSME sector is as defined under the MSME Development Act, 2006, as amended from time to time.

iii) Units of SEZs can raise ECB only for their own requirements.

iv) Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively.

v) ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years.

vi) ECBs for the following purposes will be considered only under the approval route:

- Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;
- On-lending by Exim Bank.

companies registered under the Companies Act, 1956/2013 can raise ECB only for on-lending to self-help groups or for micro-credit or for *bona fide* micro finance activity including capacity building.

4. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following:

i. Real estate activities
ii. Investing in capital market
iii. Using the proceeds for equity investment domestically;
iv. On-lending to other entities with any of the above objectives;
v. Purchase of land

6. **Individual Limits**: The individual limits refer to the amount of ECB which can be raised in a financial year under the *automatic route*. 
i. The individual limits of ECB that can be raised by eligible entities under the automatic route per financial year for all the three tracks are set out as under:

- Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors;
- Up to USD 200 million or equivalent for companies in software development sector;
- Up to USD 100 million or equivalent for entities engaged in micro finance activities; and
- Up to 500 million or equivalent for remaining entities.

ii. ECB proposals beyond aforesaid limits will come under the approval route. For computation of individual limits under Track III, exchange rate prevailing on the date of agreement should be taken into account.

iii. In case the ECB is raised from direct equity holder, aforesaid individual ECB limits will also subject to ECB liability: equity ratio requirement. For ECB raised under the automatic route, the ECB liability of the borrower (including all outstanding ECBs and the proposed one) towards the foreign equity holder should not be more than four times of the equity contributed by the latter. For ECB raised under the approval route, this ratio should not be more than 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

Notes: For the purpose of ECB liability: equity ratio, the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet can be reckoned for calculating the ‘equity’ of the foreign equity holder. Where there are more than one foreign equity holders in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio.

7. Currency of Borrowing: ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees. Further details are given below:

i. In case of Rupee denominated ECB, the non-resident lender, other than foreign equity holders, should mobilise Indian Rupees through swaps/outright sale undertaken through an AD Category I bank in India.

ii. Change of currency of ECB from one convertible foreign currency to any other convertible foreign currency as well as to INR is freely permitted. Change of currency from INR to any foreign currency is, however, not permitted.
iii. Change of currency of ECB into INR can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate which is less than the rate prevailing on the date of agreement if consented to by the ECB lender.

8. Security for raising ECB: AD Category I banks are permitted to allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised / raised by the borrower, subject to satisfying themselves that:

i. the underlying ECB is in compliance with the extant ECB guidelines,

ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee, and

iii. No objection certificate, as applicable, from the existing lenders in India has been obtained.

Once aforesaid conditions are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB.

9. Issuance of Guarantee etc. by Indian banks and Financial Institutions

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz. Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs in any manner whatsoever.

10. Debt Equity Ratio: The borrowing entities will be governed by the guidelines on debt equity ratio issued, if any, by the sectoral or prudential regulator concerned.

11. Parking of ECB proceeds: ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

i) Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody’s; (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated
above and (c) deposits with overseas branches/ subsidiaries of Indian banks abroad.

**ii) Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months. These term deposits should be kept in unencumbered position.

12. **Procedure of raising ECB:** For approval route cases, the borrowers may approach the RBI with an application in prescribed format Form ECB for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macro-economic situation and merits of the specific proposals by an Empowered Committee set up by RBI. The Empowered Committee will have external as well as internal members. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form 83. Formats of Form ECB and Form 83 are available at Annex I and II respectively of Part V of the Master Directions – Reporting under Foreign Exchange Management Act, 1999.

13. **Refinancing of ECB:** Refinancing of existing ECB with fresh ECB is permitted provided the fresh ECB is raised at a lower all-in-cost and residual maturity is not reduced. Indian banks are not permitted to participate in refinancing of existing ECB.

14. **Corporates under Investigation:** All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECBs as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Cat-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the AD Cat I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

15. **Reporting Requirements:** Borrowings under ECB Framework are subject to reporting requirements in respect of the following:
i) Loan Registration Number (LRN): Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI. To obtain the LRN, borrowers are required to submit duly certified Form 83, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

ii) Changes in terms and conditions of ECB: Permitted changes in ECB parameters should be reported to the DSIM through revised Form 83 at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form 83 the changes should be specifically mentioned in the communication.

iii) Reporting of actual transactions: The borrowers are required to report actual ECB transactions through ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in ECB 2 Return. Format of ECB 2 Return is available at Annex III of Part V of Master Directions – Reporting under Foreign Exchange Management Act.

16. Refinancing of ECB: Refinancing of existing ECB with fresh ECB is permitted provided the fresh ECB is raised at a lower all-in-cost and residual maturity is not reduced. Indian banks are not permitted to participate in refinancing of existing ECB.

17. ECB raised under the erstwhile USD 5 million Scheme: Designated AD Category I banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such rescheduling and the rescheduling is without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key/Loan Registration Number should be initially communicated to the Principal Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office, Mumbai within seven days of approval and subsequently in ECB 2 Return.

18. ECB arrangements prior to December 02, 2015: Entities raising ECB under the framework in force prior to December 02, 2015 can raise the said loans by March 31, 2016 provided the agreement in respect of the loan is already signed by the date the new framework comes into effect. It is clarified that all ECB loan agreements entered into before December 02, 2015 may continue with the disbursement schedules as already provided in the loan agreements without
requiring any further consent from the RBI or any AD Category I bank. For raising of ECB under the following carve outs, the borrowers will, however, have time up to March 31, 2016 to sign the loan agreement and obtain the LRN from the Reserve Bank by this date:

- ECB facility for working capital by airlines companies;
- ECB facility for consistent foreign exchange earners under the USD 10 billion Scheme; and
- ECB facility for low cost affordable housing projects (low cost affordable housing projects as defined in the extant Foreign Direct Investment policy)

i) ECB facility for Carve Outs: More information about the ECB facility for carve outs listed above as under:

a) ECB facility for working capital by airlines companies: Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to raise ECB. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt. The ECBs can be raised with a minimum average maturity period of three years and will be subject to the following terms and conditions:

i. The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million.

ii. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system.

iii. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over.

iv. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company.

b) ECB facility for consistent foreign exchange earners under the USD 10 billion Scheme: Indian companies in the manufacturing, infrastructure sector and hotel sector (with a total project cost of INR 250 crore or more irrespective of geographical location for hotel sector), can raise ECBs for repayment of outstanding Rupee loans availed of for capital expenditure from the domestic banking system and/ or fresh Rupee capital expenditure subject to the following terms and conditions:
i. The borrower should be consistent foreign exchange earners during the past three financial years and should not be in the default list/caution list of the Reserve Bank of India.

ii. The maximum permissible ECB that can be availed of by an individual company will be limited to 75 per cent of the average annual export earnings realized during the past three financial years or 50 per cent of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher. In case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realized during the past financial year.

iii. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability arising out of ECB should be extinguished only out of the foreign exchange earnings of the borrowing company.

iv. The overall ceiling for such ECBs shall be USD10 (ten) billion and the maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion.

v. Within the overall ceilings given above, Indian companies in the aforesaid three sectors which have established Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) / have acquired assets overseas in compliance with extant regulations under FEMA can raise ECB for repayment of all term loans having average residual maturity of 5 years and above and credit facilities availed of from domestic banks for overseas investment in JV/WOS, in addition to Capital Expenditure. The maximum permissible ECB that can be availed of by an individual company will be limited to 75 per cent of the average annual export earnings realized during the past three financial years or 75 per cent of the assessment made about the average foreign exchange earnings potential for the next three financial years of the Indian companies from the JV/ WOS/ assets abroad as certified by Statutory Auditors/ Chartered Accountant/ Certified Public Accountant/ Category I Merchant Banker registered with SEBI/ an Investment Banker outside India registered with the appropriate regulatory authority in the host country. The past earnings in the form of dividend/repatriated profit/ other forex inflows like royalty, technical know-how, fee, etc. from overseas JV/WOS/assets will be reckoned as foreign exchange earnings for the purpose.

vi. Under the USD 10 billion scheme, ECB cannot be raised from overseas branches/subsidiaries of Indian banks.

c) ECB facility for low cost affordable housing projects: The terms and conditions for the ECB facility for low cost affordable housing projects are as under:
i. For the purpose of ECB, a low cost affordable housing project is as defined in the extant foreign direct investment policy

ii. ECB proceeds shall not be utilized for acquisition of land.

iii. Developers/builders registered as companies may raise ECB for low cost affordable housing projects provided they have minimum 3 years’ experience in undertaking residential projects, have good track record in terms of quality and delivery and the project and all necessary clearances from various bodies including Revenue Department with respect to land usage/environment clearance, etc., are available on record. They should also not have defaulted in any of their financial commitments to banks/financial institutions or any other agencies and the project should not be a matter of litigation. Builders/developers meeting the eligibility criteria shall have to apply to the National Housing Bank (NHB) in the prescribed format. NHB shall act as the nodal agency for deciding a project’s eligibility as a low cost affordable housing project, and on being satisfied, forward the application to the Reserve Bank for consideration under the approval route. Once NHB decides to forward an application for consideration of RBI, the prospective borrower (builder/developer) will be advised by the NHB to approach RBI for availing ECB through his Authorised Dealer in the prescribed format.

iv. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis.

v. Housing Finance Companies (HFCs) registered with the National Housing Bank (NHB) and operating in accordance with the regulatory directions and guidelines issued by NHB are eligible to avail of ECB for financing low cost affordable housing units. The minimum Net Owned Funds (NOF) of HFCs for the past three financial years should not be less than INR 300 crore. Borrowing through ECB should be within overall borrowing limit of 16 (sixteen) times of their Net Owned Fund (NOF) and the net non-performing assets (NNPA) should not exceed 2.5 % of the net advances. The maximum loan amount sanctioned to the individual buyer will be capped at INR 25 lakh subject to the condition that the cost of the individual housing unit shall not exceed INR 30 lakh. HFCs while making the applications shall submit a certificate from NHB that the availment of ECB is for financing prospective owners of individual units for the low cost affordable housing and ensure that the interest rate spread charged by them to the ultimate buyer is reasonable.

vi. NHB is also eligible to raise ECB for financing low cost affordable housing units of individual borrowers. Further, in case, a developer of low cost affordable housing project not being able to raise ECB directly as envisaged above, National Housing Bank is permitted to avail of ECB for on-lending to such developers which satisfy the conditions prescribed to developers/builders subject to the interest rate spread set by RBI.
vii. Interest rate spread to be charged by NHB may be decided by NHB taking into account cost and other relevant factors. NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners’ of individual units under the low cost affordable housing scheme is reasonable.

viii. Developers/ builders/ HFCs/ NHB will not be permitted to raise Foreign Currency Convertible Bonds (FCCBs) under this scheme.

ix. An aggregate limit of USD 1(one) billion each for the financial years 2013-14, 2014-15 and 2015-16 is fixed for ECB under the low cost affordable housing scheme which includes ECBs to be raised by developers/builders and NHB/specified HFCs.

**CONVERSION OF ECB INTO EQUITY**

i) Conversion of ECB into equity is permitted subject to the following conditions:

a. The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment (FDI) or approval from the Foreign Investment Promotion Board (FIPB), wherever applicable, for foreign equity participation has been obtained as per the extant FDI policy;

b. The foreign equity holding after such conversion of debt into equity is within the applicable sectoral cap;

c. Applicable pricing guidelines for shares are complied with.

ii) Partial or full Conversion of ECB may be reported to the RBI as follow:

a. For partial conversion, the converted portion is to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in ECB 2 Return will be with suitable remarks "ECB partially converted to equity".

b. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in ECB 2 Return should be done with remarks “ECB fully converted to equity”. Subsequent filing of ECB 2 Return is not required.

c. For conversion of ECB into equity in phases, reporting through ECB 2 Return will also be in phases.

**DEPOSITOR RECEIPTS SCHEME, 2014**

The Depository Receipts Scheme, 2014 was notified by the Central Government with effect from December 15, 2014.

**DEFINITIONS**
**Permissible Jurisdiction**

‘Permissible Jurisdiction’ as foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering and the regulator of the securities market in that jurisdiction is a member of the International Organization of Securities Commission. Schedule I of the scheme gives the list of permissible jurisdiction.

**Unsponsored Depository Receipts**

‘Unsponsored depository receipts’ mean depository receipts issued without specific approval of the issuer of the underlying permissible securities.

**ELIGIBILITY**

Clause 3 of the scheme describes the eligibility of issue of depository receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts:

- Any Indian company, listed or unlisted, private or public;
- Any other issuer of permissible securities;
- Any person holding permissible securities which has not been specifically prohibited from accessing the capital market or dealing in securities. Unsponsored depository receipts on the back of the listed permissible securities can be issued only if such depository receipts gave the holder the right to issue voting instruction and are listed on an international exchange.

**PROCEDURE FOR THE ISSUE OF DEPOSITORY RECEIPTS**

The following is the procedure for the issue of depository receipts:

- The aggregate of permissible securities which may be issued or transferred to foreign depositories for issue of depository receipts, along with permissible securities already held by persons resident outside India shall not exceed the limit on foreign holding of such permissible securities under the FEMA, 1999;
- The depository receipts may be converted to underlying permissible securities and vice versa;
- A foreign depository may issue depository receipts by way of a public offering or private placement or in any other manner prevalent in a permissible jurisdiction;
- An issuer may issue permissible securities to a foreign depository for the purpose of issue of depository receipts by any mode permissible for issue of such permissible securities to investors;
- The holders of permissible securities may transfer permissible securities to a foreign depository for the purpose of the issue of depository receipt, with or without the approval of issue of such permissible securities through transactions on a recognized stock exchange, bilateral transactions or by tendering through a public platform;
- The permissible securities shall not be issued to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue of such securities to domestic investors under the applicable laws;

Any approval necessary for issue or transfer of permissible securities to a person resident outside India shall apply to the issue or transfer of such permissible securities to a foreign depository for the purpose of issue of depository receipts. Subject to this the issue of depository receipts shall not require any approval from any Government agency, if the issuance is in accordance with the scheme.

**RIGHTS AND DUTIES**

The following are the rights and duties for the foreign depository:

- The foreign depository shall be entitled to exercise voting rights, if any, associated with the permissible securities whether pursuant to voting instruction from the holder of depository receipts or otherwise;
- The shares of a company underlying the depository receipts shall form part of the public shareholding of the company under Securities Contracts (Regulation) Rules, 1957, if:
  1. the holder of such depository receipts has the right to issue voting instruction; and
  2. such depository receipts are listed on an international exchange;
- In the cases not covered under second point, shares of the company underlying depository receipts shall not be included in the total shareholding and in the public shareholding for the purpose of computing the public shareholding of the company;

A holder of depository receipts issued on the back of equity shares of a company shall have the same obligations as if it is the holder of the underlying equity shares, if it has the right to issue voting instruction.
**OBLIGATIONS**

Clause 8 of the scheme imposes certain obligations on the domestic custodian which are-

- to ensure that the relevant provisions of the scheme related to the issue and cancellation of depository receipts is complied with;
- to maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of depository receipts for the purpose of monitoring limits under the FEMA, 1999;
- to provide the information and data as may be called upon by SEBI, the RBI, Ministry of Finance, Ministry of Corporate Affairs and any other authority of law; and
- to file with SEBI a copy of the document by whatever name called, which sets the terms of issue of depository receipts issued on the back of securities, as defined under Section 2(h) of SCRA, 1956, in a permissible jurisdiction.

The following are the obligations imposed on the Indian Depositories-

- they shall co-ordinate among themselves;
- they shall disseminate the outstanding permissible securities against which the depository receipts are outstanding; and
- they shall disseminate the limit up to which permissible securities can be converted to depository receipts.

A person issuing or transferring permissible securities to a foreign depository for the purpose of the issue of depository receipts shall comply with relevant provisions of the Indian law, including the scheme, related to the issue and cancellation of depository receipts.

**APPROVAL**

Any approval necessary for issue or transfer of permissible securities to a person resident outside India shall apply to the issue or transfer of such permissible securities to a foreign depository for the purpose of issue of depository receipts’. No approval is required if the issue of depository receipt is in accordance with the scheme.
LESSON 12
INDIAN DEPOSITORY RECEIPTS

COMPLIANCES UNDER SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 FOR INDIAN DEPOSITORY RECEIPTS (IDRS)

Every issuer of an IDR has to comply with the conditions stipulated in Chapter VII of the SEBI (LODR) Regulations, 2015. The provisions of this chapter shall apply to listed entity whose securities market regulators are signatories to the Multilateral Memorandum of Understanding of International Organization of Securities Commission issuing ‘Indian Depository Receipts’ as defined under Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Subject Matter</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 67</td>
<td>General Obligations of listed entity.</td>
<td>• All correspondences filed with the stock exchange(s) and those sent to the IDR Holders shall be in English.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The listed entity shall comply, at all times, with the rules/regulations/laws of the country of origin.</td>
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<td></td>
<td>• The listed entity shall undertake that the competent Courts, Tribunals and regulatory authorities in India shall have jurisdiction in the event of any dispute, either with the stock exchange or any investor, concerning the India Depository Receipts offered or subscribed or bought in India.</td>
</tr>
<tr>
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<td></td>
<td>• The listed entity shall forward, on a continuous basis, any information requested by the stock exchange, in the interest of investors from time to time.</td>
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<td></td>
<td></td>
<td>• In case of any claim, difference or dispute under the provisions of chapter VII o and other provisions</td>
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of SEBI (LODR) Regulations applicable to the listed entity, the same shall be referred to and decided by arbitration as provided in the bye-laws and regulations of the stock exchange(s).

<table>
<thead>
<tr>
<th>Regulation 68</th>
<th>Disclosure of material events or information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To promptly inform to the stock exchange(s) of all events which are material, all information which is price sensitive and/or have bearing on performance/operation of the listed entity and the listed entity shall make the disclosures as specified in Part C of Schedule III. Of these regulations.</td>
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<tr>
<th>Regulation 69</th>
<th>Holding pattern &amp; Shareholding details</th>
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<tbody>
<tr>
<td></td>
<td>• To file with the stock exchange the Indian Depository Receipt holding pattern <strong>on a quarterly basis within fifteen days of end of the quarter.</strong></td>
</tr>
<tr>
<td></td>
<td>• To file the following details with the stock exchange as is required to be filed in compliance with the disclosure requirements of the listing authority or stock exchange in its home country or any other jurisdiction where the securities of the listed entity are listed:</td>
</tr>
<tr>
<td></td>
<td>(a) Shareholding Pattern;</td>
</tr>
<tr>
<td></td>
<td>(b) Pre and post arrangement share holding pattern and Capital Structure in case of any corporate restructuring like mergers / amalgamations.</td>
</tr>
</tbody>
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<tr>
<th>Regulation 70</th>
<th>Periodical Financial Results</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• To file periodical financial results with the stock exchange in such manner and within such time and to the extent that it is required to file as per the listing requirements of the home country.</td>
</tr>
<tr>
<td></td>
<td>• The listed entity shall comply with the requirements with respect to preparation and disclosures in financial results as specified in Part B of Schedule IV.</td>
</tr>
<tr>
<td>Regulation 71</td>
<td>Annual Report</td>
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<tr>
<td>To submit to stock exchange an annual report at the same time as it is disclosed to the security holder in its home country or in other jurisdictions where such securities are listed.</td>
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<tr>
<td>The annual report shall contain the following:</td>
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<tr>
<td>(a) Report of board of directors;</td>
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<tr>
<td>(b) Balance Sheet;</td>
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<tr>
<td>(c) Profit and Loss Account;</td>
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<td>(d) Auditors Report;</td>
<td></td>
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<tr>
<td>(e) All periodical and special reports (if applicable);</td>
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<tr>
<td>(f) Any such other report which is required to be sent to security holders annually.</td>
<td></td>
</tr>
<tr>
<td>The listed entity shall comply with the requirements with respect to preparation and disclosure in financial results in annual report as specified in Part B of Schedule IV.</td>
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<thead>
<tr>
<th>Regulation 72</th>
<th>Corporate Governance</th>
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<tbody>
<tr>
<td>To submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable under regulation 17 to regulation 27, to other listed entities.</td>
<td></td>
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<table>
<thead>
<tr>
<th>Regulation 73</th>
<th>Documents and Information to IDR Holder</th>
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<tbody>
<tr>
<td>To disclose/send the following documents to IDR Holders, at the same time and to the extent that it discloses to security holders in its home country or in other jurisdictions where its securities are listed:</td>
<td></td>
</tr>
<tr>
<td>(a) Soft copies of the annual report to all the IDR holders who have registered their email address(es) for the purpose.</td>
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</table>
(b) Hard copy of the annual report to those IDR holders who request for the same either through domestic depository or Compliance Officer.

(c) the pre and post arrangement capital structure and share holding pattern in case of any corporate restructuring like mergers / amalgamations and other schemes.

<table>
<thead>
<tr>
<th>Regulation 74</th>
<th>Equitable Treatment to IDR Holders.</th>
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<tbody>
<tr>
<td></td>
<td>• If the listed entity's equity shares or other securities representing equity shares are also listed on the stock exchange(s) in countries other than its home country, it shall ensure that IDR Holders are treated in a manner equitable with security holders in home country.</td>
</tr>
<tr>
<td></td>
<td>• The listed entity shall ensure that for all corporate actions, except those which are not permitted by Indian laws, it shall treat IDR holders in a manner equitable with security holders in the home country.</td>
</tr>
<tr>
<td></td>
<td>• In case of take-over or delisting or buy-back of its equity shares, the listed entity shall, while following the laws applicable in its home country, give equitable treatment to IDR holders vis-à-vis security holder in home country.</td>
</tr>
<tr>
<td></td>
<td>• The listed entity shall ensure protection of interests of IDR holders particularly with respect to all corporate benefits permissible under Indian laws and the laws of its home country and shall address all investor grievances adequately.</td>
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<tr>
<th>Regulation 75</th>
<th>Advertisements in Newspapers.</th>
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<tr>
<td></td>
<td>• The listed entity shall publish the following information in the newspaper:</td>
</tr>
<tr>
<td></td>
<td>(a) periodical financial results required to be disclosed;</td>
</tr>
<tr>
<td></td>
<td>(b) Notices given to its IDR Holders by advertisement;</td>
</tr>
<tr>
<td></td>
<td>• The information specified above</td>
</tr>
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</table>
shall be issued in at one English national daily newspaper circulating in the whole or substantially the whole of India and in one Hindi national daily newspaper in India.

<table>
<thead>
<tr>
<th>Regulation 76</th>
<th>Terms of Indian Depository Receipts</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• The listed entity shall pay the dividend as per the timeframe applicable in its home country or other jurisdictions where its securities are listed, whichever is earlier, so as to reach the IDR Holders on or before the date fixed for payment of dividend to holders of its equity share or other securities.</td>
</tr>
<tr>
<td></td>
<td>• The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law in the home country of the listed entity, as may be applicable, and that such forfeiture, when effected, shall be annulled in appropriate cases.</td>
</tr>
<tr>
<td></td>
<td>• The Indian Depository Receipts shall have two-way fungibility in the manner specified by the SEBI from time to time.</td>
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<table>
<thead>
<tr>
<th>Regulation 77</th>
<th>Structure of Indian Depository Receipts</th>
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<tbody>
<tr>
<td></td>
<td>• The listed entity shall ensure that the underlying shares of IDRs shall rank <em>pari-passu</em> with the existing shares of the same class and the fact of having different classes of shares based on different criteria, if any, shall be disclosed by the listed entity in the annual report.</td>
</tr>
<tr>
<td></td>
<td>• The listed entity shall not exercise a lien on the fully paid underlying shares, against which the IDRs are issued, and that in respect of partly paid underlying shares, against which the IDRs are issued and shall also not exercise any lien except in respect of moneys called or payable at a fixed time in respect of such underlying shares.</td>
</tr>
</tbody>
</table>
|               | • The listed entity, subject to the requirements under the laws and regulations of its home country, if
any amount be paid up in advance of calls on any underlying shares against which the IDRs are issued, shall stipulate that such amount may carry interest but shall not in respect thereof confer a right to dividend or to participate in profits.

<table>
<thead>
<tr>
<th>Regulation 78</th>
<th>Record Date</th>
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<tbody>
<tr>
<td>• The listed entity, where it is required so to do in its home country or other jurisdictions where its securities may be listed, shall fix the record date for the purpose of payment of dividends or distribution of any other corporate benefits to IDR Holders.</td>
<td></td>
</tr>
<tr>
<td>• The listed entity shall give notice in advance of <strong>at least four working days</strong> to the recognised stock exchange(s) of record date specifying the purpose of the record date.</td>
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<tr>
<th>Regulation 79</th>
<th>Voting.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The listed entity shall, either directly or through an agent, send out proxy forms to IDR Holders in all cases mentioning that a security holder may vote either for or against each resolution.</td>
<td></td>
</tr>
<tr>
<td>• Voting rights of the IDR Holders shall be exercised in accordance with the depository agreement.</td>
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<thead>
<tr>
<th>Regulation 80</th>
<th>Delisting of Indian Depository Receipt.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The listed entity shall, if it decides to delist Indian Depository Receipts, give fair and reasonable treatment to IDR holders.</td>
<td></td>
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<tr>
<td>• The listed entity shall comply with such norms and conditions for delisting Indian Depository Receipts as specified by the SEBI or stock exchange in this regard.</td>
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</tr>
<tr>
<td>• The listed entity shall, in case underlying equity shares are delisted, shall delist and cancel the Indian Depository Receipts.</td>
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NEW REGULATIONS INTRODUCED BY SEBI

SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014

The activities of the Foreign Portfolio Investor in the Indian capital market are regulated by SEBI (Foreign Portfolio Investors) Regulations, 2014.

DEFINITIONS

“Foreign Portfolio Investor” means a person who satisfies the eligibility criteria and has been registered under FPI Regulations, which shall be deemed to be an intermediary. However, any foreign institutional investor or qualified foreign investor who holds a valid certificate of registration shall be deemed to be a foreign portfolio investor till the expiry of the block of three years for which fees have been paid as per the SEBI (Foreign Institutional Investors) Regulations, 1995.

"Offshore Derivative Instrument" means any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it that are listed or proposed to be listed on any recognized stock exchange in India, as its underlying;

“Qualified Depository Participant” means a depository participant approved by SEBI to act as qualified depository participant.

“Qualified Foreign Investor” means a person who has opened a dematerialized account with a qualified depository participant as a qualified foreign investor;

“Designated Depository Participant” means a person who has been approved by SEBI under FPI Regulations, 2014.

REGISTRATION OF FOREIGN PORTFOLIO INVESTORS

Any person shall not buy, sell or otherwise deal in securities as a foreign portfolio investor unless it has obtained a certificate granted by the designated depository participant on behalf of SEBI. Further that a qualified foreign investor may continue to buy, sell or otherwise deal in securities subject to the provisions of these regulations, for a period of one year from the date of commencement of these regulations, or until he obtains a certificate of registration as foreign portfolio investor, whichever is earlier.

An application for the grant of certificate as foreign portfolio investor shall be made to the designated depository participant in such form and such fees as prescribed in the regulations.
ELIGIBILITY CRITERIA

An applicant desirous of foreign portfolio investor registration should, *inter alia*, satisfy the following conditions:

- It should not be resident in India or a Non-Resident Indian.
- It should be a resident of a country:-
  - whose securities market regulator is a signatory to IOSCO’s Multilateral MOU or a signatory to a bilateral MOU with SEBI;
  - whose central bank is a member of the Bank for International Settlements;
  - against whom the Financial Action Task Force (FATF) has not issued any warnings.
- It should legally be permitted to invest in securities outside the country of its incorporation or establishment or place of business.
- It should be authorised by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients.
- It must be a fit and proper person as prescribed.
- the applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;
- the grant of certificate to the applicant is in the interest of the development of the securities market;

**Whether the existing FII and SAs that do not meet the eligibility requirements as stipulated under these regulations, can continue to deal in Indian securities?**

Yes. All existing FII and SAs are deemed FPIs. They can continue to deal in Indian securities till the validity period of FII/SA registration for which fee has been paid. After the validity period, they can continue to deal as FPIs subject to payment conversion and registration fees.
CATEGORIES OF FPI

An applicant shall seek registration as a foreign portfolio investor in one of the categories mentioned hereunder or any other category as may be specified by SEBI from time to time:

Categories of FPI

Category I FPI includes
- Government and Government-related investors such as central banks, Governmental agencies, sovereign wealth funds and
- international or multilateral organisations or agencies.

Category II FPIs includes:
- appropriately regulated broad based funds such as mutual funds, investment trusts, insurance/reinsurance companies;
- appropriately regulated persons such as banks, AMCs, investment managers/advisors, portfolio managers;
- broad based funds that are not appropriately regulated but whose investment manager is appropriately regulated.
- university funds and pension funds; and
- university-related endowments already registered with SEBI as FIIIs or sub accounts.

Category III FPIs include
- all others not eligible under Category I and II FPIs such as endowments, charitable societies, charitable trusts, foundations, corporate bodies, trusts, individuals and family offices.
However, the investment manager of such broad based fund should be registered as a Category II FPI and should undertake that it shall be responsible and liable for all acts of commission and omission of all its underlying broad based funds and other deeds and things done by such broad based funds under these regulations.

**Explanation 1.-** For the purposes of this clause, an applicant seeking registration as a foreign portfolio investor shall be considered to be "appropriately regulated" if it is regulated or supervised by the securities market regulator or the banking regulator of the concerned foreign jurisdiction, in the same capacity in which it proposes to make investments in India.

**Explanation 2-**
A) For the purposes of this clause, "broad based fund" shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor holding more than 49% of the shares or units of the fund. However, if the broad based fund has an institutional investor who holds more than 49% of the shares or units in the fund, then such institutional investor must itself be a broad based fund.
B) For the purpose of clause A of this Explanation, for ascertaining the number of investors in a fund, direct investors as well as underlying investors shall be considered.
C) For the purpose of clause B of this Explanation, only investors of entities which have been set up for the sole purpose of pooling funds and making investments, shall be considered for the purpose of determining underlying investors.

**Whether entities which are not regulated eligible to register as FPIs?**
Entities which are not appropriately regulated can register as Category III FPIs.

**FURNISHING OF INFORMATION, CLARIFICATION AND PERSONAL REPRESENTATION**
SEBI or the designated depository participant may require the applicant to furnish such further information or clarification as it consider necessary, for the purpose of processing of the application. SEBI or the designated depository participant, if so desires, may ask the applicant or its authorised representative to appear before SEBI for personal representation in connection with the grant of a certificate.

**GRANT OF CERTIFICATE**
The designated depository participant grants a certificate after getting satisfied that the applicant is eligible for the grant of a certificate of registration. The grant of certificate
of registration should be subject to the payment of the specified registration fee in the manner prescribed in the regulations.

If an applicant seeking registration as a foreign portfolio investor has any grievance with respect to its application or if the designated depository participant has any question in respect of interpretation of any provision of this regulation, it may approach SEBI for appropriate instructions.

**APPLICATION TO CONFORM TO THE REQUIREMENTS**

An application for grant of certificate of registration to act as a foreign portfolio investor, which is not complete in all respects or is false or misleading in any material particular shall be deemed to be deficient and liable to be rejected by the designated depository participant.

However, before rejecting any such application, the applicant shall be given a reasonable opportunity to remove the deficiency, within the time as specified by the designated depository participant.

**PROCEDURE WHERE CERTIFICATE IS NOT GRANTED**

The designated depository participant may reject the application if after considering an application is of the opinion that a certificate should not be granted, after giving the applicant a reasonable opportunity of being heard. The decision of the designated depository participant not to grant the certificate should be communicated by the designated depository participant to the applicant stating the grounds on which the application has been rejected. Any applicant aggrieved by the decision of the designated depository participant may apply to SEBI, within a period of thirty days from the date of receipt of communication. SEBI as soon as possible re-consideration the application and after giving a reasonable opportunity of being heard, convey its decision in writing to the applicant.

**SUSPENSION, CANCELLATION OR SURRENDER OF CERTIFICATE**

The registration granted by the designated depository participant on behalf of SEBI under these regulations shall be permanent unless suspended or cancelled by SEBI or surrendered by the foreign portfolio investor. Suspension and cancellation of registration granted by SEBI under these regulations shall be dealt with in the manner as provided in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

Any foreign portfolio investor desirous of giving up its activity and surrendering the certificate of registration may make a request for such surrender to the designated depository participant who shall accept the surrender of registration after obtaining approval from SEBI to do so. While accepting the surrender of registration, the designated depository participant may impose such conditions as may be specified by SEBI and such person shall comply with such conditions.
Any person shall not act as designated depository participant unless it has obtained the approval of SEBI. However, a custodian of securities which is registered with SEBI as on the date of commencement of these regulations shall be deemed to have been granted approval as designated depository participant subject to the payment of fees as prescribed in regulations. Further that a qualified depository participant which has been granted approval by SEBI prior to the commencement of these regulations, having opened qualified foreign investor account as on date of notification of these regulations, shall be deemed to have been granted approval as designated depository participant subject to the payment of fees as prescribed in this regulations.

An application for approval to act as designated depository participant shall be made to SEBI through the depository in which the applicant is a participant and shall be accompanied by the application fee specified and shall be paid in the manner specified in the regulations.

The depository shall forward to SEBI the application, as early as possible, but not later than 30 days from the date of receipt by the depository, along with its recommendations and certifying that the participant complies with the eligibility criteria as provided for in these regulations.

**ELIGIBILITY CRITERIA**

The SEBI shall not consider an application for the grant of approval as designated depository participant unless the applicant satisfies the following conditions, namely:

a) the applicant is a participant registered with SEBI.

b) the applicant is a custodian of securities registered with SEBI.

c) the applicant is an Authorized Dealer Category-1 bank authorized by Reserve Bank of India;

d) the applicant has multinational presence either through its branches or through agency relationships with intermediaries regulated in their respective home jurisdictions;

e) the applicant has systems and procedures to comply with the requirements of Financial Action Task Force Standards, Prevention of Money Laundering Act, 2002, Rules prescribed thereunder and the circulars issued from time to time by SEBI.

f) the applicant is a fit and proper person based on the criteria specified in Schedule II of the SEBI (Intermediaries)Regulations, 2008; and

g) any other criteria specified by SEBI from time to time.
SEBI may consider an application from a global bank, regulated in its home jurisdiction, for grant of approval to act as designated depository participant, if it is satisfied that it has sufficient experience in providing custodial services and the grant of such approval is in the interest of the development of the securities market. However, such global bank shall be registered with SEBI as a participant, custodian of securities, and shall have tie up with Authorized Dealer Category-1 bank.

Regulation 14 provides that after considering an application, SEBI may grant approval to the applicant, if it is satisfied that the applicant is eligible and fulfills the requirements including payment of fees. SEBI shall dispose of the application for grant of approval as soon as possible but not later than one month after receipt of application by SEBI or, after the information furnished, whichever is later.

Regulation 15 provides that an application for grant of approval to act as designated depository participant which is not complete in all respects or is false or misleading in any material particular, shall be deemed to be deficient and shall be liable to be rejected by SEBI after giving a reasonable opportunity to remove the deficiency, within the time as specified by SEBI.

PROCEDURE WHERE APPROVAL IS NOT GRANTED

SEBI may reject the application if the applicant does not satisfy the requirements specified above after giving a reasonable opportunity of being heard and the decision of rejection shall be communicated by SEBI to the applicant in writing stating therein the grounds on which the application has been rejected.

The applicant, who is aggrieved by the decision of SEBI may, within a period of thirty days from the date of receipt of communication may apply to SEBI for reconsideration of its decision. SEBI shall reconsideration the application after giving a reasonable opportunity of being heard, convey its decision in writing to the applicant.

VALIDITY OF APPROVAL

The approval granted by SEBI under these regulations shall be permanent unless suspended or withdrawn by SEBI or surrendered by the designated depository participant.

SUSPENSION OR WITHDRAWAL OR SURRENDER OF APPROVAL

Where any designated depository participant who has been granted approval-

- fails to comply with any conditions subject to which an approval has been granted to him;
- contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

SEBI may, by order suspend or withdraw such approval after providing the designated depository participant a reasonable opportunity of being heard. Any designated depository participant, who has been granted approval desirous of giving up its
activity and surrendering the approval granted, may make a request for such surrender to SEBI.

SEBI may impose such conditions as it deems fit for protection of investors or the clients of designated depository participants or the securities market and such person shall comply with such conditions.

INVESTMENT CONDITIONS AND RESTRICTIONS

INVESTMENT RESTRICTIONS

- A foreign portfolio investor shall invest only in the following securities, namely-
  a) Securities in the primary and secondary markets including shares, debentures and warrants of companies, listed or to be listed on a recognized stock exchange in India;
  b) Units of schemes floated by domestic mutual funds, whether listed on a recognized stock exchange or not;
  c) Units of schemes floated by a collective investment scheme;
  d) Derivatives traded on a recognized stock exchange;
  e) Treasury bills and dated government securities;
  f) Commercial papers issued by an Indian company;
  g) Rupee denominated credit enhanced bonds;
  h) Security receipts issued by asset reconstruction companies;
  i) Perpetual debt instruments and debt capital instruments, as specified by the Reserve Bank of India from time to time;
  j) Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where ‘infrastructure’ is defined in terms of the extant External Commercial Borrowings (ECB) guidelines;
  k) Non-convertible debentures or bonds issued by Non-Banking Financial Companies categorized as ‘Infrastructure Finance Companies’ (IFCs) by the Reserve Bank of India;
  l) Rupee denominated bonds or units issued by infrastructure debt funds;
  m) Indian depository receipts; and
  n) Such other instruments specified by SEBI from time to time.

- Where a foreign institutional investor or a sub account, prior to commencement of these regulations, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial
public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to shares held by a foreign direct investor placed in similar position, under the policy of the Government of India relating to foreign direct investment for the time being in force.

- In respect of investments in the secondary market, the following additional conditions shall apply:

  a) A foreign portfolio investor shall transact in the securities in India only on the basis of taking and giving delivery of securities purchased or sold;

  b) Nothing contained in clause (a) shall apply to:
     i. any transactions in derivatives on a recognized stock exchange;
     ii. short selling transactions in accordance with the framework specified by SEBI;
     iii. any transaction in securities pursuant to an agreement entered into with the merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter XB of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
     iv. Any other transaction specified by SEBI.

  c) No transaction on the stock exchange shall be carried forward;

  d) The transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by SEBI.

  e) Clause (d) shall not apply to:
     - transactions in Government securities and such other securities falling under the purview of the RBI.
     - sale of securities in response to a letter of offer sent by an acquirer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
     - sale of securities in response to an offer made by any promoter or acquirer in accordance with SEBI (Delisting of Equity shares) Regulations, 2009;
     - sale of securities, in accordance with SEBI (Buy-back of securities) Regulations, 1998;
     - divestment of securities in response to an offer by Indian Companies in accordance with Operative Guidelines for Disinvestment of Shares by
Indian Companies in the overseas market through issue of ADR or GDR as notified by the Government of India and directions issued by RBI from time to time;
- any bid for, or acquisition of, securities in response to an offer for disinvestment of shares made by the Central Government or any State Government;
- any transaction in securities pursuant to an agreement entered into with merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter XB of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;

f) A foreign portfolio investor shall hold, deliver or cause to be delivered securities only in dematerialized form. However, any shares held in non-dematerialized form, before the commencement of these regulations, can be held in non-dematerialized form, if such shares cannot be dematerialized.

- In respect of investments in the debt securities, the foreign portfolio investors shall also comply with terms, conditions or directions, specified or issued by SEBI or RBI, from time to time, in addition to other conditions specified in these regulations.
- Unless otherwise approved by SEBI, securities shall be registered in the name of the foreign portfolio investor as a beneficial owner for the purposes of the Depositories Act, 1996.
- The purchase of equity shares of each company by a single foreign portfolio investor or an investor group shall be below ten percent of the total issued capital of the company.
- The investment by the foreign portfolio investor shall also be subject to such other conditions and restrictions as may be specified by the Government of India from time to time.
- In cases where the Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.
A foreign portfolio investor may lend or borrow securities in accordance with the framework specified by SEBI in this regard.

**OFFSHORE DERIVATIVE INSTRUMENTS (ODIs)**

- FPIs can issue, subscribe to or otherwise deal in ODIs, directly or indirectly, only if such ODIs are issued to persons who are regulated by an appropriate foreign regulatory authority, and the ODIs are issued after compliance with ‘Know Your Client’ (KYC) norms.

- Unregulated broad based funds which are classified as Category II FPIs by virtue of their investment manager being appropriately regulated shall not deal in ODIs.

- Category III FPIs also cannot deal in ODIs.

- FPIs shall ensure that further issue or transfer of any ODIs issued by or on behalf of it is made only to persons who are regulated by an appropriate foreign regulatory authority.

- Foreign portfolio investors shall fully disclose to SEBI any information concerning the terms of and parties to off-shore derivative instruments such as participatory notes, equity linked notes or any other such instruments, by whatever names they are called, entered into by it relating to any securities listed or proposed to be listed in any stock exchange in India.

- Outstanding ODIs shall be deemed to have been issued under the corresponding provision of the FPI Regulations.

**OBLIGATIONS AND RESPONSIBILITIES OF FOREIGN PORTFOLIO INVESTORS (FPIs)**

1. The foreign portfolio investor shall-

   (a) comply with the provisions of these regulations, circulars and any other terms and conditions specified by SEBI from time to time;

   (b) forthwith inform SEBI and designated depository participant in writing, if any information or particulars previously submitted to SEBI or designated depository participant are found to be false or misleading, in any material respect;

   (c) forthwith inform SEBI and designated depository participant in writing, if there is any material change in the information previously furnished by him to SEBI or designated depository participant;
(d) as and when required by SEBI or any other government agency in India, submit any information, record or documents in relation to its activities as a foreign portfolio investor;

(e) forthwith inform SEBI and the designated depository participant, in case of any penalty, pending litigations or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it;

(f) obtain a Permanent Account Number from the Income Tax Department;

(g) in relation to its activities as foreign portfolio investor, at all times, subject itself to the extant Indian laws, rules, regulations and circulars issued from time to time and provide an express undertaking to this effect to the designated depository participant;

(h) provide such declarations and undertakings as required by the designated depository participant; and

(i) provide any additional information or documents as may be required by the designated depository participant to ensure compliance with the Prevention of Money Laundering Act, 2002 and rules and regulations prescribed thereunder, Financial Action Task Force standards and circulars issued from time to time by SEBI.

2. In case of jointly held depository accounts, each of the joint holders shall meet the requirements specified for foreign portfolio investor and each shall be deemed to be holding a depository account as a foreign portfolio investor.

3. In case the same set of ultimate beneficial owner(s) invest through multiple entities, such entities shall be treated as part of same investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.

4. In case of any direct or indirect change in structure or beneficial ownership of the foreign portfolio investor, it shall bring the same to the notice of its designated depository participant forthwith.

**CODE OF CONDUCT**

Every foreign portfolio investor is required to abide by the Code of Conduct as per SEBI Regulations:

1. A foreign portfolio investor and its key personnel shall observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities.

2. A foreign portfolio investor shall, at all times, render high standards of service, exercise due diligence and independent professional judgment.
3. A foreign portfolio investor shall ensure and maintain confidentiality in respect of trades done on its own behalf and/or on behalf of its clients.

4. A foreign portfolio investor shall ensure the clear segregation of its own money/securities and its client's money/securities and arms length relationship between its business of fund management/investment and its other business.

5. A foreign portfolio investor shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made thereunder and the circulars and guidelines, which may be applicable and relevant to the activities carried on by it. Every foreign portfolio investor shall also comply with award of the Ombudsman and decision of SEBI under SEBI (Ombudsman) Regulations, 2003.

6. A foreign portfolio investor shall not make any untrue statement or suppress any material fact in any documents, reports or information to be furnished to the designated depository participant and/or SEBI.

7. A foreign portfolio investor shall ensure that good corporate policies and corporate governance are observed by it.

8. A foreign portfolio investor shall ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India.

9. A foreign portfolio investor or any of its directors or managers shall not, either through its/his own account or through any associate or family members, relatives or friends indulge in any insider trading.

10. A foreign portfolio investor shall not be a party to or instrumental for –
   - creation of false market in securities listed or proposed to be listed in any stock exchange in India;
   - price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India; c) passing of price sensitive information to any person or intermediary in the securities market.

**APPOINTMENT OF CUSTODIAN OF SECURITIES**

A foreign portfolio investor or a global custodian, who is acting on behalf of the foreign portfolio investor, shall enter into an agreement with the designated depository participant engaged by it to act as a custodian of securities, before making any investment under these regulations. In addition to the obligation of custodian of securities under any other regulations, the custodian of securities shall:

- report to the depositories and SEBI on a daily basis the transactions entered into by the foreign portfolio investor.
- monitor investment of the foreign portfolio investors;
- maintain the relevant true and fair records, books of accounts, and documents including the records relating to transactions of foreign portfolio investors;
- report the holdings of foreign portfolio investors who form part of investor group to the depositories and the depositories shall club the investment limits to ensure that combined holdings of all these foreign portfolio investors remains below 10% of the issued capital of the investee company at any time.

**APPPOINTMENT OF DESIGNATED BANK**

A foreign portfolio investor shall appoint a branch of a bank authorized by the Reserve Bank of India for opening of foreign currency denominated account and special non-resident rupee account before making any investments in India.

**OBLIGATIONS AND RESPONSIBILITIES OF DESIGNATED DEPOSITORY PARTICIPANTS (DDPS)**

1. All designated depository participants (DDPs) who have been granted approval by SEBI shall -
   a. comply with the provisions of these regulations, circulars and any other terms and conditions specified by SEBI from time to time;
   b. forthwith inform SEBI in writing, if any information or particulars previously submitted to SEBI are found to be false or misleading, in any material respect;
   c. forthwith inform SEBI in writing, if there is any material change in the information previously furnished by him to SEBI.
   d. furnish such information, record or documents to SEBI and RBI, as may be required, in relation to his activities as a DDP.
   e. ensure that only registered foreign portfolio investors are allowed to invest in securities market.
   f. ensure that foreign portfolio investor does not have opaque structure(s):

**Explanation- For the purposes of this clause, "opaque structure" mean any structure such as protected cell company, segregated cell company or equivalent, where the details of the ultimate beneficial owners are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement.**

However, the foreign portfolio investor satisfying the following criteria shall not be treated as having opaque structure:

- the applicant is regulated in its home jurisdiction
- each fund or sub fund in the applicant satisfies broad based criteria, and
- the applicant gives an undertaking to provide information regarding its beneficial owners as and when Board seeks this information.
g. have adequate systems to ensure that in case of jointly held depository accounts, each of the joint holders meet the requirements specified for foreign portfolio investors and shall perform KYC due diligence for each of the joint holders;

h. in case of any penalty, pending litigations or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by any regulator against a DDP, the DDP shall bring such information forthwith, to the attention of SEBI, depositories and stock exchanges;

i. be guided by the relevant circular on Anti-Money Laundering or Combating the Financing of Terrorism specified by SEBI from time to time.

2. The designated depository participant engaged by an applicant seeking registration as foreign portfolio investor shall:

- ascertain at the time of granting registration and whenever applicable, whether the applicant forms part of any investor group;

- open a dematerialized account for the applicant only after ensuring compliance with all the requirements under Prevention of Money Laundering Act, 2002 and rules and regulations prescribed thereunder, Financial Action Task Force standards and circulars issued by SEBI in this regard, from time to time and shall also ensure that foreign portfolio investors comply with all these requirements on an on going basis;

- carry out necessary due diligence and obtain appropriate declarations and undertakings from applicant to ensure that no other depository account is held by any of the concerned applicant as a foreign portfolio investor or as a non resident Indian, before opening a depository account;

- ensure that equity shares held by foreign portfolio investors are free from all encumbrances;

- collect and remit fees to SEBI, in the manner as specified in Part A of Second Schedule; and

- in case of change in structure or constitution or direct or indirect change in beneficial ownership reported by the foreign portfolio investor, re-assess the eligibility of such foreign portfolio investor.

**APPOINTMENT OF COMPLIANCE OFFICER**

Every foreign portfolio investor and DDPs shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines and instructions issued by the designated depository participant (in case of FPIs) or SEBI or the Central Government. The compliance officer shall immediately and independently report to SEBI and the designated depository participant regarding any non-compliance observed by him.
INVESTMENT ADVICE IN PUBLICLY ACCESSIBLE MEDIA

A foreign portfolio investor, or designated depository participant or any of its employees shall not render directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.

In case, an employee of the foreign portfolio investor or designated depository participant is rendering such advice, he shall also disclose the interest of his dependent family members and his employer including their long or short position in the said security, while rendering such advice.

MAINTENANCE OF PROPER BOOKS OF ACCOUNTS, RECORDS AND DOCUMENTS

- Every foreign portfolio investor shall keep or maintain, as the case may be, the following books of accounts, records and documents, namely:-
  - true and fair accounts relating to remittance of initial corpus for buying, selling and realising capital gains of investment made from the corpus;
  - accounts of remittances to India for investments in India and realising capital gains on investments made from such remittances;
  - bank statement of accounts;
  - contract notes relating to purchase and sale of securities; and
  - communication from and to the designated depository participants, stock brokers and depository participants regarding investments in securities.

- Every designated depository participant shall keep or maintain, as the case may be, the relevant true and fair records, books of accounts, and documents including the records relating to registration of foreign portfolio investors.

- The foreign portfolio investor shall intimate to its designated depository participants and DDP shall intimate to SEBI in writing, the location where such books, records and documents will be kept or maintained.

- Every foreign portfolio investor and DDPs shall preserve the books of accounts, records and documents for a minimum period of five years.

PROCEDURE FOR INSPECTION AND INVESTIGATION

SEBI can appoint one or more persons as inspecting authority to undertake inspection and investigation of the books of account, records and documents relating to a designated depository participant for any of the following purposes, namely,-

- to ensure that the books of account, records including telephone records and electronic records and documents are being maintained by DDPs.
- to ascertain whether any circumstances exist which would render the DDPs unfit or ineligible;
- to inquire into the complaints received from investors, clients, other market participants or any other person on any matter having a bearing on the activities of the DDPs.
- to ascertain whether the provisions of the securities laws and the directions or circulars issued are complied;
- to ascertain whether the systems, procedures and safeguards which have been established and are being followed by DDPs are adequate; and
- to investigate *suo motu* into the affairs of DDPs in the interest of the securities market or in the interest of investors.

**NOTICE OF INSPECTION OR INVESTIGATION**

SEBI shall give ten days written notice to the DDPs before ordering an inspection or investigation. SEBI in the interest of the investors may order in writing, direct that the inspection or investigation of the affairs of the DDPs to be taken up without such notice. During the course of an inspection or investigation, the DDPs against whom the inspection or investigation is being carried out should be bound to discharge all its obligations as provided in this regulation.

**OBLIGATIONS OF DESIGNATED DEPOSITORY PARTICIPANTS IN INSPECTION**

It shall be the duty of the designated depository participants whose affairs are being inspected, and of every director, officer and employee thereof to produce to the inspecting officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to its activities, as the inspecting officer may require, within such reasonable period as the inspecting officer may specify. The designated depository participants shall allow the inspecting officer to have reasonable access to the premises occupied by such designated depository participant or by any other person on its behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the designated depository participants or such other person and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purposes of the inspection.

The inspecting officer, in the course of inspection, shall be entitled to examine or to record the statements of any director, officer or employee of the designated depository participants. It shall be the duty of every director, officer or employee of the designated depository participants to give to the inspecting officer all assistance in connection with the inspection, which the inspecting officer may reasonably require.
SUBMISSION OF REPORT TO SEBI

The inspecting officer shall, as soon as possible, on completion of the inspection or investigation as the case may be, submit a report to SEBI and if directed to do so by SEBI, he may submit interim report(s). SEBI shall after consideration of inspection report take such action as SEBI may deem fit and appropriate including action under Chapter V of the SEBI (Intermediaries) Regulations, 2008.

APPOINTMENT OF AUDITOR

SEBI have the power to appoint an auditor to inspect or investigate, as the case may be, into the books of account, records, documents, infrastructures, systems and procedures or affairs of the applicant or the designated depository participants, as the case may be. However, the auditors so appointed shall have the same powers as vested in the inspecting officer as prescribed in the regulation and the applicant or designated depository participants and its directors, officers and employees shall be under the same obligations, towards the auditor so appointed, as are mentioned in regulation.

SEBI shall be entitled to recover from the designated depository participants or applicant, as the case may be, such expenses including fees paid to the auditors as may be incurred by it for the purposes of inspecting or investigating the books of account, records, documents, infrastructures, systems and procedures or affairs of the designated depository participants or applicant, as the case may be.

ACTION IN CASE OF DEFAULT

A foreign portfolio investor, designated depository participant, depository or any other person who contravenes any of the provisions of these regulations shall be liable for action under SEBI (Intermediaries) Regulations, 2008 and/or the relevant provisions of the Act or the Depositories Act, 1996.
SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013

SEBI issued Issue and Listing of Non-Convertible Redeemable Preference Shares Regulations, 2013 pertaining to Issue and Listing of Non-Convertible Redeemable Preference Shares which are not convertible, either in whole or part into equity instruments. They provide for a rationalized disclosure requirements and a reduction of certain onerous obligations erstwhile attached to an issue of Non-Convertible Redeemable Preference securities.

These Regulations are applicable to -
1. public issue of non-convertible redeemable preference shares;
2. listing of non-convertible redeemable preference shares on a recognized stock exchange which are issued by a public company through public issue or on private placement basis; and
3. issue and listing of Perpetual Non-Cumulative Preference Shares and Perpetual Debt Instrument, issued by banks on private placement basis in compliance with Guidelines issued by RBI.

DEFINITIONS

"Non-Convertible Redeemable Preference Share" means a preference share which is redeemable in accordance with the provisions of the Companies Act, 2013 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder.

"Perpetual Non-Cumulative Preference Share" means a perpetual Non-Cumulative Preference Share issued by a bank in accordance with the guidelines framed by the Reserve Bank of India.

ISSUE OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

CONDITIONS

A Company cannot make any public issue of non-convertible redeemable preference shares if –
1. The Company or its promoter has been restrained or prohibited or debarred by SEBI from accessing the securities market or dealing in securities and such direction or order is in force.
2. It has made an application to one or more recognized stock exchanges for listing of such securities therein. If the application is made to more than one recognized stock exchanges, the issuer must choose one of them which has nationwide trading terminals as the designated stock exchange.
3. It has obtained in-principle approval for listing of its non-convertible redeemable preference shares.

4. Credit rating including the unaccepted ratings obtained from more than one credit rating agencies, registered with SEBI shall be disclosed in the offer document.

5. The minimum tenure of the non-convertible redeemable preference shares shall not be less than three years.

6. The issue has been assigned a rating of not less than “AA-” or equivalent by a credit rating agency registered with SEBI.

7. The Company shall create a capital redemption reserve in accordance with the provisions of the Companies Act, 2013.

8. The issuer shall not issue non-convertible redeemable preference shares for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer.

**APPOINTMENT OF INTERMEDIARIES**

1. It shall enter into an arrangement with a depository registered with SEBI for dematerialization of the non-convertible redeemable preference shares in accordance with the Depositories Act, 1996 and regulations made there under.

2. In case of public issue of non-convertible redeemable preference shares, the Company shall appoint one or more merchant bankers registered with SEBI at least one of whom shall be a lead merchant banker.

**DISCLOSURES OF MATERIAL INFORMATION**

1. The offer document must contain all material disclosures which are necessary for the subscribers of the non-convertible redeemable preference shares to take an informed investment decision. The offer document contains the following:
   
   (a) the disclosures specified in Section 26 of the Companies Act, 2013;

   (b) disclosure specified in Schedule I of these regulations;

   (c) additional disclosures as may be specified by SEBI

2. The amount of minimum subscription which the issuer seeks to raise and underwriting arrangements shall be disclosed in the offer document.

**FILING**

The company shall file draft offer document with the designated stock exchange through the lead merchant banker and also forwarded a copy of draft and final offer document to SEBI for its records, along with fees as specified in regulation.
RESPONSIBILITIES OF MERCHANT BANKER

The lead merchant banker must ensure that –

- The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

- All comments received on the draft offer document are suitably addressed and shall also furnish to SEBI a due diligence certificate as per these regulations prior to the filing of the offer document with the Registrar of Companies.

MODE OF DISCLOSURE

- The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of 7 working days from the date of filing the draft offer document and simultaneously with filing thereof with ROCs for dissemination on its website prior to the opening of the issue.

- The draft offer document may also be displayed on the website of the company, merchant bankers and the stock exchanges where the non-convertible redeemable preference shares are proposed to be listed.

- The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

- Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

ADVERTISEMENT

- The Company should make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation on or before the issue opening date and such advertisement, amongst other things must contain the disclosures specified in these regulations.

- An Company should not issue an advertisement –
  - which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive or extraneous matters.
  - which contain a statement, promise or forecast which is untrue or misleading and the advertisement shall be truthful, fair and clear.
– during the subscription period any reference to the issue of non-convertible redeemable preference shares or be used for solicitation.

❖ The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

ABRIDGED PROSPECTUS AND APPLICATION FORMS

The issuer and lead merchant banker shall ensure that:
(a) Every application form issued by the issuer is accompanied by a copy of the abridged prospectus;
(b) The abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;
(c) Adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

The issuer may provide the facility for subscription of application in electronic mode.

ON-LINE ISSUANCES

A Company proposing to issue of non-convertible redeemable preference shares to the public through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by SEBI.

ISSUE PRICE

A Company may determine the price of non-convertible redeemable preference shares in consultation with the lead merchant banker and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by SEBI.

MINIMUM SUBSCRIPTION

The Company may decide the amount of minimum subscription which it seeks to raise by public issue of non-convertible redeemable preference shares in accordance with the provisions of Companies Act, 2013 and disclose the same in the offer document.

In the event of non-receipt of minimum subscription, all application moneys received in the public issue shall be refunded forthwith to the applicants. In the event the application monies are refunded beyond 8 days from the last day of the offer, then such amounts shall be refunded together with interest at such rate as may be set out in the offer document which shall not be less than 15% per annum.

OPTIONAL UNDERWRITING

A public issue of non-convertible redeemable preference shares may be underwritten by an underwriter registered with SEBI and in such a case adequate
disclosures regarding underwriting arrangements shall be made in the offer document.

PROHIBITION OF MIS-STATEMENTS IN THE OFFER DOCUMENT

- The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.
- The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of non-convertible redeemable preference shares shall not contain any false or misleading statement.

MANDATORY LISTING

- A Company desirous of making an offer of non-convertible redeemable preference shares to public shall make an application for listing to one or more recognized stock exchanges in terms of section 40 of the Companies Act, 2013.
- It must comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.
- Where of the Company has disclosed the intention to seek listing of non-convertible redeemable preference shares issued on private placement basis, it shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

LISTING AGREEMENT

Every issuer desirous of listing its non-convertible redeemable preference shares, or perpetual non-cumulative preference shares or innovative perpetual debt instruments on a recognized stock exchange, shall execute an agreement with such stock exchange.

Every issuer who has previously entered into agreements with a recognized stock exchange to list non-convertible redeemable preference shares, or perpetual non-cumulative preference shares or innovative perpetual debt instruments shall execute a fresh listing agreement with such stock exchange within 6 months of the date of notification of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

SECURITY DEPOSIT

The issuer shall deposit, before the opening of subscription list, and keep deposited with the stock exchange(s) an amount calculated at the rate of 1% of the amount of securities offered for subscription to the public. The amount stipulated in above shall be deposited and refundable or forfeitable in the manner specified by SEBI.
CONDITIONS FOR PRIVATE PLACEMENT

1. An issuer may list its non-convertible redeemable preference shares issued on private placement basis on a recognized stock exchange subject to the following conditions:
   – In compliance with the provisions of the Companies Act, 2013, rules prescribed thereunder and other applicable laws;
   – Credit rating has been obtained from at least one credit rating agency registered with SEBI.
   – Should be in dematerialized form;
   – The disclosures as provided in regulation have been made;
   – The minimum application size for each investor is not less than 2 lakh rupees; and
   – Where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange.

2. The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

3. The issuer making a private placement of non-convertible redeemable preference shares and seeking listing thereof on a recognized stock exchange shall make disclosures as specified in Schedule I of these regulations accompanied by the latest Annual Report of the issuer.

4. The disclosures as provided above shall be made on the websites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

RELAXATION OF STRICT ENFORCEMENT OF RULE 19 OF SECURITIES CONTRACTS (REGULATION) RULES, 1957

In exercise of the powers conferred by sub-rule (7) of rule 19 of the Securities Contracts (Regulations) Rules, 1957, SEBI hereby relaxes the strict enforcement of sub-rules (1) and (3) of rule 19 of the said rules in relation to listing of non-convertible redeemable preference shares issued by way of a public issue or a private placement.

LISTING AND TRADING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

CONTINUOUS LISTING
All the issuers making public issues of non-convertible redeemable preference shares or seeking listing of non-convertible redeemable preference shares issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for non-convertible redeemable preference shares.

The issuer and stock exchanges shall disseminate all information and reports on non-convertible redeemable preference shares including compliance reports filed by the issuers regarding the non-convertible redeemable preference shares to the investors and the general public by placing them on their websites.

**TRADING**

1. The non-convertible redeemable preference shares issued to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges it should satisfy the conditions specified by SEBI.

2. In case of trades of non-convertible redeemable preference shares which have been made over the counter, such trades shall be reported on a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by SEBI.

3. SEBI may specify conditions for reporting of trades on the recognized stock exchange or other platform.

**OBLIGATIONS OF THE ISSUER, LEAD MERCHANT BANKER, ETC.**

1. The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

2. The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required as per Companies Act, 2013.

3. The issuer shall treat the applicants in a public issue of non-convertible redeemable preference shares in a fair and equitable manner as per the procedures as may be specified by SEBI.

4. The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.
5. No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.

ISSUANCE AND LISTING OF NON-EQUITY REGULATORY CAPITAL INSTRUMENTS BY BANKS

The provisions of these regulations shall also apply to the issuance and listing of Perpetual Non-Cumulative Preference Shares and Innovative Perpetual Debt Instruments by banks. Only a bank may issue such instruments subject to the prior approval and compliance with the Guidelines issued by RBI.

If a bank is incorporated as a company under Companies Act, 2013, it shall, in addition, comply with the provisions of Companies Act, 2013 and/or other applicable statues. The bank shall comply with the terms and conditions as may be specified by SEBI from time to time and shall make adequate disclosures in the offer document regarding the features of these instruments and relevant risk factors and if such instruments are listed, shall comply with the listing requirements.

INSPECTION BY SEBI

Regulation 24 provides that SEBI may appoint one or more persons to undertake the inspection and investigation of the books of account, records and documents of the issuer or merchant banker or any other intermediary associated with the public issue, disclosure or listing of non-convertible redeemable preference shares, as governed under these regulations, for any of the purposes specified in sub-regulation (2).

Regulation 24(2) provides the purposes of inspection, namely:-

a) to verify whether the provisions of the Companies Act, 2013, Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, the rules and regulations made thereunder in respect of issue of securities have been complied with;

b) to verify whether the requirement in respect of issue of securities as specified in these regulations has been complied with;

c) to verify whether the requirement of listing conditions and continuous disclosure requirement have been complied with;

d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of securities governed under these regulations;
e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations;

f) to inquire whether any direction issued by SEBI has been complied with.

While undertaking an inspection by the inspecting authority or SEBI, as the case may be, shall follow the procedure specified by SEBI for inspection of the intermediaries.

POWERS OF SEBI

POWER TO ISSUE DIRECTIONS

SEBI, in the interest of investors in securities market, issue such directions as it deems fit under section 11 or section 11A or section 11B or section 11D of the Act including:

a) directing the issuer to refund of the application monies to the applicants in a public issue.

b) directing the persons concerned not to further deal in securities in any particular manner.

c) directing the persons concerned not to access the securities market for a particular period.

d) restraining the issuer or its promoters or directors from making further issues of securities.

e) directing the person concerned to sell or divest the securities.

f) directing the issuer or the depository not to give effect transfer or directing further freeze of transfer of securities.

g) any other direction which SEBI may deem fit and proper in the circumstances of the case:

However, SEBI may, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued. Further that, if, any ex-parte direction is required to be issued, SEBI may give post decisional hearing to affected person.

POWER TO ISSUE GENERAL ORDER OR CIRCULAR

SEBI may by a general or special order or circular specify any conditions or requirement in respect of issue of non-convertible redeemable preference shares. Such orders or circulars may provide for all or any of the following matters, namely:
a. Electronic issuances and other issue procedures including the procedure for price discovery;

b. Conditions governing trading, reporting, clearing and settlement of trade in non-convertible redeemable preference shares; or

c. Listing conditions.

If any special order is proposed to be issued to any particular issuer or intermediary on a specific issue, no such order shall be issued unless an opportunity to represent is given to the person affected by such order.

POWER TO REMOVE DIFFICULTY

In order to remove any difficulties in the application or interpretation of these regulations, SEBI may issue clarifications or grant relaxations from application requirement or conditions of these regulations, after recording reasons therefore.

SEBI may, on an application made by any issuer, relax any of the procedural requirements or conditions or strict enforcement of these regulations, if SEBI is satisfied that:

- requirement is procedural or technical in nature; or
- requirement causes undue hardship to a particular class of industry or issuers from accessing the securities market; or
- relaxation is in the interest of substantial number of investors; or
- such relaxation will be in the interest of securities market.
SEBI (REAL ESTATE INVESTMENT TRUST) REGULATIONS, 2014

SEBI notified the Real Estate Investment Trusts (REITs) Regulations on 26 September 2014, thereby paving the way for introduction of an internationally acclaimed investment structure in India. The Finance Minister has also made necessary amendments to the Indian taxation regime to provide the tax pass through status, which is one of the key requirements for feasibility of REITs.

The Real estate Investment Trusts (REITs) Regulations, 2014, provide a positive push to the Indian Capital Markets and Real Estate & Infrastructure sectors. It also creates liquidity to some extent for Real Estate and Infrastructure players. Further, it would provide investors an opportunity to invest in Indian stabilized assets through an Indian listed platform.

The activities of the Real Estate Investment Trust in the Indian capital market are regulated by SEBI (Real Estate Investment Trust) Regulations, 2014.

**DEFINITIONS**

“*Associate*” of any person includes:-

i. Any person controlled, directly or indirectly, by the said person;

ii. Any person who controls, directly or indirectly, the said person;

iii. Where the said person is a company or a body corporate, any person(s) who
is designated as promoter(s) of the company or body corporate and any
other company or body corporate with the same promoter(s);

iv. Where the said person is an individual, any relative of the individual;

v. where the said person is a company or a body corporate or an LLP, its group
companies;

vi. Companies or LLPs under the same management;

vii. Where the said person is a REIT, related parties to the REIT;

viii. Any company or LLP or body corporate in which the person or its
director(s) or partner(s) hold(s), either individually or collectively, more
than 15 % of its paid-up equity share capital or partnership interest, as the
case may be;

"*Floor Space Index*" or "*FSI*" shall mean the buildable area on a plot of land as
specified by the competent authority.
“Follow–On Offer” means offer of units of a listed REIT to the public for subscription and includes an offer for sale of REIT units by an existing unit holder to the public;

“Follow-On Offer Document” means any document by which follow-on offer is made to the public;

“Investment Management Agreement” means an agreement between the trustee and the manager which lays down the roles and responsibilities of the manager towards the REIT;

“Occupancy Certificate” means a completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any property under any law for the time being in force;

“Real Estate” Or “Property” means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage.

“Real Estate Assets” means properties owned by REIT whether directly or through a special purpose vehicle;

"Re-Designated Sponsor" means any person who has assumed the responsibility of the sponsor as provided under regulation 11 from the person as designated under clause (zt) of sub-regulation (1) i.e., Sponsor, of this regulation or from any re-designated sponsor thereafter;

“REIT Assets” means real estate assets and any other assets owned by the REIT whether directly or through a special purpose vehicle;

“Related Party To The REIT” shall include:

i. parties to the REIT;
ii. any unit holder holding, directly or indirectly, more than twenty per cent of the units of the REIT;
iii. associates, sponsors, directors and partners of the persons in clause i and ii.

"Rent Generating Property” means property which has been leased or rented out in accordance with an agreement entered into for the purpose;
“Right-Of-First-Refusal” or "ROFR" of a REIT means the right given to the REIT by a person to enter into a transaction with it before the person is entitled to enter that transaction with any other party.

"Transferable Development Rights" or "TDR" shall mean development rights issued by the competent authority under relevant laws in lieu of the area relinquished or surrendered by the owner or developer or by way of declared incentives by the government or authority;

“Under-Construction Property” means a property of which construction is not complete and occupancy certificate has not been received;

### REGISTRATION OF REAL ESTATE INVESTMENT TRUSTS

Any person shall not act as a REIT unless it is registered with SEBI under these regulations. An application for grant of certificate of registration as REIT shall be made, by the sponsor in such form and on such fees as prescribed in the regulations.

SEBI may, in order to protect the interests of investors, appoint any person to take charge of records, documents of the applicant and for this purpose, also determine the terms and conditions of such an appointment. SEBI shall take into account requirements as prescribed in these regulations for the purpose of considering grant of registration.

### ELIGIBILITY CRITERIA

For the purpose of the grant of certificate to an applicant, SEBI shall consider all matters relevant to the activities as a REIT.

Without prejudice to the generality of the foregoing provision, SEBI shall consider the following, namely, -

(a) The applicant is a trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908;

(b) The trust deed has its main objective as undertaking activity of REIT and also includes responsibilities of the Trustee in accordance with these regulations.

(c) Persons have been designated as sponsor(s), manager and trustee under these regulations and all such persons are separate entities;

(d) With regard to sponsor(s), -
   i. Not more than three sponsors each holding or proposing to hold not less than 5% of the number of units of the REIT on post-initial offer basis;
ii. The sponsor(s), on a collective basis, have a net worth of not less than 100 crore rupees. However, each sponsor has a net worth of not less than 20 crore rupees; and

iii. The sponsor or its associate(s) has not less than five years’ experience in development of real estate or fund management in the real estate industry. However, where the sponsor is a developer, at least two projects of the sponsor have been completed.

(e) With regard to the manager,-

(i) the manager has a net worth of not less than 10 crore rupees if the manager is a body corporate or a company or net tangible assets of value not less than 10 crore rupees in case the manager is a LLP;

(ii) the manager or its associate has not less than five years’ experience in fund management or advisory services or property management in the real estate industry or in development of real estate;

(iii) the manager has not less than two key personnel who each have not less than five years’ experience in fund management or advisory services or property management in the real estate industry or in development of real estate;

(iv) the manager has not less than half, of its directors in the case of a company or of members of the governing Board of directors in case of an LLP, as independent and not directors or members of the governing Board of directors of another REIT; and

(v) the manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the manager in accordance with these regulations.

(f) with regard to the trustee,-

(i) the trustee is registered with SEBI under SEBI(Debenture Trustees)Regulations, 1993 and is not an associate of the sponsor(s) or manager; and

(ii) the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of SEBI and in accordance with circulars or guidelines as may be specified by SEBI;

(g) The unit holder of the REIT shall not enjoys preferential voting or any other rights over another unit holder;

(h) There are no multiple classes of units of REIT;

(i) The applicant has clearly described details related to proposed activities at the time of application for registration.
(j) The applicant and parties to the REIT are fit and proper persons based on the criteria as specified in SEBI(Intermediaries) Regulations, 2008;

(k) Whether any previous application for grant of certificate by the applicant or any related party has been rejected by SEBI.

(l) Whether any disciplinary action has been taken by SEBI or any other regulatory authority against the applicant or any related party under any Act or the regulations or circulars or guidelines made thereunder.

**FURNISHING OF FURTHER INFORMATION, CLARIFICATION AND PERSONAL REPRESENTATION**

SEBI may require the applicant to furnish any such information or clarification as may be required by it for the purpose of processing of the application. SEBI, if it so desires, may require the applicant or any authorized representative to appear before SEBI for personal representation in connection with the grant of certificate.

**PROCEDURE FOR GRANT OF CERTIFICATE**

SEBI on being satisfied that the applicant fulfils the eligibility requirements, shall send intimation to the applicant and grant certificate of registration after receipt of the payment of registration fees as prescribed in these regulations.

**CONDITIONS OF CERTIFICATE**

The certificate granted as above shall, inter-alia, be subject to the following conditions, namely,-

a) the REIT shall abide by the provisions of the Act and these regulations;

b) the REIT shall forthwith inform SEBI in writing, if any information or particulars previously submitted to SEBI are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

c) the REIT and parties to the REIT shall satisfy with the conditions as prescribed in these regulations;

d) the REIT and parties to the REIT shall comply with the Code of conduct.
PROCEDURE WHERE REGISTRATION IS REFUSED

After considering an application made by applicant, if SEBI is of the opinion that a certificate should not be granted to the applicant, it may reject the application after giving the applicant a reasonable opportunity of being heard. The decision of SEBI to reject the application shall be communicated to the applicant within 30 days of such decision.

RIGHTS AND RESPONSIBILITIES OF PARTIES TO THE REIT, VALUER AND AUDITOR

RIGHTS AND RESPONSIBILITIES OF TRUSTEE

(1) The trustee shall hold the REIT assets in trust for the benefit of the unit holders.

(2) The Trustee shall enter into an investment management agreement with the manager on behalf of the REIT.

(3) The trustee shall oversee activities of the manager in the interest of the unit holders, and shall obtain compliance certificate from the manager in the form as may be specified on a quarterly basis.

(4) The trustee shall ensure that the manager complies with the reporting and disclosures requirements in these regulations and in case of any delay or discrepancy require the manager to rectify the same on an urgent basis.

(5) The trustee shall review the transactions carried out between the manager and its associates and where the manager has advised that there may be a conflict of interest, shall obtain confirmation from a practising chartered accountant that such transaction is on arm's length basis.

(6) The trustee shall periodically review the status of unit holders' complaints and their redressal undertaken by the manager.

(7) The trustee shall make distributions and ensure that the manager makes timely declaration of distributions to the unit holders.

(8) The trustee may require the manager to set up such systems and submit such reports to the trustees, as may be necessary for effective monitoring of the performance and functioning of the REIT.

(9) The trustee shall ensure that subscription amount is kept in a separate bank account in name of the REIT and is only utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.

(10) The trustee shall ensure that the remuneration of the valuer is not linked to or based on the value of the asset being valued.
(11) The trustee shall ensure that the manager convenes meetings of the unit holders in accordance with these regulations and oversee the voting by unitholders and declare outcome of the voting.

(12) The trustee may take up with SEBI or with the designated stock exchange, any matter which has been approved in an annual meeting or special meeting, if the matter requires such action.

(13) The trustee shall obtain prior approval from the unit holders in accordance with these regulations and from SEBI in case of change in control of the manager.

(14) The trustee and its associates shall not invest in units of the REIT in which it is designated as the trustee.

(15) The trustee shall ensure that the activity of the REIT is being operated in accordance with the provisions of the trust deed, the offer document and if any discrepancy is noticed, shall inform the same to SEBI immediately in writing.

(16) The trustee shall provide to SEBI and to the designated stock exchange such information as may be sought by SEBI or by the designated stock exchange pertaining to the activity of the REIT.

(17) The trustee shall immediately inform to SEBI in case any act which is detrimental to the interest of the unit holders is noted.

**RIGHTS AND RESPONSIBILITIES OF MANAGER**

(1) The manager shall make the investment decisions with respect to the underlying assets of the REIT including any further investment or divestment of the assets.

(2) The manager shall ensure that the real estate assets of the REIT or SPV have proper legal and marketable titles and that all the material contracts including rental or lease agreements entered into on behalf of REITs or SPV are legal, valid, binding and enforceable by and on behalf of the REIT or SPV.

(3) The manager shall ensure that the investments made by the REIT are in accordance with the investment conditions specified in these regulations.

(4) The manager shall undertake management of the REIT assets including lease management, maintenance of the assets, regular structural audits, regular safety audits, etc. either directly or through the appointment and supervision of appropriate agents.

(5) The manager, in consultation with trustee, shall appoint the valuer(s), auditor, registrar and transfer agent, merchant banker, custodian and any other intermediary or service provider or agent for managing the assets of the REIT or for offer and listing of its units or any other activity pertaining to the REIT in a timely manner.

(6) The manager shall appoint an auditor for a period of not more than five consecutive years.
However, the auditor, not being an individual, may be reappointed for a period of another five consecutive years, subject to approval of unit-holders in the annual meeting.

(7) The manager shall arrange for adequate insurance coverage for the real estate assets of the REIT. However, in case of assets held by SPV, the manager shall ensure that real estate assets are adequately insured.

(8) If the REIT invests in under-construction properties as per these regulations, the manager-

(a) may undertake the development of the properties, either directly or through the SPV, or appoint any other person for development of such properties; and

(b) shall oversee the progress of development, approval status and other aspects of the properties up to its completion.

(9) The manager shall ensure that it has adequate infrastructure and sufficient key personnel with adequate experience and qualification to undertake management of the REIT at all times.

(10) The manager shall be responsible for,-

a. filing the draft and final offer document with SEBI and the designated stock exchange.

b. obtaining in-principle approval from the designated stock exchange;

c. dealing with all matters relating to issue and listing of the units of the REIT.

(11) The manager shall ensure that disclosures made in the offer document or any other document as may be specified by SEBI contain material, true, correct and adequate disclosures in accordance with these regulations and guidelines or circulars issued by SEBI.

(12) The manager shall declare distributions to the unit holders in accordance with these regulations.

(13) The manager shall ensure adequate and timely redressal of all unit holders' grievances pertaining to activities of the REIT.

(14) The manager shall ensure that the disclosures to the unit holders, SEBI, trustees and designated stock exchange are adequate, timely in accordance with these regulations.

(15) The manager shall provide to SEBI and to the designated stock exchanges any such information as may be sought by SEBI or the designated stock exchange pertaining to the activities of the REIT.
(16) The manager shall ensure that adequate controls are in place to ensure segregation of its activity as manager of the REIT from its other activities.

(17) The manager or its associates shall not obtain any commission or rebate or any other remuneration, by whatever name called, arising out of transactions pertaining to the REIT other than as specified in the offer document or any other document as may be specified by SEBI for the purpose of issue of units.

(18) The manager shall submit to the trustee,

(a) quarterly reports on the activities of the REIT including receipts for all funds received by it and for all payments made, position on compliance with these regulations, specifically including compliance with investment conditions, related party transactions and borrowings and deferred payments, performance report, status of development of under-construction properties, within thirty days of end of such quarter;

(b) valuation reports within fifteen days of the receipt of the valuation report from the valuer;

(c) decision to acquire or sell or develop any property or expand existing completed properties along with rationale for the same;

(d) details of any action which requires approval from the unit holders as required under these regulations;

(e) details of any other material fact including change of its directors, any legal proceedings that may have a significant bearing on the activity of the REIT within 7 working days of such action.

(19) In case the manager fails to timely submit to the trustee information or reports as specified, the trustee shall intimate the same to SEBI and SEBI may take action, as it deems fit.

(20) The manager shall coordinate with trustee, as may be necessary, with respect to operations of the REIT.

(21) The manager shall ensure that the valuation of the REIT assets is done by the valuer(s) in accordance with these regulations.

(22) The manager shall ensure that computation of NAV of the REIT is based on the valuation done by the valuer and is declared no later than fifteen days from the date of valuation and such computation shall be done and declared not less than once every six months.

(23) The manager shall ensure that the audit of accounts of the REIT by the auditor is done not less than twice annually and such report is submitted to the designated stock exchange within 45 days of end of such financial year ending March 31st and half-year ending on September 30th.
(24) The manager may appoint a custodian in order to provide such custodial services as maybe authorised by the trustees and oversee activities of such custodian.

(25) The manager shall place, before its board of directors in the case of a company or the governing board in case of an LLP, a report on activity and performance of the REIT every three months.

(26) The manager shall designate an employee or director as the compliance officer for monitoring of compliance with these regulations and circulars issued thereunder and intimating SEBI in case of any violation.

(27) The manager shall convene meetings of the unit holders in accordance with regulation and maintain records pertaining to the meetings in accordance with these regulations.

(28) The manager shall ensure the compliance with laws, as may be applicable, of the State or the local body with respect to the activity of the REIT including local building laws.

(29) The manager shall ensure that all activities of management of assets of the REIT and activities of the intermediaries or agents or service providers appointed by the manager are in accordance with these regulations and circulars issued thereunder.

**RIGHTS AND RESPONSIBILITIES OF SPONSOR(S)**

(1) The sponsor(s) shall set up the REIT and appoint the trustee of the REIT.

(2) The sponsor(s) shall transfer or undertake to transfer, its entire shareholding or interest in the SPV or entire ownership of the real estate assets to the REIT prior to allotment of units of the REIT to the applicants.

However, this shall not apply to the extent of any mandatory holding of shares or interest in the SPV by the sponsor(s) as required any Act or regulations or circulars or guidelines of government or regulatory authority as specified from time to time.

(3) With respect to holding of units in the REIT, the sponsor(s) shall.-

   (a) hold a minimum of 25% of the total units of the REIT after initial offer on a post-issue basis.

   However, the minimum sponsor holding specified in this clause shall be held for a period of atleast three years from the date of listing of such units:

   Further that any holding of the sponsor exceeding the minimum holding as specified in this clause, shall be held for a period of atleast one year from the date of listing of such units.

   (b) Together hold not less than 15% of the outstanding units of the listed REIT.
(c) Individually, hold not less than 5% of the outstanding units of the listed REIT.

(4) If the sponsor(s) propose(s) to sell its units below the limit specified in above sub-regulations -

a. such units shall be sold only after a period of three years from the date of listing of the units;

b. prior to sale of such units, the sponsor(s) shall arrange for another person(s) or entity(ies) to act as the re-designated sponsor(s) where the re-designated sponsor satisfy the eligibility norms for the sponsor as specified under these regulation.

However, such units may also be sold to an existing sponsor;

c. The sponsor/proposed re-designated sponsor shall obtain approval from the unit holders or provide option to exit to the unit holders in accordance with guidelines as may be specified.

However, this clause shall not apply where the units are proposed to be sold to an existing sponsor.

(5) If re-designated sponsor(s) propose(s) to sell its units to any another person, conditions specified in above sub-regulations shall be complied with.

**RIGHTS AND RESPONSIBILITIES OF THE VALUER**

The valuer (s) shall comply with the following conditions:-

(a) The valuer (s) shall ensure that the valuation of the REIT assets is impartial, true and fair in accordance with these regulations.

(b) The valuer (s) shall ensure adequate and robust internal controls to ensure the integrity of its valuation reports.

(c) The valuer(s) shall ensure that it has sufficient key personnel with adequate experience and qualification to perform property valuations at all times.

(d) The valuer(s) shall ensure that it has sufficient financial resources to enable it to conduct its business effectively and meet its liabilities.

(e) The valuer(s) and any of its employees involved in valuing of the assets of the REIT, shall not,-

   (i) invest in units of the REIT or in the assets being valued; and

   (ii) sell the assets or units of REITs held prior to being appointed as the valuer, till the time such person is designated as valuer of such REIT and not less than six months after ceasing to be valuer of the REIT;
(f) The valuer(s) shall conduct the valuation of the REIT assets with transparency and fairness and shall render, high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment;

(g) The valuer(s) shall act with independence, objectivity and impartiality in performing the valuation;

(h) The valuer(s) shall discharge its duties towards the REIT in an efficient and competent manner, utilizing his knowledge, skills and experience in best possible way to complete given assignment;

(i) The valuer(s) shall not accept remuneration, in any form, for performing a valuation of the REIT assets from any person other than the REIT or its authorized representative;

(j) The valuer(s) shall before accepting any assignment, disclose to the REIT any direct or indirect consideration which the valuer may have in respect of such assignment;

(k) The valuer(s) shall not make false, misleading or exaggerated claims in order to secure assignments; (m) The valuer(s) shall not provide misleading valuation, either by providing incorrect information or by withholding relevant information;

(l) The valuer(s) shall not accept an assignment that includes reporting of the outcome based on predetermined opinions and conclusions required by the REIT;

(m) The valuer(s) shall, prior to performing a valuation, acquaint itself with all laws or regulations relevant to such valuation.

**RIGHTS AND RESPONSIBILITIES OF THE AUDITOR**

- The auditor shall conduct audit of the accounts of the REIT and prepare the audit report based on the accounts examined by him and after taking into account the relevant accounting and auditing standards, as may be specified by SEBI.

- The auditor shall, to the best of his information and knowledge, ensure that the accounts and financial statements, including profit or loss and cash flow for the period and such other matters as may be specified, give a true and fair view of the state of the affairs.

- The auditor shall have a right of access at all times to the books of accounts and vouchers pertaining to activities of the REIT.

- The auditor shall have a right to require such information and explanation pertaining to activities of the REIT as he may consider necessary for the
performance of his duties as auditor from the employees of REIT or parties to the REIT or SPV or any other person in possession of such information.

ISSUE AND LISTING OF UNITS

ISSUE AND ALLOTMENT OF UNITS

(1) A REIT shall make an initial offer of its units by way of public issue only.

(2) No initial offer of units by the REIT shall be made unless,-

(a) the REIT is registered with SEBI under these regulations;
(b) the value of all the assets owned by REIT is not less than five hundred crore rupees;
(c) the units proposed to be offered to the public is not less than 25% of the total of the outstanding units of the REIT and the units being offered by way of the offer document.

However, for initial offer of value greater than 500 crore rupees, if prior to the initial offer units of the REIT are held by the public, the units proposed to be offered to the public shall be calculated after reducing such existing units for satisfying the aforesaid percentage requirement.

(d) the offer size is not less than 250 crore rupees.

However, the requirement of ownership of assets and size of REIT may be complied with after initial offer subject to a binding agreement with the relevant party (ies) that the requirements shall be fulfilled prior to allotment of units, a declaration to SEBI and the designated stock exchanges to that effect and adequate disclosures in this regard in the initial offer document.

(3) Any subsequent issue of units by the REIT may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI.

(4) REIT, through the manager, shall file a draft offer document with the designated stock exchange(s) and SEBI, not less than twenty one working days before filing the final offer document with the designated stock exchange.

(5) The draft offer document filed with SEBI shall be made public, for comments, to be submitted to SEBI, within a period of at least 10 days, by hosting it on the websites
of SEBI, designated stock exchanges and merchant bankers associated with the issue.

(6) The draft and final offer document shall be accompanied by a due diligence certificate signed by the Manager and lead merchant banker.

(7) SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit.

(8) The lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably taken into account prior to the filing of the offer document with the designated stock exchanges.

(9) In case no modifications are suggested by SEBI in the draft offer document within 21 working days from the date of receipt of satisfactory reply from the lead merchant bankers or manager, the REIT may issue the final offer document or follow-on offer document to the public.

However, prior to issue of such final offer document, it shall be filed with the designated stock exchanges and with SEBI.

(10) The final offer document shall be filed with the designated stock exchanges and SEBI not less than 5 working days before opening of the offer and such filing with SEBI shall be accompanied by filing fees as specified under these regulations.

(11) The initial offer or follow-on offer shall be made by the REIT within a period of not more than six months from the date of last issuance of observations by SEBI, if any or if no observations have been issued by SEBI, within a period of not more than six months from the date of filing of offer document with the designated stock exchanges.

However, if the initial offer or follow-on offer is not made within the specified time period, a fresh offer document shall be filed.

(12) The REIT may invite for subscriptions and allot units to any person, whether resident or foreign.

However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time.

(13) The application for subscription shall be accompanied by a statement containing the abridged version of the offer document, detailing the risk factors and summary of the terms of issue.

(14) Under both the initial offer and follow-on public offer, the REIT shall not accept subscription of an amount less than two lakh rupees from an applicant.

(15) Initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days.
(16) In case of over-subscriptions, the REIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber as specified above.

(17) The REIT shall allot units or refund application money as the case may be, within twelve working days from the date of closing of the issue.

(18) The REIT shall issue units only in dematerialized form to all the applicants.

(19) The price of REIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the circulars or guidelines issued by SEBI and in the manner as may be specified by SEBI.

(20) The REIT shall refund money, -

(a) to all applicants in case it fails to collect subscription amount of exceeding seventy five per cent of the issue size as specified in the initial offer document or follow-on offer document;

(b) to applicants to the extent of oversubscription in case the moneys received is in excess of the extent of over-subscription as specified in the initial offer document or follow-on offer document:

However, right to retain such over subscription cannot exceed twenty five percent of the issue size.

(c) to all applicants in case the number of subscribers to the initial offer forming part of the public is less than two hundred.

(21) If the manager fails to allot, or list the units, or refund the money within the specified time, then the manager shall pay interest to the unit holders at 15% per annum, till such allotment/listing/refund and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.

(22) Units may be offered for sale to public:-

a. if such units have been held by the existing unitholders for a period of at least one year prior to the filing of draft offer document with SEBI.

However, the holding period for the equity shares or partnership interest in the SPV against which such units have been received shall be considered for the purpose of calculation of one year period.

b. subject to other circulars or guidelines as may be specified by SEBI in this regard.

(23) If the REIT fails to make its initial offer within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and
cease to operate as a REIT. However, SEBI if it deems fit, may extend the period by another one year.

Further that the REIT may later re-apply for registration, if it so desires.

(24) SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by a REIT.

OFFER DOCUMENT AND ADVERTISEMENTS

The Offer document of the REIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.

Without prejudice to the generality of above sub regulation, the offer document shall-

| Include all information as specified in Schedule III to these regulations or any circulars or guidelines issued by SEBI in this regard | Not be misleading and not contain any untrue statements or mis-statements; | Not provide for any guaranteed returns to the investors; | Include such other disclosures as may be specified by SEBI |

Any advertisement material relating to any issue of units of the REIT shall not be misleading and shall not contain anything extraneous to the contents of the offer document. If an advertisement contains positive highlights, it shall also contain risk factors with equal importance in all aspects including print size.

The advertisements shall be in accordance with the offer document and any circulars or guidelines as may be specified by SEBI in this regard.

LISTING AND TRADING OF UNITS

- After the initial offer it shall be mandatory for all units of REITs to be listed on a recognized stock exchange having nationwide trading terminals within a period of 12 working days from the date of closure of the offer.
- The listing of the units of the REIT shall be in accordance with the listing agreement entered into between the REIT and the designated stock exchange.
• The units of the REIT listed in recognized stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of concerned stock exchanges and such conditions as may be specified by SEBI.

• Trading lot for the purpose of trading of units of the REIT shall be one lakh rupees.

• The REIT shall redeem units only by way of a buy-back or at the time of delisting of units.

• The units of REIT shall be remain listed on the designated stock exchange unless delisted under these regulation.

• The minimum public holding for the units of the listed REIT shall be 25% of the total number of outstanding units at all times, and the number of unit holders of the REIT forming part of the public shall be two hundred at all times, failing which action may be taken as may be specified by SEBI and by the designated stock exchange including delisting of units.

  However, in case of breach of the conditions specified in this sub-regulation, the trustee may provide a period of six months to the manager to rectify the same, failing which the manager shall apply for delisting of units accordance with these regulations.

• Any person other than the sponsor(s) holding units of the REIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units subject to circulars or guidelines as may be specified by SEBI.

• SEBI and designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the REIT by issuance of guidelines or circulars.

**DELISTING OF UNITS**

• The manager shall apply for delisting of units of the REIT to SEBI and the designated stock exchanges if,-

  (a) the public holding falls below the specified limit under these regulations.

  (b) the number of unit holders of the REIT forming part of the public falls below two hundred;

  (c) if there are no projects or assets remaining under the REIT for a period exceeding six months and REIT does not propose to invest in any project in future.

  However, the period may be extended by further six months, with the approval of unit holders in the manner as specified in these regulation.
(d) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or these regulations or the Act;
(e) the sponsor(s) or trustee requests such delisting and such request has been approved by unit holders in accordance with regulation 22(6);
(f) unit holders apply for such delisting in accordance with these regulations.
(g) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement, these regulations or the Act or in the interest of the unit holders.

- SEBI and the designated stock exchanges may consider such application for approval or rejection as may be appropriate in the interest of the unit holders.
- SEBI, instead of requiring delisting of the units, if it deems fit, may provide additional time to the REIT or parties to the REIT to comply with regulations.
- SEBI may reject the application for delisting and take any other action, as it deems fit, for violation of the listing agreement or these regulations or the Act.
- The procedure for delisting of units of REIT including provision of exit option to the unitholders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.
- SEBI may require the REIT to wind up and sell its assets in order to redeem units of the unit holders for the purpose of delisting of units and SEBI may through circulars or guidelines specify the manner of such winding up or sale.
- After delisting of its units, the REIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of a REIT:

However, the REIT and parties to the REIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the REIT notwithstanding such surrender.

INVESTMENT CONDITIONS, RELATED PARTY TRANSACTIONS, BORROWING AND VALUATION OF ASSETS

INVESTMENT CONDITIONS AND DISTRIBUTION POLICY

- The Investment by a REIT shall only be in SPVs or properties or securities or TDR in India in accordance with these regulations and in accordance with the investment strategy as detailed in the offer document as may be amended subsequently.
- The REIT shall not invest in vacant land or agricultural land or mortgages other than mortgage backed securities. However, this shall not apply to any land which is contiguous and extension of an existing project being implemented in stages.
- The REIT may invest in properties through SPVs subject to the following,-
  a) no other shareholder or partner of the SPV shall have any rights that prevents the REIT from complying with the provisions of these regulations;
  b) the manager, in consultation with the trustee, shall appoint not less than one authorized representative on the Board of directors or governing board of such SPVs;
  c) the manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the REIT is exercised subject to provisions of Companies Act, 2013.

- Not less than 8% of value of the REIT assets shall be invested proportionate to the holding of the REITs in completed and rent generating properties subject to the following,-
  a. if the investment has been made through a SPV, whether by way of equity or debtor equity linked instruments or partnership interest, only the portion of direct investments in properties by such SPVs shall be considered under this sub-regulation.
  b. if any project is implemented in stages, the part of the project which is completed and rent-generating shall be considered under this sub-regulation and the remaining portion including any contiguous land.

- Not more than 20% of value of the REIT assets shall be invested proportionate to the holding of the REITs in assets other than as provided above and such other investment shall only be in,-
  (a) properties, in which not more than 10% of value of the REIT assets shall be invested, which are:
    i. under-construction properties which shall be held by the REIT for not less than three years after completion;
    ii. under-construction properties which are a part of the existing income generating properties owned by the REIT which shall be held by the REIT for not less than three years after completion;
    iii. completed and not rent generating properties which shall be held by the REIT for not less than three years from date of purchase;
  (b) listed or unlisted debt of companies or body corporate in real estate sector. However, this shall not include any investment made in debt of the SPV.
    i. mortgage backed securities;
ii. equity shares of companies listed on a recognized stock exchange in India which derive not less than seventy five per cent of their operating income from real estate activity as per the audited accounts of the previous financial year;

iii. government securities;

iv. unutilized FSI of a project where it has already made investment;

v. TDR acquired for the purpose of utilization with respect to a project where it has already made investment;

vi. money market instruments or cash equivalents.

- Not less than seventy five per cent of the revenues of the REIT and the SPV, other than gains arising from disposal of properties, shall be, at all times, from rental, leasing and letting real estate assets or any other income incidental to the leasing of such assets.

- Not less than seventy five per cent of value of the REIT assets proportionately on a consolidated basis shall be rent generating.

- A REIT shall hold at least two projects, directly or through SPV, with not more than sixty per cent of the value of the assets, proportionately on a consolidated basis, in one project.

- Conditions specified in above shall be monitored on ahalf-yearly basis and at the time of acquisition of an asset.

However, if such conditions are breached on account of market movements of the price of the underlying assets or securities or change in tenants or expiry of lease or sale of properties, the manager shall inform the same to the trustee and ensure that the conditions as specified in this regulation are satisfied within six months of such breach.

Further that the period may be extended by another six months subject to approval from investors in accordance with these regulations.

- A REIT shall hold any completed and rent generating property, whether directly or through SPV, for a period of not less than three years from the date of purchase of such property by the REIT or SPV.

- For any sale of property, whether by the REIT or the SPV or for sale of shares or interest in the SPV by the REIT exceeding ten per cent of the value of REIT assets in a financial year, the manager shall obtain approval from the unit holders in accordance with these regulations.

- A REIT shall not invest in units of other REITs.
• A REIT shall not undertake lending to any person. However, investment in debt securities shall not be considered as lending.

• With respect to investment in leasehold properties, the manager shall consider the remaining term of the lease, the objectives of the REIT, the lease profile of the REIT’s existing real estate assets and any other factors as may be relevant, prior to making such investment.

• In case of any co-investment with any person(s) in any transaction,-

  (a) the investment by the other person(s) shall not be at terms more favourable than those to the REIT;

  (b) the investment shall not provide any rights to the person(s) which shall prevent the REIT from complying with the provisions of these regulations;

  (c) the agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the REIT to receive not less than pro rata distributions and mode for resolution of any disputes between the REIT and the other person(s).

• With respect to distributions made by the REIT and the SPV,-

  (a) not less than ninety per cent of net distributable cash flows of the SPV shall be distributed to the REIT in proportion of its holding in the SPV subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008;

  (b) not less than ninety per cent of net distributable cash flows of the REIT shall be distributed to the unit holders;

  (c) such distributions shall be declared and made not less than once every six months in every financial year and shall be made not later than fifteen days from the date of such declaration;

  (d) if any property is sold by the REIT or SPV,-

    i) if the REIT proposes to reinvest sale proceeds, if any, into another property, it shall not be required to distribute any sale proceeds from such sale to the unit holders; and if the SPV proposes to reinvest sale proceeds, if any, into another property, it shall not be required to distribute any sale proceeds from such sale to the REIT;

    ii) if the REIT or SPV proposes not to invest the sales proceeds made into any other property, it shall be required to distribute not less than ninety per cent of the sales proceeds in accordance with clauses (a) and (b);

  (e) if the distributions are not made within fifteen days of declaration, then the manager shall be liable to pay interest to the unit holders at the rate of fifteen
per cent per annum till the distribution is made and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.

- No schemes shall be launched under the REIT.
- SEBI may specify any additional conditions for investments by the REIT as it deems fit.

**RELATED PARTY TRANSACTIONS**

- All related party transactions shall be on an arms-length basis, in the best interest of the unit holders, consistent with the strategy and investment objectives of the REIT and shall be disclosed to the designated stock exchange and unit holders periodically in accordance with the listing agreement and these regulations.
- A REIT, subject to the conditions specified hereunder, may,-
  a) acquire assets from related parties;
  b) sell assets or securities to related parties;
  c) lease assets to related parties;
  d) lease assets from related parties;
  e) invest in securities issued by related parties;
  f) borrow from related parties.
- With respect to purchase or sale of properties both prior to and after initial offer,-
  a) two valuation reports from two different valuers, independent of each other, shall be obtained;
  b) such valuers shall undertake a full valuation of the assets proposed to be purchased or sold as specified under these regulation.
  c) Transactions for purchase of such assets shall be at a price not greater than, and transactions for sale of such assets shall be at a price not lesser than, average of the two independent valuations.
- In case of any related party transactions entered into prior to making the initial offer,-
  a) adequate disclosures to that effect shall be made in the initial offer document including a consolidated full valuation report of all such assets in accordance with above mentioned, as may be applicable;
(b) the REIT shall enter into proper and valid agreements with such related parties at the price or interest rate or rental value mentioned in the initial offer document;

(c) If the transactions are conditional upon the REIT receiving a minimum amount of subscription, adequate disclosures shall be made in the offer document and the agreements to that effect.

- In case of any related party transactions entered into after the initial offer,-
  a. adequate disclosures shall be made to the unit holders and to the designated stock exchanges
  b. in case,-
    i) the total value of all the related party transactions, in a financial year, pertaining to acquisition or sale of properties or investments into securities exceeds ten per cent. of the value of REIT; or
    ii) the value of the funds borrowed from related parties, in a financial year, exceeds ten per cent. of the total consolidated borrowings of the REIT;

approval from the unit holders shall be obtained prior to entering into any such subsequent transaction with any related party.

- For the purpose of obtaining approval for such transactions, the manager shall obtain approval from unit holders and request for such approval shall be accompanied by a transaction document.

- The disclosures in the offer document and transaction document shall include the following, as may be applicable,-
  a. identity of the related parties and their relationship with the REIT or parties to the REIT;
  b. nature and details of the transactions entered into or proposed to be entered into with such related parties including description and location of assets;
  c. the price or value of the assets or securities bought or sold or leased or proposed to be bought or sold or leased and if leased or proposed to be leased, value of the lease;
  d. Ready reckoner rate of the real estate asset being bought or sold. However, where such ready reckoner rate are not available, property tax assessment value or similar published rates by Government authorities shall be disclosed;
  e. summary of the valuation report(s);
  f. the current and expected rental yield;
g. if the transactions are conditional upon the REIT receiving a stated amount of subscriptions, the minimum amount of such subscriptions to be received;

h. amount of borrowing and rate of interest in case of borrowing from any related party;

i. any other information that is required for the investor to take an informed decision.

• With respect to any properties leased to related parties to the REIT, both before and after initial offer, if:-

   a) such lease area exceeds twenty per cent of the total area of the underlying assets;
   b) value of assets under such lease exceeds twenty per cent of the value of the total underlying assets;
   c) rental income obtained from such leased assets exceeds twenty per cent of the value of the rental income of all underlying assets,

   a fairness opinion from an independent valuer shall be obtained by the manager and submitted to the trustee and approval of unitholders in accordance with these regulations shall be obtained.

• For any related party transaction requiring approval of the unit holders or proposed to be undertaken immediately after the initial offer, the agreement shall be entered into within six months from date of close of initial offer or from date of approval of the unit holders, as the case may be.

   However, in case of the agreement is not entered into within such period, approval from the unit holders may be sought for extension for another six months in accordance with these regulations with the updated valuation report(s).

• Adequate disclosures of all related party transactions that have been entered into prior to the follow-on offer shall be made in the follow-on offer document.

• Transaction between two or more of the REITs with a common manager or sponsor shall be deemed to be related party transactions for each of the REITs and provisions of these regulations shall apply.

   However, this sub-regulation shall also apply if the managers or sponsors of the REITs are different entities but are associates.

• With respect to any related party transaction, details of any fees or commissions received or to be received by any person or entity which is an associate of the related party shall be adequately disclosed to the unit holders and to the designated stock exchanges.
• No related party shall retain cash or other rebates from any property agent inconsideration for referring transactions in REIT assets to the property agent.

• Where any of the related parties has an interest in a business which competes or is likely to compete, either directly or indirectly, with the activities of the REIT, the following details shall be disclosed in the offer document,-

  (a) details of the such business including an explanation as to how such business shall compete with the REIT;
  
  (b) a declaration that the related party shall perform its duty in relation to the REIT independent of its related business;
  
  (c) declaration as to whether any acquisition of such business by the REIT is intended and if so, details of the same thereof.

• Any arrangement or transaction or contract with any related party other than as included in this regulation shall be disclosed to the unit holders and to the designated stock exchanges.

BORROWINGS AND DEFERRED PAYMENTS

• The aggregate consolidated borrowings and deferred payments of the REIT net of cash and cash equivalents shall never exceed forty nine per cent of the value of the REIT assets. However, such borrowings and deferred payments shall not include any refundable security deposits to tenants.

• If the aggregate consolidated borrowings and deferred payments of the REIT net of cash and cash equivalents exceed twenty five per cent of the value of the REIT assets, for any further borrowing,-

  a) credit rating shall be obtained from a credit rating agency registered with SEBI; and

  b) approval of unit holders shall be obtained in the manner as prescribed in these regulations.

• If the conditions specified above are breached on account of market movements of the price of the underlying assets or securities, the manager shall inform the same to the trustee and ensure that the conditions as specified in this regulation are satisfied within six months of such breach.

VALUATION OF ASSETS

• The valuer shall not be an associate of the sponsor(s) or manager or trustee and shall have not less than five years of experience in valuation of real estate.
• Full valuation includes a detailed valuation of all assets by the valuer including physical inspection of every property by the valuer.

• Full valuation report shall include the mandatory minimum disclosures as specified in Schedule V to these regulations.

• A full valuation shall be conducted by the valuer at least once in every financial year. However, such full valuation shall be conducted at the end of the financial year ending March 31st within three months from the end of such year.

• A half yearly valuation of the REIT assets shall be conducted by the valuer for the half year ending on September 30 for incorporating any key changes in the previous six months and such half yearly valuation report shall be prepared within forty-five days from the date of end of such half year.

• Valuation reports received by the manager shall be submitted to the designated stock exchange and unit holders within fifteen days from the receipt of such valuation reports.

• Prior to any issue of units to the public and any other issue of units as may be specified by SEBI, the valuer shall undertake full valuation of all the REIT assets and include a summary of the report in the offer document.

    However, such valuation report shall not be more than six months old at the time of such offer.

    Further that this shall not apply in cases where full valuation has been undertaken not more than six months prior to such issue and no material changes have occurred thereafter.

• For any transaction of purchase or sale of properties,-
  a. if the transaction is a related party transaction, the valuation shall be in accordance with these regulations.
  b. if the transaction is not a related party transaction,-:
      ⇒ a full valuation of the specific property shall be undertaken by the valuer; if,-

(1) in case of a purchase transaction, the property is proposed to be purchased at a value greater than one hundred and ten per cent of the value of the property as assessed by the valuer;

(2) in case of a sale transaction, the property is proposed to be sold at a value less than ninety per cent of the value of the property as assessed by the valuer, approval of the unit holders shall be obtained in accordance with regulation as prescribed in the regulations.
• No valuer shall undertake valuation of the same property for more than four years consecutively. However, the valuer may be reappointed after a period of not less than two years from the date it ceases to be the valuer of the REIT.

• Any valuation undertaken by any valuer shall abide by international valuation standards and valuation standards as may be specified by Institute of Chartered Accountants of India (ICAI) for valuation of real estate assets.
  However, in case of any conflict, standards specified by ICAI shall prevail.

• In case of any material development that may have an impact on the valuation of the REIT assets, then manager shall require the valuer to undertake full valuation of the property under consideration within not more than two months from the date of such event and disclose the same to the trustee, investors and the Designated Stock Exchanges within fifteen days of such valuation.

• The valuer shall not value any assets in which it has either been involved with the acquisition or disposal within the last twelve months other than such cases where valuer was engaged by the REIT for such acquisition or disposal.

RIGHTS AND MEETINGS OF UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the Offer document or trust deed.

2. With respect to any matter requiring approval of the unit holders,-

   a. a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favour of the resolution exceed a certain percentage, as specified in this regulation, of the votes cast against;

   b. the voting may also be done by postal ballot or electronic mode;

   c. a notice of not less than twenty one days either in writing or through electronic mode shall be provided to the unit holders;

   d. voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;

   e. manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holders, subject to overseeing by the trustee.

   However, in respect of issues pertaining to the manager such as change in manager including removal of the manager or change in control of the manager, trustee shall convene and handle all activities pertaining to conduct of the meetings.
Further that in respect of issues pertaining to the trustee such as change in the
trustee, the trustee shall not be involved in any manner in the conduct of the
meeting.

3. An annual meeting of all unit holders shall be held not less than once a year within
one hundred and twenty days from the end of financial year and the time between
two meetings shall not exceed fifteen months.

4. With respect to the annual meeting of unit holders,-

(a) any information that is required to be disclosed to the unit holders and any
issue that, in the ordinary course of business, may require approval of the unit
holders may be taken up in the meeting including,-

i. latest annual accounts and performance of the REIT;
ii. approval of auditor and fees of such auditor, as may be required;
iii. latest valuation reports;
iv. appointment of valuer, as may be required;
v. any other issue including special issues as specified

(b) for any issue taken up in such meetings which require approval from the unit
holders, votes cast in favour of the resolution shall not be less than one and a
half times the votes cast against the resolution.

5. In case of,-

(a) any approval from unit holders required under these regulation;

(b) any transaction, other than any borrowing, value of which is equal to or greater
than twenty five per cent. of the REIT assets;

(c) any borrowing in excess of specified limit as required under these regulations;

(d) any issue of units after initial offer by the REIT, in whatever form, other than
any issue of units which may be considered by SEBI under sub regulation(6);

(e) increasing period for compliance with investment conditions to one year in
accordance with these regulations.

(f) any issue, in the ordinary course of business, which in the opinion of the
sponsor(s) or trustee or manager, is material and requires approval of the
unitholders, if any;

(g) any issue for which SEBI or the designated stock exchange requires approval,
approval from unitholders shall be required where the votes cast in favour of
the resolution shall be not less than one and half times the votes cast against the resolution.

6. In case of ,-

(a) any change in manager including removal of the manager or change in control of the manager;

(b) any material change in investment strategy or any change in the management fees of the REIT;

(c) the sponsor(s) or manager proposing to seek delisting of units of the REIT;

(d) the value of the units held by a person along with its associates other than the sponsor(s) and its associates exceeding fifty per cent of the value of outstanding REIT units, prior to acquiring any further units;

(e) any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or manager or trustee requires approval of the unit holders;

(f) any issue for which SEBI or the designated stock exchanges requires approval under this sub-regulation;

(g) any issue taken up on request of the unit holders including:

   i. removal of the manager and appointment of another manager to the REIT;

   ii. removal of the auditor and appointment of another auditor to the REIT;

   iii. removal of the valuer and appointment of another valuer to the REIT;

   iv. delisting of the REIT if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unitholders;

   v. any issue which the unit holders have sufficient reason to believe that acts detrimental to the interest of the unit holders;

   vi. change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders, approval from unit holders shall be required where the votes cast in favour of the resolution shall be not less than three times the votes cast against the resolution.

However, in case of clause (d), if approval is not obtained, the person shall provide an exit option to the unitholders to the extent and in the manner as may be specified by SEBI.

7. With respect to the right(s) of the unit holders:-

   a. not less than twenty five per cent of the unit holders by value, other than any party related to the transactions and its associates, shall apply, in writing, to the trustee for the purpose;
b. on receipt of such application, the Trustee shall require the manager to place the issue for voting in the manner as specified in these regulations;

c. not less than sixty per cent of the unit holders by value shall apply, in writing, to the manager for the purpose.

8. In case of any change in sponsor or re-designated sponsor or change in control of sponsor or re-designated sponsor,-

(a) prior to such changes, approval shall be obtained from the unit holders wherein votes cast in favour of the resolution shall not be less than three times the votes cast against the resolution;

(b) if such change does not receive the required approval,-

i. in case of change of sponsor or re-designated sponsor, the proposed re-designated sponsor who proposes to buy the units shall provide the dissenting unit holders an option to exit by buying their units;

ii. in case of change in control of the sponsor or re-designated sponsor, the sponsor or re-designated sponsor shall provide the dissenting unit holders an option to exit by buying their units;

(c) if on account of such sale, the number of unit holders forming part of the public falls below two hundred or below twenty five per cent of the total outstanding units, the trustee shall apply for delisting of the units of the REIT in accordance with these regulations.

DISCLOSURES

- The manager shall ensure that the disclosures in the offer document are in accordance with these regulations and any circulars or guidelines issued by SEBI in this regard.

- The manager shall submit an annual report to all unit holders of the REIT with respect to activities of the REIT, within three months from the end of the financial year.

- The manager shall submit a half-yearly report to all unit holders of the REIT with respect to activities of the REIT within forty five days from the end of the half year ending on September 30th.

- Such annual and half yearly reports shall contain disclosures as specified under these regulations.

- The manager shall disclose to the designated stock exchanges any information having bearing on the operation or performance of the REIT as well as price sensitive information which includes but is not restricted to the following,-
(a) acquisition or disposal of any properties, value of which exceeds five per cent. Of value of the REIT assets;
(b) additional borrowing, at level of SPV or the REIT, resulting in such borrowing exceeding five per cent. of the value of the REIT assets during the year;
(c) additional issue of units by the REIT;
(d) details of any credit rating obtained by the REIT and any change in such rating;
(e) any issue which requires approval of the unit holders;
(f) any legal proceedings which may have significant bearing on the functioning of the REIT;
(g) notices and results of meetings of unit holders;
(h) any instance of non-compliance with these regulations including any breach of limits specified under these regulations;
(i) any material issue that in the opinion of the manager or trustee needs to be disclosed to the unit holders.

- The manager shall submit such information to the designated stock exchanges and unitholders on a periodical basis as may be required under the listing agreement.
- The manager shall disclose to the designated stock exchanges, unit holders and SEBI such information and in the manner as may be specified by SEBI.

SUBMISSION OF REPORTS TO SEBI

SEBI may at any time call upon the REIT or parties to the REIT to file such reports, as SEBI may desire, with respect to the activities relating to the REIT.

POWER TO CALL FOR INFORMATION

SEBI may at any time call for any information from the REIT or parties to the REIT or any unit holder or any other person with respect to any matter relating to activity of the REIT. Where any information is called for, it shall be furnished within the time specified by SEBI.

MAINTENANCE OF RECORDS

(1) The manager shall maintain records pertaining to the activity of the REIT including,-

   a. decisions of the manager with respect to investments or divestments and documents supporting the same;
   b. details of investments made by the REIT and documents supporting the same;
   c. agreements entered into by the REIT or on behalf of the REIT;
d. documents relating to appointment of persons as specified in regulation 10(5);
e. insurance policies for real estate assets;
f. investment management agreement;
g. documents pertaining to issue and listing of units including initial offer document or follow-on offer document(s) or other offer document(s), in-principle approval by designated stock exchanges, listing agreement with the designated stock exchanges, details of subscriptions, allotment of units, etc.;
h. distributions declared and made to the unit holders;
i. disclosures and periodical reporting made to the trustee, SEBI, unit holders and designated stock exchanges including annual reports, half yearly reports, etc.;
j. valuation reports including methodology of valuation;
k. books of accounts and financial statements;
l. audit reports;
m. reports relating to activities of the REIT placed before the Board of Directors of the manager;
n. unit holders' grievances and actions taken thereon including copies of correspondences made with the unit holders and SEBI, if any;
o. any other material documents.

(2) The trustee shall maintain records pertaining to,-

(a) certificate of registration granted by SEBI;
(b) registered trust deed;
(c) documents pertaining to application made to SEBI for registration as a REIT;
(d) titles of the real estate assets.

However, where the original title documents are deposited with the lender in respect of any loan / debt, the trustee shall maintain copies of such title documents.

(e) notices and agenda send to unit holders for meetings held;
(f) minutes of meetings and resolutions passed therein;
(g) periodical reports and disclosures received by the trustee from the manager;
(h) disclosures, periodically or otherwise, made to SEBI, unit holders and to the designated stock exchanges;
(i) any other material documents.
(3) The records specified in sub-regulation (2) may be maintained in physical or electronic form.

However, where records are required to be duly signed and are maintained in the electronic form, such records shall be digitally signed.

LIABILITY FOR ACTION IN CASE OF DEFAULT

A REIT or parties to the REIT or any other person involved in the activity of the REIT who contravenes any of the provisions of the Act or these regulations, notifications, guidelines, circulars or instructions issued thereunder by SEBI shall be liable for one or more actions specified therein including any action provided under SEBI (Intermediaries) Regulations, 2008.
SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014

The activities of the Infrastructure Investment Trusts in the Indian capital market are regulated by SEBI (Infrastructure Investment Trusts) Regulations, 2014.

DEFINITIONS

“Governing board” in case of an LLP shall mean a group of members assigned by the LLP to act in a manner similar to the board of directors in case of a company.

“Infrastructure” includes all infrastructure sub-sectors as defined vide notification of the Ministry of Finance dated October 07, 2013 and shall include any amendments or additions made thereof.

“Completed and revenue generating project” means an infrastructure project, which prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions, the infrastructure project has -

(i) achieved the commercial operations date as defined under the relevant project agreement including concession agreement, power purchase agreement or any other agreement of a similar nature entered into in relation to the operation of the project or in any agreement entered into with the lenders;

(ii) received all the requisite approvals and certifications for commencing operations; and

(iii) been generating revenue from operations for a period of not less than one year;

“InvIT” or 'Infrastructure Investment Trust” shall mean the trust registered as such under these regulations.

“InvIT assets” means assets owned by the InvIT, whether directly or through a SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

“Value of the InvIT” means value of the InvIT as assessed by the valuer based on value of the infrastructure and other assets owned by the InvIT, whether directly or through SPV excluding any debtor liabilities thereof.

REGISTRATION OF INFRASTRUCTURE INVESTMENT TRUSTS

Any person shall not act as an InvIT unless it has obtained a certificate of registration from the SEBI under these regulations. An application for grant of certificate of registration as InvIT shall be made by the sponsor in such form and in such a manner as prescribed in these regulations.
The SEBI may, in order to protect the interests of investors, appoint any person to take charge of records, documents of the applicant and for this purpose, also determine the terms and conditions of such an appointment. The SEBI shall take into account requirements as specified in these regulations for the purpose of considering grant of registration.

**ELIGIBILITY CRITERIA**

(1) For the purpose of the grant of certificate to an applicant, the SEBI shall consider all matters relevant to the activities as an InvIT.

(2) Without prejudice to the generality of the foregoing provisions, the SEBI shall consider the following, mandatory requirements namely,—

   (a) the applicant is a trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908;

   (b) the trust deed has its main objective as undertaking activity of InvIT and also includes responsibilities of the trustee in accordance with these regulations;

   (c) persons have been designated as sponsor(s), investment manager and trustee under these regulations and all such persons are separate entities;

   (d) with regard to sponsor(s),—

      (i) there are not more than 3 sponsors;

      (ii) each sponsor has,—

         1. a net worth of not less than Rs. 100 crore if it is a body corporate or a company; or

         2. net tangible assets of value not less than Rs 100 crore in case it is a limited liability partnership.

However, in case of PPP projects, where the sponsor is the SPV, the net worth or net tangible assets shall be as defined in the eligibility criteria of the project documents;

   (iii) Whether the sponsor or its associate has a sound track record in development of infrastructure or fund management in the infrastructure sector.

   (e) with regard to the investment manager,—

      (i) the investment manager has a net worth of not less than rupees ten crore if the investment manager is a body corporate or a company or net tangible
assets of value not less than ten crore rupees in case the investment manager is a limited liability partnership;

(ii) the investment manager has not less than five years’ experience in fund management or advisory services or development in the infrastructure sector;

(iii) the investment manager has not less than two employees who have at least five years’ experience each, in fund management or advisory services or development in the infrastructure sector;

(iv) the investment manager has not less than one employee who has at least five years’ experience in the relevant subsector (s) in which the InvIT has invested or proposes to invest;

(v) the investment manager has not less than half of its directors in case of a company or members of the governing board in case of an LLP as independent and not directors or members of the governing board of another InvIT;

(vi) the investment manager has an office in India from where the operations pertaining to the InvIT is proposed to be conducted;

(vii) the investment manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the investment manager in accordance with these regulations.

(f) the project implementation agreement has been entered into between the project manager, the concessionaire SPV and the trustee acting on behalf of the InvIT which sets out obligations of the project manager with respect to execution of the project.

However, in case of PPP projects, such obligations shall be in accordance with the concession agreement or any such agreement entered into with the concessioning authority;

(g) with regard to the trustee,—

i. the trustee is registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993 and is not an associate of the sponsor(s) or manager; and

ii. the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the SEBI and in accordance with circulars or guidelines as may be specified by the SEBI;

(h) No unit holder of the InvIT enjoys preferential voting or any other rights over another unit holder;
(i) there shall not be multiple classes of units of InvITs;

(j) the applicant has clearly described at the time of registration, details pertaining to proposed activities of the InvIT;

(k) the applicant, sponsor(s), investment manager, project manager(s) and trustee are fit and proper persons based on the criteria as specified in SEBI(Intermediaries) Regulations, 2008;

(l) whether any previous application for grant of certificate made by the applicant or any related party has been rejected by the SEBI;

(m) whether any disciplinary action has been taken by the SEBI or any other regulatory authority against the applicant or any related party under any Act or the regulations or circulars or guidelines made thereunder.

**FURNISHING OF FURTHER INFORMATION, CLARIFICATION**

The SEBI may require the applicant to furnish any such information or clarification as may be required by it for the purpose of processing of the application. The SEBI, if it so desires, may require the applicant or its authorized representative(s) to appear before the SEBI for personal representation in connection with the grant of certificate.

**PROCEDURE FOR GRANT OF CERTIFICATE**

SEBI on being satisfied that the applicant fulfils, the requirements specified in these regulations, shall send intimation to the applicant and grant certificate of registration after receipt of registration fees as prescribed in the regulations. However, the SEBI may grant in-principle approval to the applicants, where it deems fit and on satisfaction of all requirements as specified in these regulations, grant final registration to the applicant. The registration may be granted with such conditions as may be deemed appropriate by the SEBI.

**CONDITIONS OF CERTIFICATE**

The certificate granted under these regulations shall, *inter-alia*, be subject to the following conditions,-
(a) the InvIT shall abide by the provisions of the Act and these regulations;

(b) the InvIT shall forthwith inform the SEBI in writing, if any information or particulars previously submitted to SEBI are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

(c) The InvIT and parties to the InvIT shall satisfy with the eligibility criteria specified in these regulations at all times;

(d) The InvIT and parties to the InvIT shall comply with the Code of conduct as specified in these regulations.

PROCEDURE WHERE REGISTRATION IS REFUSED

After considering an application made under these regulations, if the SEBI is of the opinion that a certificate should not be granted to the applicant, it may reject the application after giving the applicant a reasonable opportunity of being heard. The decision of the SEBI to reject the application shall be communicated to the applicant within thirty days of such decision.

RIGHTS AND RESPONSIBILITIES OF PARTIES TO THE INVIT, VALUER AND AUDITOR

RIGHTS AND RESPONSIBILITIES OF TRUSTEE

- The trustee shall hold the InvIT assets in the name of the InvIT for the benefit of the unit holders in accordance with the trust deed and these regulations.
- The trustee shall enter into an investment management agreement with the investment manager on behalf of the InvIT.
- The trustee shall oversee activities of the investment manager in the interest of the unit holders, ensure that the investment manager shall comply with its rights and responsibilities with these regulations and shall obtain compliance certificate from the investment manager, in the form as may be specified, on a quarterly basis.
- The trustee shall oversee activities of the project manager other than that relating with revenue streams from the projects with respect to compliance with these regulations and the project management agreement and shall obtain compliance certificate from the Project manager, in the form as may be specified, on a quarterly basis.
- The trustee shall ensure that the investment manager complies with reporting and disclosures requirements in accordance with these regulations and in case of any delay or discrepancy, it requires the investment manager to rectify the same on an urgent basis.

- The trustee shall review the transactions carried out between the investment manager and its associates and where the investment manager has advised that there may be a conflict of interest, shall obtain confirmation from a practising chartered accountant that such transaction is on arm's length basis.

- The trustee shall periodically review the status of unit holders' complaints and their redressal undertaken by the investment manager.

- The trustee shall make distributions and ensure that investment manager makes timely declaration of distributions to the unit holders in accordance with Investment conditions and dividend policy as specified in these regulations.

- The trustee may require the investment manager to set up such systems and procedures and submit such reports to the trustees, as may be necessary for effective monitoring of the functioning of the InvIT.

- The trustee shall ensure that subscription amount is kept in a separate bank account in name of the InvIT and is only utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.

- The trustee shall ensure that the remuneration of the valuer is not be linked to or based on the value of the assets being valued.

- The trustee shall ensure that the investment manager convenes meetings of the unit holders in accordance with these regulations and oversee the voting by unit holders.

- The trustee shall ensure that the investment manager convenes meetings of unit holders not less than once every year and the period between such meetings shall not exceed fifteen months.

- The trustee may take up with SEBI or with the designated stock exchange, as may be applicable, any matter which has been approved in any meeting of unit holders, if the matter requires such action.

- In case of any change in investment manager due to removal or otherwise,—
  a) prior to such change, the trustee shall obtain approval from unitholders in accordance with these regulations and from SEBI;

  b) the trustee shall appoint the new investment manager within three months from the date of termination of the earlier investment management agreement;
c) the previous investment manager shall continue to act as such at the discretion of trustee till such time as new investment manager is appointed;

d) the trustee shall ensure that the new investment manager shall stand substituted as a party in all the documents to which the earlier investment manager was a party;

e) the trustee shall ensure that the earlier investment manager continues to be liable for all its acts of omissions and commissions notwithstanding such termination.

- In case of any change in the project manager due to removal or otherwise,–
  a) the trustee shall appoint the new project manager within three months from the date of termination of the earlier project management agreement;
  b) the trustee may, either *suo motu* or based on the advice of the concessioning authority appoint an administrator in connection with a infrastructure project(s) for such term and on such conditions as it deems fit;
  c) the previous project manager shall continue to act as such at the discretion of trustee till such time as new project manager is appointed;
  d) all costs and expenses in this regard will be borne by the new project manager;
  e) the trustee shall ensure that the new project manager shall stand substituted as a party in all the documents to which the earlier project manager was a party;
  f) the trustee shall ensure that the earlier project manager continues to be liable for all its acts of omissions and commissions for the period during which it served as the project manager, notwithstanding such termination.

- The trustee shall obtain prior approval from the unit holders under these regulations and from SEBI, in case of change in control of the investment manager.

- In case of change in control of the project manager in a PPP project, the trustee shall ensure that written consent of the concessioning authority is obtained in terms of the concession agreement prior to such change, where applicable.

- The trustee or its associates shall not invest in units of the InvIT in which it is designated as the trustee.

- The trustee shall ensure that the activity of the InvIT is being operated in accordance with the provisions of the trust deed, these regulations and the offer document or placement memorandum and if any discrepancy is noticed, shall inform the same to SEBI immediately in writing.
• The trustee shall provide to SEBI and to the designated stock exchanges, where applicable, such information as may be sought by SEBI or by the designated stock exchanges pertaining to the activity of the InvIT.

• The trustee shall immediately inform SEBI in case any act which is detrimental to the interest of the unit holders is noted.

**RIGHTS AND RESPONSIBILITIES OF INVESTMENT MANAGER**

• The investment manager shall make the investment decisions with respect to the underlying assets or projects of the InvIT including any further investment or divestment of the assets.

• The investment manager shall oversee activities of the project manager with respect to revenue streams from the projects and the project management agreement and shall obtain compliance certificate from the project manager, in the form as may be specified, on a quarterly basis.

• The investment manager shall ensure that the infrastructure assets of the InvIT or SPV have proper legal titles, if applicable, and that all the material contracts entered into on behalf of InvIT or SPV are legal, valid, binding and enforceable by and on behalf of the InvIT or SPV.

• The investment manager shall ensure that the investments made by the InvIT are in accordance with the investment conditions and in accordance with the investment strategy of the InvIT.

• The investment manager, in consultation with trustee, shall appoint the valuer(s), auditor, registrar and transfer agent, merchant banker, custodian and any other intermediary or service provider or agent as may be applicable with respect to activities pertaining to the InvIT in a timely manner and in accordance with these regulations.

• The investment manager shall appoint an auditor for a period of not more than five consecutive years.

    However, the auditor, not being an individual, may be reappointed for a period of another five consecutive years, subject to approval of unit-holders in the annual meeting in accordance with these regulations.

• The investment manager shall arrange for adequate insurance coverage for the assets of the InvIT.

    However, this clause shall not apply in case the assets are required to be insured by any other person under any agreement including a concession agreement or under any Act or regulations or circulars or guidelines of any concessioning authority or government or local body.
Further that in case of assets held by SPV, the investment manager shall ensure that assets held by the SPV are adequately insured.

- The investment manager shall ensure that it has adequate infrastructure and sufficient key personnel with adequate experience and qualification to undertake management of the InvIT at all times.

- The investment manager shall be responsible for all activities pertaining to issue of units and listing of units of the InvIT including,—
  
  a) filing of placement memorandum with SEBI;
  
  b) filing the draft and final offer document with SEBI and the exchanges within the prescribed time period;
  
  c) dealing with all matters up to allotment of units to the unit holders;
  
  d) obtaining in-principle approval from the designated stock exchanges;
  
  e) dealing with all matters relating to issue and listing of the units of the InvIT as specified under these regulations and any guidelines as maybe issued by SEBI in this regard.

- The investment manager shall ensure that disclosures made in the offer document or placement memorandum contains material, true, correct and adequate disclosures and are in accordance with these regulations and guidelines or circulars issued hereunder.

- The investment manager shall declare distributions to the unit holders in accordance with these regulations.

- The investment manager shall review the transactions carried out between the project manager and its associates and where the project manager has advised that there may be a conflict of interest, shall obtain confirmation from the auditor that such transaction is on arm's length basis.

- The investment manager shall ensure adequate and timely redressal of all unit holders' grievances pertaining to activities of the InvIT.

- The investment manager shall ensure that the disclosures or reporting to the unit holders, SEBI, trustees and designated stock exchanges, are in accordance with these regulations and guidelines or circulars issued hereunder.
• The investment manager shall provide to SEBI and to the designated stock exchanges, where applicable, any such information as may be sought by SEBI or the designated stock exchanges pertaining to the activities of the InvIT.

• The investment manager or its associates shall not obtain any commission or rebate or any other remuneration, by whatever name called, arising out of transactions pertaining to the InvIT other than as specified in the offer document or placement memorandum or any other document as may be specified by SEBI for the purpose of issue of units.

• The investment manager shall ensure that the valuation of the InvIT assets is done by the valuer(s) in accordance with these regulations.

• The investment manager shall submit to the trustee,-
  
a) quarterly reports on the activities of the InvIT including receipts for all funds received by it and for all payments made, position on compliance with these regulations, specifically compliance within vestment conditions, related parties transactions and borrowing and deferred payments, performance report, status of development of under-construction projects, within thirty days of end of such quarter;
  
b) valuation reports as required under these regulations within fifteen days of the receipt of the valuation report from the valuer;
  
c) decision to acquire or sell or develop or bid for any asset or projector expand existing completed assets or projects along with rationale for the same;
  
d) details of any action which requires approval from the unit holders as maybe required under the regulations;
  
e) details of any other material fact including change in its directors, change in its shareholding, any legal proceedings that may have a significant bearing on the activity of the InvIT, within seven working days of such action.

• In case the investment manager fails to timely submit to the trustee information or reports as specified above, the trustee shall intimate the same to SEBI and SEBI may take action, as it deems fit.

• The investment manager shall coordinate with trustee, as may be necessary, with respect to operations of the InvIT.

• The investment manager shall ensure that computation and declaration of NAV of the InvIT based on the valuation done by the valuer not later than fifteen days from the date of valuation.

• The investment manager shall ensure that the audit of accounts of the InvIT by the auditor is done not less than twice annually and such report is submitted to the designated stock exchange within forty five days of end of financial year ending March 31st and half-year ending September 30th.
• The investment manager may appoint a custodian in order to provide such custodial services as may be authorised by the trustees.

• The investment manager shall place before its board of directors in case of company or the governing board in case of an LLP a report on activity and performance of the InvIT at least once every quarter within thirty days of end of every quarter.

• The investment manager shall designate an employee or director as the compliance officer for monitoring of compliance with these regulations and guidelines or circulars issued hereunder and intimating SEBI in case of any non-compliance.

• The investment manager shall convene meetings of the unit holders and maintain records pertaining to the meetings in accordance with these regulations.

• The investment manager shall ensure that all activities of the intermediaries or agents or service providers appointed by the investment manager are in accordance with these regulations and guidelines or circulars issued hereunder.

**RESPONSIBILITIES OF PROJECT MANAGER**

• The project manager shall undertake operations and management of the InvIT assets including making arrangements for the appropriate maintenance, as may be applicable, either directly or through the appointment and supervision of appropriate agents and as required under any project agreement including a concession agreement in the case of a PPP project.

• If the InvIT invests in under construction projects, the project manager shall,—
  
  a) undertake the operations and management of the projects, either directly or through appropriate agents;

  b) oversee the progress of development, approval status and other aspects of the project upto its completion, in case of appointment of agents for the purpose of execution.

• The project manager shall discharge all obligations in respect of achieving timely completion of the infrastructure project, wherever applicable, implementation, operation, maintenance and management of such infrastructure project in terms of the project management agreement.

**RIGHTS AND RESPONSIBILITIES OF SPONSOR(S)**

• The sponsor(s) shall set up the InvIT and appoint the trustees of the InvIT.

• The sponsor(s) shall transfer or undertake to transfer to the InvIT, its entire shareholding or interest in the SPV or ownership of the infrastructure projects, subject to a binding agreement and adequate disclosures in the offer document or placement memorandum, prior to allotment of units of the InvIT.
However, this shall not apply to the extent of any mandatory holding of shares or interest in the SPV by the sponsor(s) as per any Act or regulations or circulars or guidelines of government or any regulatory authority or concession agreement.

- With respect to holding of units in the InvIT, the sponsor(s) together shall hold not less than twenty five per cent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units.

However, in case of PPP projects, in case such acquiring or holding is disallowed by government or under any provisions of the concession agreement or any other such agreement,—

i. the sponsor may continue to maintain such holding at the SPV level;

ii. the consolidated value of all such holdings at the SPV level and the value of the units of InvIT held by the sponsor shall not be less than the value of twenty five per cent of the total units of the InvIT after initial issue of units on a post-issue basis;

iii. such units of the InvIT and shares or interest in the SPV shall be held for a period of not less than three years from the date of the listing of units of the InvIT;

iv. in case such holding of sponsor in the SPV results in the InvIT not having controlling interest and not having more than fifty per cent shareholding or interest in the SPV, the sponsor shall enter into a binding agreement with the InvIT to ensure that decisions taken by the sponsor including voting with respect to the SPV are in compliance with these regulations and not against the interest of the InvITs or the unit holders and shall be subject to further guidelines as may be specified by SEBI.

- Any holding by sponsor in InvIT, exceeding twenty five per cent on a post issue basis, shall be held for a period of not less than one year from the date of listing of such units.

**RIGHTS AND RESPONSIBILITIES OF THE VALUER AND AUDITOR**

- The valuers shall comply with the following conditions at all times,—
  (a) the valuer shall ensure that the valuation of the InvIT assets is impartial, true and fair in accordance with these regulations.
  (b) the valuer shall ensure adequate and robust internal controls to ensure the integrity of its valuation reports;
  (c) the valuer shall ensure that it has sufficient key personnel with adequate experience and qualification to perform valuations;
  (d) the valuer shall ensure that it has sufficient financial resources to enable it to conduct its business effectively and meet its liabilities;
(e) the valuer and any of its employees involved in valuing of the assets of the InvIT, shall not,—
   i. invest in units of the InvIT or in the assets being valued; and

   ii. sell the assets or units of InvITs held prior to being appointed as the valuer, till the time such person is designated as valuer of such InvIT and not less than six months after ceasing to be valuer of the InvIT;

(f) the valuer shall conduct valuation of the InvIT assets with transparency and fairness and shall render, at all times, high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment;

(g) the valuer shall act with independence, objectivity and impartiality in performing the valuation;

(h) the valuer shall discharge its duties towards the InvIT in an efficient and competent manner, utilizing its knowledge, skills and experience in best possible way to complete given assignment;

(i) the valuer shall not accept remuneration, in any form, for performing a valuation of the InvIT assets from any person other than the InvIT or its authorized representative;

(j) the valuer shall before accepting any assignment, disclose to the InvIT any direct or indirect consideration which the valuer may have in respect of such assignment;

(k) the valuer shall disclose to the InvIT any pending business transactions, contracts under negotiation and other arrangements with the investment manager or any other party whom the InvIT is contracting with and any other factors that may interfere with the valuer’s ability to give an independent and professional valuation of the assets;

(l) the valuer shall not make false, misleading or exaggerated claims in order to secure assignments;

(m) the valuer shall not provide misleading valuation, either by providing incorrect information or by withholding relevant information;

(n) the valuer shall not accept an assignment which interferes with its ability to do fair valuation;
(o) the valuer shall, prior to performing a valuation, acquaint itself with all laws or regulations relevant to such valuation.

- The auditor shall comply with the following conditions at all times,–

(a) the auditor shall conduct audit of the accounts of the InvIT and draft the audit report based on the accounts examined by him and after taking into account the relevant accounting and auditing standards, as may be specified by SEBI;

(b) the auditor shall, to the best of his information and knowledge, ensure that the accounts and financial statements give a true and fair view of the state of the affairs of the InvIT, including profit or loss and cash flow for the period and such other matters as may be specified;

(c) the auditor shall have a right of access at all times to the books of accounts and vouchers pertaining to activities of the InvIT;

(d) the auditor shall have a right to require such information and explanation pertaining to activities of the InvIT as he may consider necessary for the performance of his duties as auditor from the employees of InvIT or parties to the InvIT or SPV or any other person in possession of such information.

OFFER OF UNITS OF INVIT AND LISTING OF UNITS

ISSUE OF UNITS AND ALLOTMENT

(1) No initial offer of units by an InvIT shall be made unless,–

a. The InvIT is registered with SEBI under these regulations;

b. the value of the assets held by the InvIT is not less than rupees five hundred crore.

   Explanation.- Such value shall mean the value of the specific portion of the holding of InvIT in the underlying assets or SPVs;

c. the offer size is not less than rupees two hundred fifty crore.

However, the requirement of ownership of assets and offer size may be complied with after initial offer or first offer of units under private placement subject, to a binding agreement with the relevant party(ies) that the requirements shall be fulfilled prior to allotment of units, a declaration to SEBI and the designated stock exchanges to that effect, where applicable and adequate disclosures in this regard in the initial offer document or placement memorandum.
(2) If the InvIT invests or proposes to invest in under-construction projects, value of which is more than ten per cent of the value of the InvIT assets, it shall raise funds,—

a. by way of private placement only through a placement memorandum;

b. from qualified institutional buyers and body corporate only, whether Indian or foreign.

However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time;

c. with minimum investment from any investor of rupees one crore;

d. from not less than five and not more than one thousand investors.

(3) The InvIT as specified in above shall file the draft placement memorandum for making private placement of units with SEBI along with the application for registration and SEBI may communicate its comments, to such applicant which shall be incorporated by the applicant in placement memorandum prior to grant of registration.

(4) With respect to InvITs that hold not less than eighty per cent of its assets in completed and revenue generating infrastructure projects,—

a. initial issue of units shall be by way of initial offer only;

b. any subsequent issue of units after initial offer may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI;

c. minimum subscription from any investor in initial and follow-on offer shall be ten lakh rupees;

d. the units proposed to be offered to the public is not less than twenty five per cent of the total of the outstanding units of the InvIT and the units being offered by way of the offer document. However, if prior to the initial offer, units of the InvIT are held by the public, the units proposed to be offered to the public shall be calculated after reducing such existing units for satisfying the aforesaid percentage requirement;

e. prior to initial offer and follow-on offer, the investment manager shall file the draft offer document with the designated stock exchange(s) and SEBI not less than twenty one working days before filing the final offer document with the designated stock exchange;
f. the draft offer document filed with SEBI shall be made public, for comments, if any, to be submitted to SEBI, within a period of at least ten days, by hosting it on the websites of SEBI, designated stock exchanges and merchant bankers associated with the issue;

g. SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit;

h. the lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably addressed prior to the filing of the final offer document with the designated stock exchanges;

i. in case no modifications are suggested by SEBI in the draft offer document within twenty one working days from the date of receipt of satisfactory reply from the lead merchant bankers or manager, the InvIT may issue the final offer document or follow on offer document to the public;

j. the draft and final offer document shall be accompanied by a due diligence certificate signed by the investment manager and lead merchant banker;

k. the final offer document shall be filed with the designated stock exchanges and SEBI not less than five working days before opening of the offer and such filing with SEBI shall be accompanied by filing fees as prescribed in these regulations.

l. The InvIT may make the initial offer or follow-on offer within a period of not more than six months from the date of last issuance of observations by SEBI, if any and if no observations have been issued by SEBI, within six months from the date of filing of final offer document with the designated stock exchanges. However, if the initial offer or follow-on offer is not made within the prescribed time period, a fresh offer document shall be filed;

m. The InvIT may invite for subscriptions and allot units to any person, whether resident or foreign. However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time.

n. the application for subscription shall be accompanied by a statement containing the abridged version of the offer document detailing the risk factors and summary of the terms of issue;

o. initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days;

p. in case of over-subscriptions, the InvIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber as discussed above.
q. the InvIT shall allot units or refund application money, as the case may be, within twelve working days from the date of closing of the issue;

r. the InvIT shall issue units in only in dematerialized form to all the applicants;

s. the price of InvIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the guidelines issued by SEBI and in the manner as may be specified by SEBI;

t. the InvIT shall refund money,-

(i) to all the applicants in case it fails to collect subscription of atleast seventy five per cent of the issue size as specified in the final offer document;

(ii) to applicants to the extent of the over subscription, incase the moneys received is in excess of the extent of over-subscription as specified in the final offer document, money shall be refunded to applicants to the extent of the oversubscription. However, right to retain such over subscription cannot exceed twenty five per cent of the issue size;

(iii) to all the applicants, in case the number of subscribers to the initial offer forming part of the public is less than twenty;

u. If the investment manager fails to allot or list the units or refund the money within the specified time, then the investment manager shall pay interest to the unit holders at the rate of fifteen per cent per annum, till such allotment or listing or refund and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT;

v. units may be offered for sale to public,—

i. if such units have been held by the sellers for a period of at least one year prior to the filing of draft offer document with SEBI. However, the holding period for the equity shares or partnership interest in the SPV against which such units have been received shall be considered for the purpose of calculation of one year period;

ii. subject to other guidelines as may be specified by SEBI in this regard;

(5) If the InvIT fails to make any offer of its units, whether by way of public issue or private placement, within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and cease to operate as an InvIT.

However, SEBI, if it deems fit, may extend the period by another one year. Further that the InvIT may later re-apply for registration, if it so desires.

(6) SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by an InvIT, whether by way of public issue or private placement.
OFFER DOCUMENT OR PLACEMENT MEMORANDUM AND ADVERTISEMENTS

- The offer document or placement memorandum of the InvIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.

- Without prejudice to the generality of sub-regulation (1), the offer document or placement memorandum shall,—
  
  (i) not be misleading or contain any untrue statements or misstatements;

  (ii) not provide for any guaranteed returns to the investors; and

  (iii) include such other disclosures as may be specified by SEBI.

- The offer document shall include all information as specified under Schedule III.

- The placement memorandum shall contain all material information about the InvIT, parties to the InvIT, fees and all other expenses proposed to be charged, tenure of the InvIT, investment strategy, risk management tools and parameters employed, key service providers, conflict of interest and procedures to identify and address them, disciplinary history of the sponsor(s), investment manager, trustee and their associates, the terms and conditions on which the investment manager offers investment services, its affiliations with other intermediaries, manner of winding up of the InvIT and such other information as may be necessary for the investor to take an informed decision on whether to invest in the InvIT.

- No advertisement shall be issued pertaining to issue of units by an InvIT which makes a private placement of its units.

- With respect to advertisements pertaining to the offer of units by an InvIT with respect to public issue of its units,—
  
  i. such advertisement material shall not be misleading and shall not contain anything extraneous to the contents of the offer document;

  ii. if an advertisement contains positive highlights, it shall also contain risk factors with equal importance in all aspects including print size;

  iii. the advertisements shall be in accordance with any circulars or guidelines as may be specified by SEBI in this regard.

LISTING AND TRADING OF UNITS

- It shall be mandatory for units of all InvITs to be listed on a recognized stock exchange having nationwide trading terminals, whether publicly issued or privately placed.
However, this sub-regulation shall not apply if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers under these regulations.

- The listing of the units shall be in accordance with the listing agreement entered into between the InvIT and the designated stock exchanges.

- The units of the InvIT listed in the designated stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of designated stock exchanges and such conditions as may be specified by SEBI.

- The InvIT shall redeem units only by way of a buyback or at the time of delisting of units.

- The units shall remain listed on the designated Stock Exchanges unless delisted under these regulations.

- The minimum public holding for the units of the publicly offered InvIT after listing shall be 25% of the total number of outstanding units, at all times, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.

- The minimum number of unit holders in an InvIT other than the sponsor(s),
  
  (a) in case of privately placed InvIT, shall be five, each holding not more than 25% of the units of the InvIT;

  (b) forming part of public shall be twenty, each holding not more than 25% of the units of the InvIT, at all times post listing of the units, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.

- With respect to listing of privately placed units,—
  
  a. its units shall be mandatorily listed on the designated stock exchange(s) within thirty working days from the date of final closing;

  b. trading lot for the purpose of trading of units on the designated stock exchange shall be rupees one crore.

- With respect to listing of publicly offered units,—
  
  a. its units shall be mandatorily listed on the designated stock exchange(s) within twelve working days from the date of closure of the initial offer. However, this sub-regulation shall not apply if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed in these regulations.

  b. trading lot for the purpose of trading of units on the designated stock exchange shall be five lakh rupees.
• Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.

• SEBI and designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the InvIT by issuance of guidelines or circulars.

DELISTING OF UNITS AND WINDING UP OF THE INVIT

• The investment manager shall apply for delisting of units of the InvIT to SEBI and the designated stock exchanges if,-
  a. the public holding falls below the specified limit under these regulations.
  b. the number of unit holders of the InvIT falls below the limit as prescribed in these regulations.
  c. if there are no projects or assets remaining under the InvIT fora period exceeding six months and InvIT does not propose to invest in any project in future.

    However, the period may be extended by further 6 months, with the approval of unitholders in the manner as prescribed in these regulations.
  d. SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or these regulations or the Act;
  e. the sponsor(s) or trustee requests such delisting and such request has been approved by unit holders in accordance with these regulations.
  f. unit holders apply for such delisting in accordance with these regulations.
  g. SEBI or the designated stock exchanges require such delisting in the interest of the unit holders.

    However, if clause (a) or (b) is breached, the trustee may provide a period of six months to the investment manager to rectify the same, failing which shall apply for such delisting.

    Further that in case of PPP projects, such delisting shall be subject to relevant clauses in the concession agreement.

• SEBI and the designated stock Exchanges may consider such application for delisting for approval or rejection as may be appropriate in the interest of the unit holders.

• SEBI may, instead of delisting of the units, if it deems fit, provide additional time to the InvIT or parties to the InvIT to comply with above mentioned conditions.
• SEBI may reject the application for delisting and take any other action, as it deems fit, under these regulations or the Act for violation of the listing agreement or these regulations or the Act.

• The procedure for delisting of units of InvIT including provision of exit option to the unit holders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.

• After delisting of its units, the InvIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of anInvIT.

• The InvIT and parties to the InvIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the InvIT notwithstanding surrender of registration to SEBI.

INVESTMENT CONDITIONS AND DIVIDEND POLICY

• The investment by an InvIT shall only be in SPVs or infrastructure projects or securities in India in accordance with these regulations and the investment strategy as detailed in the offer document or Placement memorandum.

• In case of PPP projects, the InvIT shall mandatorily invest in the infrastructure projects through SPV.

• The InvIT may invest in infrastructure projects through SPVs subject to the following,—
  a. no other shareholder or partner of the SPV shall have any rights that prevents the InvIT from complying with the provisions of these regulations and an agreement shall be entered into with such shareholders or partners to that effect prior to investment in the SPV;
  b. in case the SPV is a company, the investment manager, in consultation with the trustee, shall appoint not less than one authorized representative on the board of directors or governing board of such SPVs;
  c. the investment manager shall ensure that the in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.

• In case of InvIT as specified under these regulations, the InvIT shall invest only in eligible infrastructure projects or securities of companies or partnership interests of LLPs in infrastructure sector. However, un-invested funds may be invested in liquid funds or government securities or money market instruments or cash equivalents.
Explanation.- Companies or LLPs in infrastructure sector shall mean those companies or LLPs which derive not less than eighty per cent of their operating income from infrastructure sector as per the audited accounts of the previous financial year.

- In case of InvITs as specified above in these regulations,-

  a) not less than 8% of the value of the assets shall be invested, proportionate to the holding of the InvITs, in completed and revenue generating infrastructure projects subject to the following;

  (i) if the investment has been made through a SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in eligible infrastructure projects by such SPVs shall be considered under this sub regulation and the remaining portion shall be included under clause (b);

  (ii) if any project is implemented in stages, the part of the project which can be categorized as completed and revenue generating project shall be considered under this sub-regulation and the remaining portion shall be included under clause (b);

  b) not more than twenty per cent of value of the assets, proportionate to the holding of the InvITs, shall be invested in,—

     i. under construction infrastructure projects, whether directly or through SPVs.

        However, investment in such assets shall not exceed ten per cent of the value of the assets of the InvIT;

     ii. listed or unlisted debt of companies or body corporate in infrastructure sector. However, this shall not include any investment made in debt of the SPV.

     iii. equity shares of companies listed on a recognized stock exchange in India which derive not less than eighty per cent of their operating income from infrastructure sector as per the audited accounts of the previous financial year;

     iv. government securities;

     v. money market instruments, liquid mutual funds or cash equivalents;

  c) if the conditions specified in clauses (a) and (b) are breached on account of market movements of the price of the underlying assets or securities, the investment manager shall inform the same to the trustee and ensure that the
conditions as specified in this regulation are satisfied within six months of such breach.

However, the period may be extended to one year subject to approval from investors in accordance with these regulations.

• With respect to distributions made by the InvIT and the SPV,-
  a. not less than ninety per cent of net distributable cash flows of the SPV shall be distributed to the InvIT in proportion of its holding in the SPV subject to applicable provisions in Companies Act, 2013 or Limited Liability Partnership Act, 2008;
  b. not less than ninety per cent of net distributable cash flows of the InvIT shall be distributed to the unit holders;
  c. such distributions shall be declared and made not less than once every six months in every financial year in case of publicly offered InvITs and not less than once every year in case of privately placed InvITs and shall be made not later than fifteen days from the date of such declaration;
  d. subject to clause (c), such distribution shall be as per the dates and in the manner as mentioned in the offer document or placement memorandum.

• If any infrastructure asset is sold by the InvIT or SPV or if the equity shares or interest in the SPV are sold by the InvIT,—
  a. if the InvIT or SPV proposes to re-invest the sale proceeds into another infrastructure asset, it shall not be required to distribute any sales proceeds to the InvIT or to the investors;
  b. If the InvIT or SPV proposes not to invest the sales proceeds into any other infrastructure asset, it shall be requiring to distribute the same in accordance with above sub-regulation.

• If the distributions are not made within fifteen days of declaration, then the investment manager shall be liable to pay interest to the unitholders at the rate of fifteen per cent per annum till the distribution is made and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT.

• An InvIT shall not invest in units of other InvITs.

• An InvIT shall not undertake lending to any person. However, investment in debt securities shall not be considered as lending.

• An InvIT shall hold an infrastructure asset for a period of not less than three years from the date of purchase of such asset by the InvIT, directly or through SPV.
However, this shall not apply to investment in securities of companies in infrastructure sector other than SPVs.

- In case of any co-investment with any person(s) in any transaction,—
  a. the investment by the other person(s) shall not be at terms more favourable than those to the InvIT;
  b. the investment shall not provide any rights to the person(s) which shall prevent the InvIT from complying with the provisions of these regulations;
  c. the agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the InvIT to receive not less than pro rata distributions and mode for resolution of any disputes between the InvIT and the other person(s).

- No schemes shall be launched under the InvIT.

- SEBI may specify any additional conditions for investments by the InvIT as deemed fit.

RELATED PARTY TRANSACTIONS

- All related party transactions shall be on an arms-length basis in accordance with relevant accounting standards, in the best interest of the unit holders, consistent with the strategy and investment objectives of the InvIT.

- All related party transactions of an InvIT shall be disclosed,—
  a. in the offer document or placement memorandum with respect to any such transactions entered into prior to the offer of units and any such proposed transactions subsequent to the offer;
  b. to the designated stock exchanges and unit holders periodically in accordance with the listing agreement and these regulations.

- With respect to related party transactions with respect to publicly offered InvITs entered into after initial offer, if,—
  a. the total value of all the related party transactions, in a financial year, pertaining to acquisition or sale of assets or investments into securities exceeds 5% of the value of InvIT; or
  b. the value of the funds borrowed from related parties, in a financial year, exceeds 5% of the total consolidated borrowings of the InvIT, approval from the unit holders shall be obtained prior to entering into any such subsequent transaction with any related party in accordance with these regulations.
• Transaction between two or more of the InvITs with a common investment manager or sponsor, shall be deemed to be related party transactions for each of the InvITs and provisions of this regulations shall apply.

However, this sub-regulation shall also apply if the investment managers or sponsors of the InvITs are different entities but are associates.

• With respect to any related party transaction, details of any fees or commissions received or to be received by any person or entity which is an associate of the related party shall be adequately disclosed to the designated stock exchanges.

• Where any of the related parties have an interest in a business which competes or is likely to compete, either directly or indirectly, with the activities of the InvIT, the following details shall be disclosed in the offer document or placement memorandum,–
  a. details of the such business including an explanation as to how such business shall compete with the InvIT;
  b. a declaration that the related party shall perform its duty in relation to the InvIT independent of its related business;
  c. declaration as to whether any acquisition of such business by the InvIT is intended and if so, details of the same thereof.

• SEBI may specify additional guidelines with respect to related party transactions, as it deems fit.

BORROWINGS AND DEFERRED PAYMENTS

• The aggregate consolidated borrowings and deferred payments of the InvIT net of cash and cash equivalents shall never exceed forty nine per cent of the value of the InvIT assets.

• If the aggregate consolidated borrowings and deferred payments of the InvIT net of cash and cash equivalents exceed twenty five per cent of the value of the InvIT assets, for any further borrowing,—
  a. credit rating shall be obtained from a credit rating agency registered with SEBI and
  b. approval of unit holders shall be obtained in the manner as prescribed in the regulations.

• If the conditions specified above are breached on account of market movements of the price of the underlying assets or securities, the investment manager shall inform the same to the trustee and ensure that the conditions are satisfied within six months of such breach.
VALUATION OF ASSETS

- The valuer shall not be an associate of the sponsor(s) or investment manager or trustee and shall have not less than five years of experience in valuation of infrastructure assets.

- Full valuation includes a detailed valuation of all assets of the InvIT by the valuer including physical inspection of every infrastructure project by the valuer.

- Full valuation report shall include the mandatory minimum disclosures as specified in Schedule V.

- A full valuation shall be conducted by the valuer not less than once in every financial year. However, such full valuation shall be conducted at the end of the financial year ending March 31st within two months from the date of end of such year.

- A half yearly valuation of the assets of the InvIT shall be conducted by the valuer for the half-year ending September 30th for a publicly offered InvIT for incorporating any key changes in the previous six months and such half yearly valuation report shall be prepared within one month from the date of end of such half year.

- Valuation reports received by the investment manager shall be submitted by the investment manager to the designated stock exchanges within fifteen days from the receipt of such valuation reports.

- Prior to any issue of units by publicly offered InvIT other than bonus issue, the valuer shall undertake full valuation of all the InvIT assets and include the same in the Offer Document.

   However, such valuation report shall not be more than six months old at the time of such offer.

   Further that this shall not apply in cases where full valuation has been undertaken not more than six months prior to such issue and no material changes have occurred thereafter.

- For any transaction of purchase or sale of infrastructure projects, whether directly or through SPVs, for publicly offered InvITs,—
  
  a. a full valuation of the specific project shall be undertaken by the valuer;
  
  b. if,—

  1. in case of a purchase transaction, the asset is proposed to be purchased at a value greater than hundred ten per cent of the value of the asset as assessed by the valuer;
2. In case of a sale transaction, the asset is proposed to be sold at a value less than ninety per cent of the value of the asset as assessed by the valuer, approval of the unit holders shall be obtained in accordance with these regulations.

- No valuer shall undertake valuation of the same project for more than four years consecutively. However, the valuer may be reappointed after a period of not less than two years from the date it ceases to be the valuer of the InvIT.

- Any valuation undertaken by any valuer shall be in compliance with by international valuation standards and valuation standards as may be specified by Institute of Chartered Accountants of India for valuation of infrastructure assets or such other valuation standards as may be specified by SEBI. However, in case of any conflict, standards specified by Institute of Chartered Accountants of India shall prevail.

- In case of any material development that may have an impact on the valuation of the assets of the InvIT, then investment manager of a publicly offered InvIT shall require the valuer to undertake full valuation of the infrastructure project under consideration within not more than two months from the date of such event and disclose the same to the trustee and the designated stock exchanges within fifteen days of such valuation.

- The valuer shall not undertake valuation of any assets in which it has either been involved with the acquisition or disposal within the last twelve months other than such cases where the valuer was engaged by the InvIT for such acquisition or disposal.

RIGHTS OF UNIT HOLDERS, GENERAL OBLIGATIONS, DISCLOSURES AND REPORTING

RIGHTS AND MEETINGS OF UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the offer document or placement memorandum.

2. With respect to any matter requiring approval of the unit holders,-

   a. a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favour of the resolution exceed a certain percentage as specified in these regulations, of votes cast against;

   b. the voting may also be done by postal ballot or electronic mode;

   c. a notice of not less than twenty one days shall be provided to the unit holders;
d. voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;

e. investment manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holder, subject to overseeing by the trustee.

However, in issues pertaining to the investment manager such as change in investment manager including removal of the investment manager or change in control of the investment manager, trustee shall convene and handle all activities pertaining to conduct of the meetings.

Further that in respect of issues pertaining to the trustee including change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.

3. With respect to publicly offered InvITs,—

a. an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months;

b. with respect to the annual meeting of unit holders,—

i. any information that is required to be disclosed to the unitholders and any issue that, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including,—

⇒ latest annual accounts and performance of the InvIT;
⇒ approval of auditor and fees of such auditor, as maybe required;
⇒ latest valuation reports;
⇒ appointment of valuer, as may be required;
⇒ any other issue;

ii. for any issue taken up in such meetings which require approval from the unit holders other than as specified in sub-regulation (6) under, votes cast in favour of the resolution shall not be less than one and a half times the votes cast against the resolution;

4. In case of,—

a. any approval from unit holders required for investment conditions, related party transactions and valuation of assets.

b. any transaction, other than any borrowing, value of which is equal to or greater than twenty five per cent of the InvIT assets;

c. any borrowing in excess of specified limit as required above in borrowing and deferred payment regulation;
d. any issue of units after initial offer by a publicly offered InvIT, in whatever form, other than any issue of units which may be considered by SEBI under sub-regulation (5);

e. increasing period for compliance with investment conditions to one year in accordance with these regulations.

f. any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or investment manager, is material and requires approval of the unit holders, if any;

g. any issue for which SEBI or the designated stock exchanges requires such approval under this sub-regulation, approval from unit holders shall be required where votes cast in favour of the resolution shall not be less than one and half times the votes cast against the resolution.

5. In case of,—

a. any change in investment manager including removal of the investment manager or change in control of the investment manager;

b. any material change in investment strategy or any change in the management fees of the InvIT.

c. the sponsor(s) or investment manager proposing to seek delisting of units of the InvIT.

d. any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or investment manager or trustee requires approval of the unit holders;

e. any issue for which SEBI or the designated stock exchanges requires approval under this sub-regulation;

f. any issue taken up on request of the unit holders including,—

i. removal of the investment manager and appointment of another investment manager to the InvIT;

ii. removal of the auditor and appointment of another auditor to the InvIT;

iii. removal of the valuer and appointment of another valuer to the InvIT;

iv. delisting of an InvIT, if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders;
v. any issue which the unit holders have sufficient reason to believe that is detrimental to the interest of the unit holders;

vi. change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders, approval from unit holders shall be required where votes cast in favour of the resolution shall not be less than three times the votes cast against the resolution.

However, in case of clause (d), if approval is not obtained, the person shall provide an exit option to the unit holder to the extent and in the manner specified by SEBI.

6. With respect to the right(s) of the unit holders,—

(a) not less than twenty five per cent. of the unit holders by value, other than any party related to the transactions and its associates, shall apply, in writing, to the trustee for the purpose;

(b) on receipt of such application, the trustee shall require the issue with the investment manager to place the issue for voting in the manner as specified in these regulations;

(c) not less than sixty per cent of the unit holders by value shall apply, in writing, to the trustee for the purpose.

DISCLOSURES

- A privately placed InvIT shall ensure that the disclosures in the placement memorandum are in accordance with these regulations and any circulars or guidelines issued by SEBI in this regard.

- A publicly offered InvIT shall ensure that the disclosures in the offer document are in accordance with the Schedule III and any circulars or guidelines issued by SEBI in this regard.

- The investment manager of all InvITs shall submit an annual report to all unit holders electronically or by physical copies and to the designated stock exchanges within three months from the end of the financial year.

- The investment manager of shall submit a half-yearly report to the designated stock exchange within forty five days from the end of the every half year ending March 31st and September 30th.

- Such annual and half yearly reports shall contain disclosures as specified under Schedule IV.

- The investment manager shall disclose to the designated stock exchanges any information having bearing on the operation or performance of the InvIT as well as price sensitive information which includes but is not restricted to the following,—
(a) acquisition or disposal of any projects, directly or through SPV, value of which exceeds 5% of value of the InvIT assets;
(b) additional borrowing, at level of SPV or the InvIT, exceeding fifteen per cent. of the value of the InvIT assets;
(c) additional issue of units by the InvIT;
(d) details of any credit rating obtained by the InvIT and any change in such rating;
(e) any issue which requires approval of the unit holders;
(f) any legal proceedings which may have significant bearing on the functioning of the InvIT;
(g) notices and results of meetings of unit holders,
(h) any instance of non-compliance with these regulations including any breach of limits specified under the regulations;
(i) any material issue that in the opinion of the investment manager or trustee needs to be disclosed to the unit holders.

• The InvIT shall also submit such information to the designated stock exchanges and unit holders on a periodical basis as may be required under the listing agreement.

• The InvIT shall disclose to the designated stock exchanges, unitholders and SEBI such information and in the manner as may be specified by SEBI.

• The InvIT shall also provide disclosures or reports specific to sector or sub-sector in which the InvIT has invested or proposes to invest in the manner as may be specified by SEBI.

**SUBMISSION OF REPORTS TO SEBI**

SEBI may at any time call upon the InvIT or parties to the InvIT to file such reports, as SEBI may desire, with respect to the activities relating to the InvIT.

**POWER TO CALL FOR INFORMATION**

SEBI may at any time call for any information from the InvIT or parties to the InvIT or any unit holder or any other person with respect to any matter relating to activity of the InvIT. Where any information is called for under above sub-regulation, it shall be furnished within the time specified by SEBI.
MAINTENANCE OF RECORDS

1. The investment manager shall maintain records pertaining to the activity of the InvIT, wherever applicable, including,—
   a) all investments or divestments of the InvIT and documents supporting the same including rationale for such investments or divestments;
   b) agreements entered into by the InvIT or on behalf of the InvIT;
   c) documents relating to appointment of persons as specified in regulation 10(5).
   d) insurance policies for infrastructure assets;
   e) investment management agreement;
   f) documents pertaining to issue and listing of units including placement memorandum, draft and final offer document, in-principle approval by designated stock exchanges, listing agreement with the designated stock exchanges, details of subscriptions, allotment of units, etc;
   g) distributions declared and made to the unit holders;
   h) disclosures and periodical reporting made to the trustee, SEBI, unit holders and the designated stock exchanges including annual reports, half yearly reports, etc.;
   i) valuation reports including methodology of valuation;
   j) books of accounts and financial statements;
   k) audit reports;
   l) reports relating to activities of the InvIT placed before the board of directors of the investment manager;
   m) unit holders' grievances and actions taken thereon including copies of correspondences made with the unit holder and SEBI, if any;
   n) any other material documents;

2. The trustee shall maintain records, wherever applicable, pertaining to,—
   a. certificate of registration granted by SEBI;
   b. registered trust deed;
   c. documents pertaining to application made to SEBI for registration as an InvIT;
   d. titles of the infrastructure assets

   However, where the original title documents are deposited with the lender or any other person in respect of any loan or debt, the trustee shall maintain copies of such title documents;
e. notices and agenda send to unit holders for meetings held;

f. minutes of meetings and resolutions passed therein;

g. periodical reports and disclosures received by the trustee from the investment manager;

h. disclosures, periodically or otherwise, made to SEBI, unitholders and the designated stock exchanges;

i. any other material documents.

2. The aforesaid records may be maintained in physical or electronic form. However, where records are required to be duly signed and are maintained in the electronic form, such records shall be digitally signed.

LIABILITY FOR ACTION IN CASE OF DEFAULT

An InvIT or parties to the InvIT or any other person involved in the activity of the InvIT who contravenes any of the provisions of the Act or these regulations or notifications, guidelines, circulars or instructions issued thereunder by SEBI shall be liable for one or more actions specified therein including any action provided under SEBI (Intermediaries) Regulations, 2008.

***************
Section 30A deals with following special provisions relating to commodity derivatives:—

(1) This Act shall not apply to non-transferable specific delivery contracts. However, no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 13 have been made applicable (other than a stock exchange) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area, the provisions of section 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the Central Government may, by notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of this Act shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) If the Central Government is of the opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

Definitions

"Associate" in relation to a person shall include another person:

(i) who, directly or indirectly, by himself, or in combination with other persons, exercises control over the first person;

(ii) who holds more than fifteen per cent shares in the paid up equity capital of the first person;
(iii) who is a holding company or a subsidiary company of the first person;

(iv) who is a relative of the first person;

(v) who is a member of a Hindu Undivided Family wherein the first person is also a member;

(vi) such other cases where SEBI is of the view that a person shall be considered as an associate based on the facts and factors including the extent of control, independence, conflict of interest.

“Commodity derivatives exchange” means a recognized stock exchange which assists, regulates or controls the business of buying, selling or dealing only in commodity derivatives.

“National commodity derivatives exchange” means a commodity derivatives exchange that is demutualized, has an electronic trading platform and is permitted to assist, regulate or control the business of buying, selling or dealing in derivatives on all commodities as notified by the Central Government from time to time.

"Netting" means the determination by Clearing Corporation of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities including the claims and obligations arising out of the termination by the Clearing Corporation or Stock Exchange, in such circumstances as the Clearing Corporation may specify in bye-laws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed."

"Public" includes any member or section of the public but does not include any trading member or clearing member or their associates and agents.

However, a public sector bank, public financial institution, an insurance company, mutual fund and alternative investment fund in public sector, that has associate(s) as trading members or clearing members, shall be deemed as public for the purposes of these regulations.

"Public interest director" means an independent director, representing the interests of investors in securities market and who is not having any association, directly or indirectly, which in the opinion of SEBI, is in conflict with his role.
"Shareholder director" means a director who represents the interest of shareholders, and elected or nominated by such shareholders who are not trading members or clearing members, as the case may be, or their associates and agents.

**Rule 19 (2) (b)**

(b) The minimum offer and allotment to public in terms of an offer document shall be-

(i) at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

(ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees;

(iii) at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees.

However, the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.

Further this clause shall not apply to a company whose draft offer document is pending with SEBI before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement.
LESSON 15
DEPOSITORIES

SINGLE REGISTRATION FOR DEPOSITORY PARTICIPANTS

This circular is issued in exercise of powers conferred under Section 11(1) of SEBI Act, 1992 and Regulation 73 of the SEBI (Depositories and Participant) Regulations, 1996 on 30 December, 2015.

As per the amendment, the existing requirement of obtaining certificate of initial registration to act as a participant and subsequently permanent registration to continue to act as a participant for each depository has been done. Henceforth, one certificate of initial registration and subsequently permanent registration through any depository shall be required after commencement of the Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2014.

For the purpose of single registration, the following guidelines are being issued:

- If a new entity desires to act as a participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registration through the concerned depository in the manner prescribed in the DP Regulations.
- If an entity has been granted a certificate of registration to act as a participant through one depository and wishes to act as a participant with the other depository then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP Regulations.

- The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements including the following:

  a) The applicant, its directors, proprietor, partners and associates shall be fit and proper.

  b) The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past inspections or in case of actions initiated/taken by SEBI/depository(s) or other regulators.

  c) Recovery of all pending fees/dues payable to SEBI and depository; and

  d) Payment of registration fees as prescribed in the DP Regulations.
The depositories shall report to SEBI about the approval as stated above on a monthly basis.

- The participant shall apply to SEBI for permanent registration through any of the depositories in which it is acting as a participant as per the DP Regulations.
- The depositories shall coordinate and share information with each other, about their participants.

**SARAL ACCOUNT OPENING FORM FOR RESIDENT INDIVIDUALS**

SEBI Circulars dated March 04, 2015 for SARAL account opening for resident individuals. It is an account opening process for Resident individual investors with a view to encourage their participation, it is, therefore, decided that such individual investors can open a trading account and demat account by filling up a simplified Account Opening Form ('AOF') termed as 'SARAL AOF' given at Annexure A.

This form will be separately available with the intermediaries and can also be downloaded from the Exchanges' and Depositories' website. The investors who open account through SARAL AOF will also have the option to obtain other facilities, whenever they require, on furnishing of additional information.

For these set of individual investors, the requirement of submission of ‘proof of address’ is as follows:

- Individual investor may submit only one documentary proof of address (either residence/correspondence or permanent) while opening a trading account and / or demat account or while undergoing updation.

- In case the proof of address furnished by the said investor is not the address where the investor is currently residing, the intermediary may take a declaration of the residence/correspondence address on which all correspondence will be made by the intermediary with the investor. No proof is required to be submitted for such correspondence/residence address.

- In the event of change of address due to relocation or any other reason, investor may intimate the new address for correspondence to the intermediary within two weeks of such a change. The residence/ correspondence address and any such change thereof may be verified by the intermediary through ‘positive confirmation’ such as (i) acknowledgment of receipt Welcome Kit/ dispatch of contract notes / any periodical statement, etc. (ii) telephonic conversation; (iii) visits, etc.

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LESSON 16
LISTING AND DELISTING OF SECURITIES

SEBI (LISTING OBLIGATIONS AND DISCLOSURES REQUIREMENTS) REGULATIONS, 2015

APPLICABILITY

Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

(a) specified securities listed on main board or SME Exchange or institutional trading platform;

(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;

(c) Indian depository receipts;

(d) securitised debt instruments;

(e) units issued by mutual funds;

(f) any other securities as may be specified by SEBI.

Company desirous of listing its securities shall enter into a listing agreement with the stock exchange. Existing listed entities are required to execute a fresh listing agreement within 6 months from date of notification of SEBI Listing Regulations.

According to Section 2 (52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange. This means that if a private limited company has its debt securities listed on any recognised stock exchange, then such company is under the ambit of listed company category for complying with the Companies Act, 2013 and rules and regulation made thereunder.

According to SEBI (LODR) Regulations, 2015 "listed entity" means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Regulation No</th>
<th>Subject</th>
<th>Particulars</th>
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<tbody>
<tr>
<td>1.</td>
<td>Regulation 5</td>
<td>General obligation of</td>
<td>To ensure that key managerial</td>
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<td></td>
<td>compliance personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations</td>
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<tr>
<td>2.</td>
<td>Regulation 6</td>
<td>Appointment of Compliance Officer To appoint a qualified company secretary as the compliance officer.</td>
<td></td>
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<tr>
<td>3.</td>
<td>Regulation 7(1)</td>
<td>Appointment of Share Transfer Agent The Company can manage in house Share Transfer Facility. But As and When the Total Number of Holders of Securities of the Listed Entity exceeds 1,00,000/-</td>
<td></td>
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<tr>
<td>4.</td>
<td>Regulation 7(3)</td>
<td>Submission a Compliance Certificate to the Exchange The Listed entity shall submit a Compliance Certificate to the Exchange duly signed by both Compliance Officer and Authorised Representative of the Share Transfer Agent, wherever applicable, within 1 month of end of each half of the financial year.</td>
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<td>5.</td>
<td>Regulation 7(4)</td>
<td>Alteration in Share Transfer Agent Any change or appointment of a new Share Transfer Agent, the listed entity shall enter into a TRIPARTITE AGREEMENT between Listed entity, Existing and New Share Transfer Agent.</td>
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<td>6.</td>
<td>Regulation 7(5)</td>
<td>Intimation to Stock Exchange The Listed Entity shall intimate the appointment of Share Transfer Agent within 7 days on entering into agreement.</td>
<td></td>
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<tr>
<td>7.</td>
<td>Proviso of Regulation 7</td>
<td>Non-Applicability of provisions of Compliance Officer The Requirement of this regulation shall not applicable in case of units issued by Mutual Funds which are listed on Recognized Stock exchange.</td>
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<td>8.</td>
<td>Regulation 8</td>
<td>Co-operation with intermediaries registered with SEBI shall Co-operate with and submit correct and adequate information to the intermediaries registered with SEBI such as credit rating agencies, registrar to an issue and Share Transfer agents, Debenture Trustee etc., within timelines and procedures</td>
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<tr>
<td>Regulation</td>
<td>Description</td>
<td>Details</td>
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<td>9. Regulation 9</td>
<td>Preservation of documents</td>
<td>The listed entity shall have a <strong>POLICY</strong> for preservation of documents, approved by its board of directors. The Company will classifying them in <strong>at least Two categories</strong> as follows-&lt;br&gt; - Documents whose preservation shall be <strong>Permanent In Nature</strong>;&lt;br&gt; - Documents with preservation period of <strong>NOT LESS THAN EIGHT YEARS after completion of the relevant transaction.</strong></td>
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<td>10. Regulation 10</td>
<td>Filing of Information</td>
<td>The listed entity shall file the reports, statements, documents, filings and any other information with the recognized stock exchange(s) <strong>on the Electronic Platform</strong> as specified by SEBI or the recognized stock exchange(s).</td>
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<td>11. Regulation 11</td>
<td>Applicability of Scheme of arrangement</td>
<td>The listed entity shall ensure that any scheme of arrangement/amalgamation/merger/reconstruction/reduction of capital etc. to be presented to any Court or Tribunal does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchange(s).</td>
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<tr>
<td>12. Regulation 12</td>
<td>Payment of dividend or interest or redemption or repayment</td>
<td>The listed entity shall use any of the electronic mode of payment facility approved by the RBI, in the manner specified in Schedule I, for the payment of the following:&lt;br&gt; i. Payment of dividend or interest or redemption or repayment&lt;br&gt; ii. Dividend&lt;br&gt; iii. Interest&lt;br&gt; iv. Redemption or Repayment of amounts <strong>Modes of Payment if Electronic</strong></td>
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</tbody>
</table>
13. Regulation 13  | Grievance Redressal Mechanism  | The listed entity shall ensure that Adequate Steps Are Taken for expeditious redressal of investor complaints. The listed entity shall file with the recognized stock exchange(s) on a QUARTERLY BASIS,
- a statement giving
  - The number of investor complaints pending at the beginning of the quarter,
  - Those received during the quarter,
  - Disposed of during the quarter and
  - Those remaining unresolved at the end of the quarter.
- within 21 days from the end of each quarter.

14. Regulation 14  | Fees and other Charges to be paid to the Recognised Stock Exchange(s)  | The listed entity shall pay all such fees or charges, as applicable, to the recognized stock exchange(s), in the manner specified by SEBI or the recognized stock exchange(s).

Common Obligations of Listed Entities which has listed its Specified Securities

1. Regulation 15(1)  | Applicability  | The provisions of this chapter shall apply to following Listed Entities, which has listed with any recognize Stock Exchange(s) for its specified securities either on:
- Main Board or
- SME Exchange or
- Institutional Trading Platform

2. Regulation 15 (2)  | Non- Applicability  | - Listed entities having paid up equity share capital not exceeding Rs. 10 crore and net worth not exceeding Rs. 25 crore, as on the last day of the previous financial year.
- Listed entities which have listed its specified securities on the
SME Exchange
- Listed Entities which are not companies, but body Corporate or are subject to regulations under other statues shall not apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.

If any time Listed Company cross the above given Limits, then such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.

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<tr>
<th>15.</th>
<th>Regulation 22</th>
<th>Vigil Mechanism</th>
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<td>The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.</td>
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<td>- The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism.</td>
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<td>- The Vigil Mechanism also provides for direct access to the chairperson of the audit committee in appropriate or exceptional cases.</td>
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<th>19.</th>
<th>Regulation 28</th>
<th>In-principle approval of recognized stock exchange(s)</th>
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<td>The listed entity, before issuing securities, shall obtain an ‘in-principle’ approval from recognised stock exchange(s) in the following manner:</td>
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<td>- where the securities are listed only on recognised stock exchange (s) having nationwide trading terminals, from all such stock exchange (s);</td>
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<td>- where the securities are not listed on any recognised stock</td>
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exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issuer are proposed to be listed;
- where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

This regulation shall not be applicable for securities issued pursuant to the Scheme of Arrangement for which the listed entity has already obtained No Objection letter from recognized stock exchange(s) in accordance with regulation 37.

| 20. | Regulation 29(1)(a) & 29(2) | Prior Intimation to Stock exchange about Board Meeting | The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which the financial results viz., quarterly, half-yearly, or annual, as the case may be, at least 5 working days in advance excluding the date of the intimation and date of meeting. |

| 21. | Regulation 29(1)(b) to 29(1)(f) & 29(2) | Prior Intimation to Stock exchange about Board Meeting | The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which the following proposals is to be considered:-
- buyback of securities
- voluntary delisting
- fund raising by way of FPO, rights issue, QIP, debt issue, ADR/GDR/FCCB, preferential issue or any other method and for determination of issue price
- Declaration/recommendation of dividend, issue of convertible |
securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend
- Declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers.

Such intimation shall be given, **at least 2 working days in advance**, excluding the date of the intimation and date of meeting.

| 22. Regulation 29(3) | Prior Intimation to Stock exchange about Board Meeting | The listed entity shall give intimation to the stock exchange(s) **at least eleven working days** before any of the following proposal is placed before the board of directors:
- any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.
- any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

| 23. Regulation 30(6) | Disclosure of events or information:-
- Disclosure of Material Event
- Materiality | – Every Listed Entity shall make disclosures of any events or information, which, in the opinion of the board of directors of the listed company, is material.
- Materiality :-
- Events specified in Para A of Part A of Schedule III are deemed to be Material.
- Events specified in Para B of Schedule III are deemed to be Material.
- **Criteria for Determination of Materiality of Events**

  Information

  - Part A of Schedule III are deemed to be Material Event, if guidelines of materiality **APPLICABLE**, guidelines given in sub-regulation4 of regulation 30.

- **Formation of policy for determination of materiality shall be based on following criteria :**

  (a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

  (b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

  (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material,

- The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of:

  - Determining materiality of an event; or
  - Determining materiality of an information; or
  - Making disclosure to Stock Exchange(s) event; or
  - Determining materiality of an information; or
  - Making disclosure to Stock Exchange(s)

  - Disclose to the stock
| - Intimation to Stock Exchange | - Disclose to the stock exchange(s) of all events, as events or  
- Determining materiality of an information; or  
- Making disclosure to Stock Exchange(s)  
- Disclose to the stock exchange(s) of all events, as specified in Part A [Part A includes Para A & Para B] of Schedule III, or information as soon as reasonably possible and **not later than 24 hours of occurrence of event or information.**  
In case disclosure made after 24 hours of occurrence of event or information, along with disclosure provide explanation for delay.  
- The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, **till such time the event is resolved/closed, with relevant explanations.**  
- The listed entity shall disclose all such events or information, which has been, disclosed to stock exchange(s), on its website and give continuous such disclosures on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.  
- The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity to |
both Stock Exchange and on Website.

Note :-
- The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information.
- In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

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<th>24. Regulation 31</th>
<th>Holding of specified securities and shareholding pattern</th>
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<td>• The listed entity shall submit to the stock exchange(s) a statement showing Holding of securities &amp; Shareholding Pattern separately for each class of securities:-</td>
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<td>- In case of listing of its securities, <strong>1 day prior to listing of its securities.</strong></td>
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<td>- In case of Quarterly basis, <strong>within 21 days from the end of each quarter.</strong></td>
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<td>- In case of any capital restructuring resulting in a change exceeding 2% of the total paid up share capital, <strong>within 10 days of capital restructuring.</strong></td>
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<td>• 100% shareholding of promoter and promoter group shall be in demat form.</td>
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<td>• Listed entity shall comply with circulars or directions issued with respect to maintenance of shareholding in demat form.</td>
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<th>25. Regulation 31A</th>
<th>Disclosure of Class of</th>
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<tr>
<td></td>
<td>The event of re-classification shall</td>
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<tr>
<td>Regulation 32</td>
<td>Financial Results</td>
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<tr>
<td>Statement of deviation(s) or variation(s)</td>
<td>The listed entity or its subsidiaries shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.</td>
</tr>
<tr>
<td>- indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;</td>
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<tr>
<td>- indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.</td>
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- Unaudited financial result shall be accompanied by Limited Review Report. Audited financial results accompanied by audit report. |
- FR shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the BOD to sign the FR. |

While placing the financial results
before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

➢ The listed entity shall submit with stock exchange audited standalone financial results for the financial year along with the audit report or in case entity having subsidiaries it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and either Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion) and the listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year within 60 days from the end of the financial year.

➢ The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

Publishing in newspaper and on website of the Company.

[Financial Results shall be published within 48 hours of conclusion of Board Meeting in at]
| Regulation 34 | Annual Report | A listed entity shall submit the annual report to the stock exchange **within 21 working days** of it being approved and adopted in the Annual General Meeting as per provisions of Companies Act, 2013.

The annual report shall contain the following:

(a) audited financial statements i.e. balance sheets, profit and loss accounts etc;

(b) consolidated financial statements audited by its statutory auditors;

(c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;

(d) directors report;

(e) management discussion and analysis report - either as a part of directors report or addition thereto;

(f) for the top five hundred listed entities based on market capitalization(calculated as on March 31 of every financial year), business responsibility report. |

<p>| Regulation 35 | Annual Information Memorandum | Listed entity shall submit to the stock exchanges an Annual Information Memorandum. |</p>
<table>
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<tr>
<th>Regulation</th>
<th>Description</th>
<th>Details</th>
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</table>
| 30. Regulation 36 | Documents & information to shareholders | The Listed Entity shall send Annual report to the holders of securities, *not less than 21 days before the AGM* in the following manner: -
  - Soft copies of full annual report to all those shareholders who have registered their e-mail addresses.
  - Hard copy containing salient features to those who have not registered their e-mail addresses.
  - Hard copies of full annual reports to all those who request for the same. |
| 31. Regulation 37 | Draft Scheme of Arrangement & Scheme of Arrangement | Before filing the draft scheme of arrangement before any Court or Tribunal, it shall be filed with the stock exchanges.
  - An observation letter or no-objection letter shall be obtained before filing such draft scheme.
  - Such observation letter or no-objection letter shall be placed before the Court or Tribunal at the time of seeking approval of the scheme of arrangement.
  - The observation or no-objection letter shall be valid for a period of 6 Months from the date of issuance within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.
  - Upon sanction of the Scheme by the Court or Tribunal the listed entity shall submit such prescribed documents to the stock exchanges. |
| 32. Regulation 38 | Minimum Public Shareholding | The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) |
and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by SEBI from time to time. However, the provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue.

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| **33. Regulation 39** | Issuance of Certificates or Receipts/Letters/Advices for securities and dealing with unclaimed securities. | The listed entity shall:  
- issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgement.  
- Submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.  
- Comply with the procedural requirements specified in Schedule VI while dealing with securities issued pursuant to the public issue or any other issue, physical or otherwise, which remain unclaimed and/or are lying in the escrow account, as applicable. |

| **34. Regulation 40** | Transfer or transmission or transposition of securities. | The Board may delegate the power of transfer of securities to a committee or to a compliance officer or to the share transfer agent. Such delegated authority shall attend to share transfer formalities once in a fortnight and shall report on the same to the Board. |
### Transfer of securities

- On receipt of proper documentation, the listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be, **within a period of 15 days from the date of such receipt of request for transfer.**

- **Transmission of Securities**

  - The listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode **within 7 days and 21 days respectively,** after receipt of the specified documents.

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<tr>
<th>35. Regulation 41</th>
<th>Other provisions relating to securities</th>
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<td>The listed entity shall not exercise a lien on its fully paid shares or partly paid shares except in respect of moneys called or payable at a fixed time in respect of such shares.</td>
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<td>The listed entity shall not issue shares in any manner which may confer on any person, superior rights as to voting or dividend vis-à-vis the rights on equity shares that are already listed.</td>
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<td>The listed entity shall, issue or offer in the first instance all shares (including forfeited shares), securities, rights, privileges and benefits to subscribe pro rata basis, to the equity shareholders of the listed entity, unless the shareholders in</td>
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the general meeting decide otherwise.

- The listed entity shall not select any of its listed securities for redemption otherwise than on pro-rata basis or by lot.

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<tr>
<th>36. Regulation 42</th>
<th>Record Date or Date of closure of transfer books</th>
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<td>Listed Company will intimate Stock Exchanges, <em>7 days in advance</em> about the record date for:</td>
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<td>A) declaration of dividend</td>
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<td>B) issue of right or bonus shares</td>
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<td>C) issue of shares for conversion of debentures or any other convertible security.</td>
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<td></td>
<td>D) corporate actions like mergers, de-mergers, splits and bonus shares.</td>
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<td>- A listed entity shall recommend or declare all dividend and/or cash bonuses <em>at least 5 working days</em> (excluding the date of intimation and the record date) <em>before the record date.</em></td>
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<td>- There shall be a gap of <em>at least 30 days</em> between two Record Dates.</td>
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<tr>
<th>37. Regulation 43</th>
<th>Dividends</th>
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<td></td>
<td>The listed entity shall declare and disclose the dividend on per share basis only.</td>
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<td>The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.</td>
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<tr>
<th>38. Regulation 44</th>
<th>Voting by Shareholders</th>
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<td>Listed Company to provide e-voting facility to all its shareholders, in respect of all shareholders’ resolutions. Results of E-voting to be submitted <em>within 48 hours of conclusion of its General Meeting</em> in the format Specified</td>
</tr>
<tr>
<td>39. Regulation 45</td>
<td>Change in name of the listed entity</td>
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<td>The listed entity shall be allowed to change its name subject to compliance with the following conditions:</td>
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<td>- a time period of <em>at least 1 year</em> has elapsed from the last name change;</td>
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<td>- <em>at least fifty percent of the total revenue</em> in the preceding one year period has been accounted for by the new activity suggested by the new name; or</td>
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<td>- the amount invested in the new activity/project is <em>atleast fifty percent of the assets</em> of the listed entity.</td>
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<td>On satisfaction of conditions, the listed entity shall file an application for name availability with Registrar of Companies.</td>
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<td>On receipt of confirmation regarding name availability from Registrar of Companies, the listed entity shall seek approval from Stock Exchange by submitting a certificate from chartered accountant stating compliance with conditions.</td>
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<tr>
<th>40. Regulation 46</th>
<th>Website</th>
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<td></td>
<td>The listed entity shall maintain a functional website containing the basic information about the listed entity.</td>
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<td>The listed entity shall disseminate the following information on its website:</td>
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<tr>
<td></td>
<td>✓ details of its business;</td>
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<td>✓ terms and conditions of appointment of independent directors;</td>
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<td></td>
<td>✓ composition of various committees of board of directors;</td>
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<td></td>
<td>✓ code of conduct of board of</td>
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</table>
directors and senior management personnel;
✓ details of establishment of vigil mechanism/ Whistle Blower policy;
✓ criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;
✓ policy on dealing with related party transactions;
✓ policy for determining ‘material’ subsidiaries;
✓ details of familiarization programmes imparted to independent directors.
✓ the email address for grievance redressal and other relevant details;
✓ contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
✓ financial information including:
  (i) notice of meeting of the board of directors where financial results shall be discussed;
  (ii) Approved financial results.
  (iii) Complete copy of the annual report of the Company.
✓ shareholding pattern;
✓ details of agreements entered into with the media companies and/or their associates.
➢ The listed entity shall ensure that the contents of the website are correct.
➢ The listed entity shall update any change in the content of its website within two working days from the date of such change in
| 41. Regulation 47 | Advertisements in Newspapers | The listed entity shall publish the following information in the newspaper:
(a) Notice of meeting of the board of directors where financial results shall be discussed.
(b) Financial results along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor.
However, if the listed entity has submitted both standalone and consolidated financial results, the listed entity shall publish consolidated financial results along-with Turnover, Profit before tax and Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results of the listed entity are available.
(c) statements of deviation(s) or variation(s) on quarterly basis, after review by audit committee and its explanation in directors report in annual report;
(d) Notices given to shareholders by advertisement published in at least one English language national daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the listed entity is situated.

| 42. Regulation 48 | Accounting Standards | The listed entity shall comply with |
all the applicable and notified Accounting Standards from time to time.

### CORPORATE GOVERNANCE UNDER SEBI (LODR), 2015

<table>
<thead>
<tr>
<th>Sl.</th>
<th>Regulation No</th>
<th>Subject</th>
<th>Particulars</th>
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<tbody>
<tr>
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<tr>
<td>No.</td>
<td>Regulation 16(1)(b)</td>
<td>Independent Director</td>
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<td>1.</td>
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<td>Independent Director</td>
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<td>&quot;means a non-</td>
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<td>executive director,</td>
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<td>other than a</td>
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<td>nominee director of</td>
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<td>directors, is a</td>
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<td>associate company;</td>
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<td>directors in the</td>
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<td>listed entity, its</td>
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<td>holding, subsidiary</td>
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<td>director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;</td>
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<td>income or Rs. 50</td>
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<td>current financial</td>
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<td>who, neither himself, nor whose relative(s) holds or has held the position of a key managerial personnel or is or has been an</td>
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</table>
employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
- who, neither himself, nor whose relative(s) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed,

The Composition of Board of directors of the listed entity shall be as follows:

**Executive/Non Executive:**
- Board of Directors shall have an optimum combination of executive and non-executive directors:-
  - One Women Director
  - At least 50% of Board of Directors shall comprise of Non-Executive Director.

**Independent Director:**
- If Chairman of the Board is Non-Executive director
  - at least (1/3) one-third of the board of directors shall comprise of independent directors.
- where the listed entity does not have a regular non-executive chairperson
  - at least (1/2) half of the board of directors shall comprise of independent directors
- where the regular non-executive chairperson is a promoter of the listed entity; or is related to any promoter; or is related to person occupying management positions at the level of board of director; or at one level below the board of directors;
<table>
<thead>
<tr>
<th>Regulation 17(2)</th>
<th>Frequency of Meeting</th>
<th>• at least (1/2) half of the board of directors of the listed entity shall consist of independent directors.</th>
</tr>
</thead>
</table>
| Regulation 17(3) | Review of Compliance report | - At least 4 Board meeting  
- Maximum Gap Between two meetings 120 days |
| Regulation 17(4) & (5) | Duties of Board of Directors | - The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity.  
- The board of directors shall periodically review steps taken by the listed entity to rectify instances of non-compliances. |
| Regulation 17(6) | Fees or Compensation | - Plans for Ordinary succession of appointment: The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.  
- Code of Conduct: The board of directors shall lay down a Code of Conduct for all members of board of directors and senior management of the listed entity.  
- Duties of Independent Director: The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.  
- The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of Shareholders in General Meetings.  
- The requirement of obtaining approval of shareholders in General Meeting shall not apply to payment of sitting fees to Non-Executive Directors, if made within the limits prescribed under Companies Act, 2013.  
Approval of shareholders |
mentioned above, shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.
- Independent Director shall not entitle to any Stock Option.

3. **Regulation 17(8)**  
   **Compliance Certificate**  
   The Chief Executive Officer and the Chief Financial Officer shall provide the compliance certificate to the board of directors.

4. **Regulation 17(10)**  
   **Performance evaluation**  
   The performance evaluation of independent directors shall be done by the entire board of directors.

   However, in the above evaluation the directors who are subject to evaluation shall not participate.

3. **Regulation 18**  
   **Audit Committee**

   - Every Listed Entity shall constitute a Qualified and independent audit committee in accordance with the terms subject to the followings:-
     - The audit committee shall have minimum Three directors as members and
     - 2/3 (Two-thirds) of the members of committee shall be independent directors.
     - All members of Committee shall be financially literate and at least one member has expertise in accounting or related financial management.
     - The chairperson of the audit committee shall be an independent director and he shall be present at AGM to answer shareholder queries.
     - The Company Secretary shall act as the secretary to the audit committee.
   - The listed entity shall conduct the meetings of the audit
committee in the following manner:
- Four Meetings in a year
- Maximum gap between two meetings 120 days
- Quorum shall be 2 members or 1/3rd of the members of the audit committee, whichever is greater, with at least 2 independent directors.
- The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Note: - The Role of the audit committee and the INFORMATION TO BE REVIEWED by the audit committee shall be as specified in Part C of Schedule II.

4. Regulation 19

Nomination and remuneration committee

- The Board of Directors shall constitute the nomination and remuneration committee as follows:
  - The committee shall comprise of at least three directors.
  - All the directors of the committee shall be Non-Executive directors and
  - At least 50% of the directors shall be Independent directors.

- The Chairperson of the nomination committee shall be independent director. However, where chairperson of listed entity is executive or non-executive, may appoint as a member and
| Regulation | Stakeholder Relationship Committee | Purpose of constitution: To look into the mechanism of redressal of grievances of:
- shareholders,
- debenture holders and
- other security holders |
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<tbody>
<tr>
<td>Regulation 20</td>
<td></td>
<td>The chairperson of such committee shall be a <strong>Non-Executive Director</strong>.</td>
</tr>
<tr>
<td>Regulation 21</td>
<td>Risk Management Committee</td>
<td>The board of directors shall constitute Risk Management Committee, shall be define the role and responsibility of the Risk Management Committee, and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.</td>
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<td>The majority of members of such Committee shall consist of members of the board of directors.</td>
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<td></td>
<td>The Chairperson of such committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.</td>
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<tr>
<td>Regulation 24</td>
<td>Subsidiary Companies</td>
<td>Corporate governance requirements with respect to subsidiary of listed entity</td>
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<td>- At least one independent director of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.</td>
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<td>- The audit committee of the listed entity shall also review the financial statements, in</td>
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</table>
particular, the investments made by the unlisted subsidiary.
- The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.
- A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.
- Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to
<table>
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<tr>
<th></th>
<th>Regulation 25</th>
<th>Obligations with respect to Independent directors:-</th>
<th>Obligations with respect to Independent directors:-</th>
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<tr>
<td></td>
<td></td>
<td>- Limit of Directorship as Independent Director</td>
<td>➢ A person shall serve as an independent director <em>not more than seven listed entities</em>. If such person is whole time director in any entities then he shall be serving as independent director <em>not more than three listed entities</em>.</td>
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<td>16.</td>
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<td>- Tenure of Independent Director</td>
<td>➢ Maximum tenure of independent director shall be up to <em>five consecutive years</em> on the Board of a company. He shall be eligible for re-appointment on <em>passing of a special resolution</em> by the company and disclosure of such appointment in the Board's report.</td>
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<td>- Meeting of Independent Director</td>
<td>➢ The independent directors of the listed entity shall hold <em>at least one meeting</em> in a year. Non-Independent Director and Members of the Management will not present in such Meeting. All the Independent Directors shall strives to present in such Meeting.</td>
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</table>
|   |               | - Agenda for the Meeting of Independent Director   | ➢ The Independent director in the meeting shall :-)  
|   |               |                                                    | - Review the performance of non-independent directors and the board of directors as a whole.  
|   |               |                                                    | - Review the performance of the chairperson of the listed entity.  
|   |               |                                                    | (Taking into account the views of executive directors and non- |
- Liability of Independent Director

- Intermittent vacancy of an Independent Director

- Duties of the Company towards Independent Director

- Assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

➢ An independent director shall be held liable, ONLY in respect of such acts of omission or commission by the listed entity which had occurred:
  - with his knowledge and
  - attributable through processes of board of directors, and
  - with his consent or connivance or
  - Where he had not acted diligently with respect to the provisions contained in these regulations.

➢ Any Intermittent Vacancy of an Independent director shall be filled-up by the Board of Directors at the earliest but not later than:
  - Immediate Next Board Meeting OR
  - 3 (Three) Months from the date of such vacancy, whichever is Later

➢ The listed entity shall familiarize the independent directors through various programmes about the listed entity, including the following:
  - Nature of the industry in which the listed entity operates;
  - Business model of the listed
For the purpose of considering the limit of companies Private Company, Foreign Company and Section 8 of Companies Act, 2013 company are excluded.

A Director shall not be:
- Member in more than 10 committees
- Chairman in more than 5 committees

For reckoning the limit, ONLY Audit committee and Stakeholder’s relationship Committee are considered.

The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI from time to time to the recognized stock exchange(s) within fifteen days from close of the quarter.

Details of all material transactions with related parties shall be disclosed.

Report shall be sign either by Compliance officer or by Chief Executive officer.

<table>
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<tr>
<th>Sl.No</th>
<th>Particulars</th>
<th>Listing Regulations</th>
<th>Companies Act 2013</th>
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<tbody>
<tr>
<td>1.</td>
<td>Size of the Board</td>
<td>Regulation 17(1)(a)</td>
<td>Section 149 (1)</td>
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<td>The board of directors shall have an optimum combination of executive and non-executive</td>
<td>It stipulates the minimum number of director as three in case of public company, two in case of private</td>
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</table>
| 2. | **Board Composition** | Regulation 17(1) | Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribe that the following class or classes of companies shall have at least two independent directors:
- Public Companies having paid-up share capital of 10 crore rupees or more; or
- Public Companies having turnover of 100 crore rupees or more; or
- Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

Section 149(4) provides that every public listed Company shall have at least one third of total number of directors as independent directors and Central Government may further prescribe minimum number of independent directors in any class or classes of company.

- At least 50% of the board of directors shall comprise of non-executive directors.
- If the chairperson of the board of directors is a non-executive director, at least 1/3rd of the board of directors shall comprise of independent directors.
- If the chairperson of the board of directors is not a non-executive director, at least 50% of the board of directors shall comprise of independent directors.
- If the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least 50% of the board of directors of the listed entity shall consist of independent directors.

Section 149(1) and Companies (Appointment and Qualification of Directors) Rules, 2014

Rule (3) read with Section 149(1) provides that (i) every listed company; (ii) every other public company having - (a) paid-up share capital of Rs.100 crores or more; or (b) Turnover of Rs.300 crore or more shall appoint at least one woman director.

A company shall comply with provisions within a period of six months from the date of its formation.

3. | **Appointment of Woman Director** | Regulation 17(1)(a) | The Board of Directors of the Listed Entity shall have at least one woman director.

Section 149(1) and Companies (Appointment and Qualification of Directors) Rules, 2014

Rule (3) read with Section 149(1) provides that (i) every listed company; (ii) every other public company having - (a) paid-up share capital of Rs.100 crores or more; or (b) Turnover of Rs.300 crore or more shall appoint at least one woman director.

A company shall comply with provisions within a period of six months from the date of its formation.
Any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

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<tr>
<th>4.</th>
<th><strong>Maximum No. of directorship of IDs.</strong></th>
<th><strong>Regulation 25(1)</strong></th>
<th><strong>Section 165</strong></th>
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<tr>
<td></td>
<td>A person shall not serve as an independent director in more than seven listed Entities. Any person who is serving as a whole time director in any listed Entity shall serve as an independent director in not more than three listed Entities.</td>
<td>A person shall not hold office as a director, including any alternate directorship in more than 20 companies at the same time. The max no. of public companies in which a person can be appointed as a director shall not exceed 10.</td>
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<th>5.</th>
<th><strong>Maximum tenure of IDs</strong></th>
<th><strong>Regulation 25(2)</strong></th>
<th><strong>Section 149(10) &amp; (11)</strong></th>
</tr>
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<tbody>
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<td></td>
<td>It shall be in accordance with the Companies Act 2013 and rules made there under, in this regard, from time to time.</td>
<td>Subject to the provisions of Section 152(2), an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board’s report. No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.</td>
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<tr>
<th>6.</th>
<th><strong>Performance evaluation of IDs</strong></th>
<th><strong>Section 178(2) read with Schedule IV</strong></th>
</tr>
</thead>
</table>
|    | a. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.  
b. The Listed Entities shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.  
c. The performance evaluation of independent directors shall be done by the entire Board of Directors. | The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director’s performance. The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. |
d. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

<table>
<thead>
<tr>
<th>7.</th>
<th>Separate meeting of IDs</th>
<th>Regulation 25(3)</th>
<th>Section 149 read with Schedule IV</th>
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<tbody>
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<td>The IDs of shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the Listed Entity shall strive to be present at such meeting.</td>
<td>IDs of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.</td>
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<tr>
<th>8.</th>
<th>Familiarisation Programme for Independent Director</th>
<th>Regulation 25(7)</th>
<th>Schedule IV specifies that the Independent Directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.</th>
</tr>
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<tbody>
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<td></td>
<td>The Listed Entity shall familiarise the independent directors with the Listed Entity, their roles, rights, responsibilities in the Listed Entity, nature of the industry in which the Listed Entity operates, business model of the Listed Entity, etc. The details of such familiarization programme shall be disclosed on Listed Entity website and a web link thereto shall also be given in the Annual Report.</td>
<td>Section 149 read with Schedule IV</td>
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<tr>
<th>9.</th>
<th>Prohibited Stock options for IDs</th>
<th>Regulation17(6)(d)</th>
<th>Section 197(7)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>IDs shall not be entitled to any stock options.</td>
<td>Section 149 read with Schedule IV</td>
<td></td>
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<tr>
<th>10.</th>
<th>Filing of Casual Vacancy of IDs</th>
<th>Regulation25(6)</th>
<th>Schedule IV, Section VI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>An independent director who resigns or is removed from the Board of the Listed Entity shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. Provided that, where the Listed Entity fulfils the requirement of</td>
<td>An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be. Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or</td>
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<td>independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.</td>
<td>removal, as the case may be, the requirement of replacement by a new Independent Director shall not apply.</td>
</tr>
<tr>
<td>11.</td>
<td>Succession planning</td>
<td>Regulation17(4)</td>
</tr>
<tr>
<td></td>
<td>The Board of the Listed Entity shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.</td>
<td>There is no such provision.</td>
</tr>
<tr>
<td>12.</td>
<td>Code of Conduct of Board of Directors &amp; Senior Management</td>
<td>Regulation17(5)</td>
</tr>
<tr>
<td></td>
<td>The board shall lay down a code of conduct for all Board members and seniors management of the Listed Entity. The code of conduct shall be posted on the website of the Listed Entity. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the Listed Entity shall contain a declaration to this effect signed by the CEO. The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.</td>
<td>Section 149(8) provides that the company and the independent directors shall abide by the provisions specified in Schedule IV.</td>
</tr>
<tr>
<td>13.</td>
<td>Liability of IDs</td>
<td>Regulation25(5)</td>
</tr>
<tr>
<td></td>
<td>An independent director shall be held liable, only in respect of such acts of omission or commission by a Listed Entity which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.</td>
<td>Section 149(12)</td>
</tr>
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<td></td>
<td>An independent director; a NED not being promoter or KMP, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.</td>
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<td>204</td>
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<tr>
<td>14. Vigil mechanism</td>
<td>Regulation 22</td>
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<tr>
<td>The Listed Entity shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the Listed Entity code of conduct or ethics policy. This mechanism should also provide for adequate safeguards against victimization of director(s)/employee(s) who avail of the mechanism and also provide for direct access to the chairperson of the Audit Committee in exceptional cases. The details of establishment of such mechanism shall be disclosed by the Listed Entity on its website and in the Board’s report.</td>
<td>Section 177(9) read with Rule 7 of Companies (Meeting of Board and its Power) Rules, 2014</td>
<td></td>
</tr>
<tr>
<td>Every listed company or such class or classes of companies to establish a Vigil mechanism for directors and employees to report genuine concern. The details of establishment of Vigil mechanism shall be disclosed by the company in the website, if any, and in the Board’s Report.</td>
<td></td>
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<tr>
<td>Rule 7 of Companies (Meeting of Board and its Power) Rules, 2014 states that the companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should rescue them-selves and the others on the committee would deal with matter on hand. The Vigil Mechanism shall provide adequate safeguards against victimization of employees and directors who avail of the Vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases.</td>
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<thead>
<tr>
<th>15. Qualification of IDs</th>
<th>The qualifications of IDs are not specified in the Listed Regulation.</th>
<th>Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.</td>
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<tr>
<th>16. Constitution of Audit Committee</th>
<th>Regulation 18</th>
</tr>
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<tbody>
<tr>
<td>A listed Entity shall set up a qualified and independent audit committee shall be set up, giving</td>
<td>Section 177 read with Rule 6 of Companies (Meeting of Board and Its Powers) Rules, 2014 states that the Board of directors of every listed company and such class of companies</td>
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the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
3. The chairperson of the Audit Committee shall be an Independent Director.

as prescribed under Rule 6, shall constitute an Audit Committee. The Audit Committee shall consist of a minimum three directors with independent directors forming a majority provided that majority of members of Audit Committee including its chairperson shall be person with ability to read and understand the financial statement.

17. Constitution of Nomination & Remuneration Committee

The Listed Entity through its Board of directors shall constitute the nomination and remuneration committee which shall comprise at least 3 directors, all of whom shall be non-executive directors and at least ½ shall be independent.

A. Chairperson of the committee shall be an Independent Director. Provided that the chairperson of the Listed Entity (whether executive or non-executive) may be appointed as a member of the Nomination and remuneration Committee but shall not chair such Committee.

B. The role of the committee shall, inter-alia, include the following:

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the

Section 178 and Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014

The Board of directors of every listed companies and such class or classes of companies as prescribed under Rule 6, shall constitute a Nomination and Remuneration Committee of the Board.

The above mentioned companies shall constitute the Nomination and Remuneration Committee consisting of 3 or more non-executive directors out of which not less than one half shall be IDs.

The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

The Nomination and Remuneration Committee shall- Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal, carry out evaluation of every director’s performance.
directors, KMP and other employees;
2. Formulation of criteria for evaluation of IDs and the Board;
3. Devising a policy on Board diversity;
4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The Listed Entity shall disclose the remuneration policy and the evaluation criteria in its Annual Report.
C. The Chairperson of the nomination and remuneration committee could be present at the AGM, to answer the shareholders’ queries. However, it would be up to the Chairperson to decide who should answer the queries.

Formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

The Nomination and Remuneration Committee shall while formulating the policy ensure that—
(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
(c) remuneration to directors, KMPs and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals: The policy shall be disclosed in the Board’s report.

18. Risk management

The top 100 Listed entities, determined on the basis of market capitalisation shall lay down procedures to inform Board members about the risk assessment and minimization procedures. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the Listed Entity.
The Listed Entity through its Board of Director shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and

The Board’s report as prescribed under Section 134(3) required to include in the Board’s Report, a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, this in the opinion of the Board may threaten the existence of the company.
may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. The majority of Committee shall consist of members of the Board of Directors. Senior executives of the Listed Entity may be members of the said Committee but the Chairperson of the Committee shall be a member of the Board of Directors.

19. **Related Party**

**Clause 2(zb)**

For the purpose of Listing Regulation, an entity shall be considered as related to the Listed Entity if:

i. Such entity is a related party under Section 2(76) of the Companies Act, 2013; or

ii. Such entity is a related party under the applicable accounting standards.

**Section 2(76)**

“Related party”, with reference to a company, means—

(i) a director or his relative

(ii) a KMP or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;

(vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

(viii) any company which is—

A) a holding, subsidiary or an associate company of such company; or

B) a subsidiary of a holding company to which it is also a subsidiary.

(viii) such other person as may be prescribed.

Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014 provides that a director or key managerial personnel of the
20. Disclosure of RPTs

<table>
<thead>
<tr>
<th>Regulation 27(2)(a)</th>
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<tr>
<td>Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance. The Listed Entity shall disclose the policy on dealing with RPTs on its website and a web link thereto shall be provided in the Annual Report.</td>
</tr>
<tr>
<td>Section 134(3)(h) mandates that Board’s Report shall contain particulars of contracts or arrangements with related party as referred in section 188 of the Companies Act, 2013.</td>
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21. Disclosure of different Accounting standard

<table>
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<tr>
<th>Regulation 34(3)</th>
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<tr>
<td>Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management’s explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.</td>
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<td>Section 129(5)</td>
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<tr>
<td>Where the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.</td>
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22. Disclosure on Remuneration

<table>
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<th>Regulation 34(3)</th>
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| 1. All pecuniary relationship or transactions of the non-executive director’s vis-à-vis the Listed Entity shall be disclosed in the Annual Report. 
2. In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report: 
a. All elements of remuneration package of individual directors |
| Section 197 and Rule 5 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 |
| 1) Every listed company shall disclose in the Board’s report: 
(i) The ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year. 
(ii) the percentage increase in remuneration of each director, CFO, CEO, CS or Manager, if any, in the financial year; 
(iii) the percentage increase in the median remuneration of employees in the financial year; 
(iv) the number of permanent |
summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.

b. Details of fixed component and performance linked incentives, along with the performance criteria.

c. Service contracts, notice period, severance fees.

d. Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.

3. The Listed Entity shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the Listed Entity website and reference drawn thereto in the annual report.

4. The Listed Entity shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.

5. Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the Listed Entity in which they are proposed to be appointed as directors, prior to their appointment.

These details should be disclosed in the notice to the general meeting called for appointment of such director.

employees on the rolls of company;
(v) the explanation on the relationship between average increase in remuneration and company performance;
(vi) comparison of the remuneration of the KMP against the performance of the company;
(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the financial year and its comparison with percentile increase in the managerial remuneration and justification thereof; point out if there are any exceptional circumstances for increase in managerial remuneration;
(ix) Comparison of the each remuneration of the Key Managerial personnel against the performance of the company.
(x) the key parameters for any variable component of remuneration availed by the directors;
(xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and
(xii) Affirmation that the remuneration is as per the remuneration policy of the company.
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<tr>
<th>Relationship Committee</th>
<th>A committee under the Chairperson of a non-executive director and such other members as may be decided by the Board of the Listed Entity shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as ‘Stakeholders Relationship Committee’ and shall consider and resolve the grievances of the security holders of the Listed Entity including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.</th>
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<tr>
<td></td>
<td>The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.</td>
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LESSON 17
ISSUE OF SECURITIES

LISTING ON INSTITUTIONAL TRADING PLATFORM

Applicability

These provisions shall apply to entities which seek listing of their securities exclusively on the ITP either pursuant to a public issue or otherwise.

Provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 that shall not apply to such entities

1. Provisions relating to minimum public shareholding would not be applicable to entities listed on institutional trading platform without making a public issue.

2. A cap on the money spent by companies on publicity and advertisements as start-ups need to spend much more for such purposes.

Accessibility of ITP

ITP shall be accessible to institutional investors as well as non-institutional investors.

Definition

(a) "Institutional Trading Platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in these regulation.

(b) “Institutional Investor” means qualified institutional buyer or family trust or systematically important NBFCs registered with RBI or intermediaries registered with SEBI, all with net-worth of more than 500 crore rupees, as per the last audited financial statements.

Eligibility

The following entities eligible for listing on the institutional trading platform:-

• an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide
products, services or business platforms with substantial value addition and at least 25% of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with SEBI, as the case may be; or

- any other entity in which at least 15% of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with SEBI, as the case may be.

- No person, individually or collectively with persons acting in concert, shall hold 25% or more of the post-issue share capital in such entity.

**Listing without public issue**

- An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents with SEBI in accordance with these regulations along with fee as specified in the regulations. The draft information document shall contain the disclosures as specified for draft offer document in these regulations.

However, the following shall not be applicable in case of listing without public issue:

i. Allotment

ii. Issue opening / closing;

iii. Advertisement;

iv. Underwriting;

v. Regulation 26(5)

vi. Pricing;

vii. Dispatch of issue material; and

viii. Other such provisions related to offer of specified securities to public.

- The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed and list its specified securities on the recognised stock exchange(s) within 30 days from the date of issuance of observations by SEBI or from the expiry of the period if SEBI has not issued any such observations.

- The entity which has received in-principle approval from the recognised stock exchange for listing of its specified securities on the institutional trading platform, without making a public issue, shall be deemed to have been waived by SEBI under Rule 19(7) from the requirement of Rule 19(2) (b) of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the institutional trading platform.
- Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.

- The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.

- The signatories shall also certify that all disclosures made in the information document are true and correct.

- In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

**Listing pursuant to public issue**

- An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents with SEBI in accordance with these regulations along with fees as specified in the regulations.

- The minimum application size shall be 10 lakh rupees.

- The number of allottees shall be more than 200.

- The allocation in the net offer to public category shall be as follows:
  
  - 75% to institutional investors, there shall be no separate allocation for Anchor Investors
  - 25% to non-institutional investors;

- Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors’ category.

- The allotment to institutional investors may be on a discretionary basis, no institutional investor shall be allotted more than 10% of the issue size. Whereas the allotment to non-institutional investors shall be on a proportionate basis.

- The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.

- In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than 10% of the issue size.
- The offer document shall disclose the broad objects of the issue.

- The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

**Lock-in**

1. The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue:

   However, this regulation shall not apply to:

   i. equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme;

   ii. equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor.

   However, such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

   iii. equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue.

   *Explanation.* For the purpose of clause (ii) and (iii), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

2. The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms of sanction of the loan.

3. The specified securities that are locked-in may be transferable in accordance with these regulations.
4. All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in by Anchor Investors on main board of the stock exchange, as specified under clause 10(j) in Part A of Schedule XI.

### Trading lot

The minimum trading lot shall be ten lakh rupees.

### Exit of entities listed without making a public issue

- An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if-
  
  a. its shareholders approve such exit by passing a special resolution through postal ballot where 90% of the total votes and the majority of non-promoter votes have been cast in favour of such proposal; and
  
  b. the recognised stock exchange where its shares are listed approve of such an exit.

- The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.

- No entity promoted by promoters and directors of an entity delisted, shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting.

However, the provisions of this regulation shall not apply to another entity promoted by the independent directors of such a delisted entity.

### Migration to Main Board

An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

### Listing of Securities on Stock Exchanges

#### In-principle Approval of Recognized Stock Exchange(s)

Regulation 107 stipulates that the issuer or the issuing company, as the case may be, shall obtain in-principle approval from recognised stock exchange as follows:

a) In case of an initial public offer (IPO) or an issue of Indian Depository Receipts (IDR), from all the recognised stock exchange(s) on which the issuer or the issuing company, proposes to get its specified securities or IDRs, as the case may be, listed and
b) In case of other issues, before issuance of further securities, as follows:

- where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);
- where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) on which the securities of the issuer are proposed to be listed;
- where the specified are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals.

APPLICATION FOR LISTING

The issuer or the issuing company, as the case may be, shall complete the prelisting formalities within the time specified by SEBI. The issuer or the issuing company, as the case may be, shall make an application for listing, within twenty days from the date of allotment, to one or more recognized stock exchange(s) along with the documents specified by stock exchange(s).

In case of delay in making application for listing beyond twenty days from the date of allotment, the issuer or the issuing company, as the case may be, shall pay penal interest at the rate of at least 10% per annum to allottees for each day of delay from the expiry of thirty days from date of allotment till the listing of such securities to the allottees. In the event of non-receipt of listing permission from the stock exchange(s) by the issuer or the issuing company, as the case may be, or withdrawal of observation letter issued by SEBI, wherever applicable, the securities shall not be eligible for listing and the issuer or the issuing company, as the case may be, shall be liable to refund the subscription monies, if any, to the respective allottees immediately along with interest at the rate of 10% per annum from the date of allotment.

LISTING AGREEMENT

The issuer or the issuing company desirous of listing its securities on a recognised stock exchange shall execute a listing agreement with stock exchange. The issuer or the issuing company who has previously entered into agreement(s) with a recognised stock exchange to list its securities shall execute a fresh listing agreement with such stock exchange within six months of the date of notification of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

OBLIGATION OF STOCK EXCHANGE(s)

The stock exchange(s) shall grant in-principle approval/list the securities or reject the application for in-principle approval/listing by the issuer or issuing company, as the case may be, within thirty days from the later of the date of receipt of application for in-principle approval/listing from issuer or the issuing company, as the case may be,
or the date of receipt of satisfactory reply from the issuer or the issuing company, as
the case maybe, in cases where the stock exchange(s) has sought any clarification
from them.

**SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014**

SEBI has, on 28th October 2014 notified SEBI (Share Based Employee Benefits)
Regulations, 2014 to provide for regulation of all schemes by companies for the
benefit of their employees involving dealing in shares, directly or indirectly, with a
view to facilitate smooth operation of such schemes while preventing any possible
manipulation and matters connected therewith or incidental thereto.

The SEBI (Share Based Employee Benefits) Regulations, 2014 comprises of four
chapters. Chapter I deal mainly with the preliminary and definition used in regulation.
Chapter II provides for implementation and process of scheme. Chapter III deals with
administration of specific schemes. Chapter IV deals with miscellaneous provisions.

**APPLICABILITY**

The provisions of these regulations shall apply to following:-

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<tr>
<th>APPLICABILITY</th>
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<tbody>
<tr>
<td>Employee Stock Option Schemes</td>
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<tr>
<td>Employee Stock Purchase Schemes</td>
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<tr>
<td>Stock Appreciation Rights Schemes</td>
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<tr>
<td>General Employee Benefits Schemes</td>
</tr>
<tr>
<td>Retirement Benefit Schemes</td>
</tr>
</tbody>
</table>

**COMPANIES COVERED**
The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:

(i) for direct or indirect benefit of employees;

(ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly and

(iii) satisfying, directly or indirectly, any one of the following conditions:

(a) the scheme is set up by the company or any other company in its group;

(b) the scheme is funded or guaranteed by the company or any other company in its group;

(c) the scheme is controlled or managed by the company or any other company in its group.

NON-APPLICABILITY

- These regulations shall not apply to shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

- The provisions pertaining to preferential allotment as specified in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

IMPORTANT DEFINITIONS

“Appreciation” means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price.

“Employee Stock Option Scheme” means a scheme under which a company grants employee stock option directly or through a trust.

“Employee Stock Purchase Scheme” means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.

“General Employee Benefits Scheme” means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares
of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.

“Relevant Date” means,-

(i) in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or
(ii) in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee;

“Retirement Benefit Scheme” means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.

“Stock Appreciation Right” means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

Explanation - An SAR settled by way of shares of the company shall be referred to as equity settled SAR.

“Stock Appreciation Right Scheme” means a scheme under which a company grants SAR to employees.

SCHEMES - IMPLEMENTATION AND PROCESS

IMPLEMENTATION OF SCHEMES THROUGH TRUST

1. A company may implement schemes either :-

   a) directly or
   b) by setting up an irrevocable trust(s)

However, if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes.

However, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).
2. A company may implement several schemes as permitted under these regulations through a single trust. However, such single trust shall keep and maintain-
   - proper books of account,
   - records and documents,

   for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

3. SEBI may specify the minimum provisions to be included in the trust deed under which the trust is formed, and such trust deed and any modifications thereto shall be mandatorily filed with the stock exchange in India where the shares of the company are listed.

4. A person shall not be appointed as a trustee, if he-
   (i) is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
   (ii) beneficially holds ten percent or more of the paid-up share capital of the company;

   However, where individuals or ‘one person companies’ as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

5. The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

6. The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

7. The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition as permitted by these regulations.
8. The company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).

9. For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as ‘non-promoter and non-public’ shareholding.

**Explanation:** Shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957.

10. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.

11. The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>for the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations</td>
<td>5%</td>
</tr>
<tr>
<td>B</td>
<td>for the schemes enumerated in Part D, or Part E of Chapter III of these regulations</td>
<td>2%</td>
</tr>
<tr>
<td>C</td>
<td>for all the schemes in aggregate</td>
<td>5%</td>
</tr>
</tbody>
</table>

12. The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year.
However, if such trust(s) existing as on the date of notification of these regulations are not able to appropriate the un-appropriated inventory within one year of such notification, the same shall be disclosed to the stock exchange(s) at the end of such period and then the same shall be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification of these regulations.

13. The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in this regulation, whether off market or on the platform of stock exchange.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:
   a) transfer to the employees pursuant to scheme(s);
   b) when participating in open offer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.

15. The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:
   a) cashless exercise of options under the scheme as prescribed in these regulations;
   b) on vesting or exercise, as the case may be, of SAR under the scheme as prescribed in these regulations;
   c) in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose -
      (i) the trustee shall record the reasons for such sale; and
      (ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
   d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
   e) for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided above.
f) winding up of the scheme(s); and

g) based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered in these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application by way of a banker’s cheque or demand draft payable at Mumbai in favour of SEBI.

16. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

ELIGIBILITY CRITERIA

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

**Explanation**—Where such employee is a director nominated by an institution as its representative on the board of directors of the company—

(i) The contract or agreement entered into between the institution nominating its employee as the director of a company, and the director so appointed shall, inter alia, specify the following:-

a. whether the grants by the company under its scheme(s) can be accepted by the said employee in his capacity as director of the company;

b. that grant if made to the director, shall not be renounced in favour of the nominating institution; and

c. the conditions subject to which fees, commissions, other incentives, etc. can be accepted by the director from the company.

(ii) The institution nominating its employee as a director of a company shall file a copy of the contract or agreement with the said company, which shall, in turn file the copy with all the stock exchanges on which its shares are listed.

(iii) The director so appointed shall furnish a copy of the contract or agreement at the first board meeting of the company attended by him after his nomination.

COMPENSATION COMMITTEE

- A company shall constitute a compensation committee for administration and superintendence of the schemes

However, the company may designate such of its other committees as compensation committee if they fulfil the criteria as prescribed in these regulations.
regulations. Further that where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

- The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, as amended or modified from time to time.
- The compensation committee shall, inter alia, formulate the detailed terms and conditions of the schemes which shall include the provisions as specified by SEBI in this regard.

- The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, as amended from time to time, including SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable.

**SHAREHOLDERS APPROVAL**

- Scheme shall not be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
- The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall include the information as specified by SEBI in this regard.
- Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:
  a) Secondary acquisition for implementation of the schemes.  
     
     *Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;*
  
  b) Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five per cent cap as prescribed in these regulations of such increased capital of the company;
  
  c) Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;
  
  d) Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one per cent of the
(excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

**VARIATION OF TERMS OF THE SCHEMES**

- The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees.
  
  However, the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.

- The company may by special resolution in a general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.

- The provisions of shareholders’ approval shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

- The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

- A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market.

  However, the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders in general meeting has been obtained for such repricing.

**WINDING UP OF THE SCHEMES**

In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.

**NON-TRANSFERABILITY**

- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.

- No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc.,

  However, in case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of
exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.

- The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
- In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.
- In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.
- In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire.

However, an employee shall, subject to the terms and conditions formulated by the compensation committee, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.

- In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.

**LISTING**

In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange.

<table>
<thead>
<tr>
<th>In case of the existing shares are listed, subject to the following conditions :-</th>
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<tbody>
<tr>
<td>Scheme is in compliance with these regulations</td>
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</table>
SCHEMES IMPLEMENTED BY UNLISTED COMPANIES

The shares arising after the initial public offering (“IPO”) of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009.

COMPLIANCES AND CONDITIONS

- The company shall not make any fresh grant which involves allotment or transfer of shares to its employees under any schemes formulated prior to its IPO and prior to the listing of its equity shares ('pre-IPO scheme') unless:
  - Such pre-IPO scheme is in conformity with these regulations; and
  - Such pre-IPO scheme is ratified by its shareholders subsequent to the IPO.

- No change shall be made in the terms of options or shares or SAR issued under such pre-IPO schemes, whether by repricing, change in vesting period or maturity or otherwise unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions made in accordance with these regulations.

- For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares.

However, the ratification under clause (ii) may be done any time prior to grant of new options or shares or SAR under such pre-IPO scheme.

CERTIFICATE FROM AUDITORS

In case of company which has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s)
has been implemented in accordance with these regulations and in accordance with
the resolution of the company in the general meeting.

DISCLOSURES
In addition to the information that a company is required to disclose, in relation to
employee benefits under the Companies Act, 2013, the board of directors of such a
company shall also disclose the details of the scheme(s) being implemented, as
specified by SEBI in this regard.

ACCOUNTING POLICIES
Any company implementing any of the share based schemes shall follow the
requirements of the 'Guidance Note on Accounting for employee share-based
Payments' (Guidance Note) or Accounting Standards as may be prescribed by the
Institute of Chartered Accountants of India (ICAI) from time to time, including the
disclosure requirements prescribed therein.

Where the existing Guidance Note or Accounting Standard do not prescribe
accounting treatment or disclosure requirements for any of the schemes covered
under these regulations then the company shall comply with the relevant Accounting
Standard as maybe prescribed by the ICAI from time to time.

ADMINISTRATION OF SPECIFIC SCHEMES

EMPLOYEE STOCK OPTION SCHEME (ESOS)

Administration and Implementation
The ESOS shall contain the details of the manner in which the scheme will be
implemented and operated. ESOS shall not be offered unless the disclosures, as
specified by SEBI in this regard, are made by the company to the prospective option
grantees.

Pricing
The company granting option to its employees pursuant to ESOS will have the
freedom to determine the exercise price subject to conforming to the accounting
policies as specified in these regulation.

Vesting Period
There shall be a minimum vesting period of one year in case of ESOS. However, in
case where options are granted by a company under an ESOS in lieu of options held
by a person under an ESOS in another company which has merged or amalgamated
with that company, the period during which the options granted by the transferor
company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.

The company may specify the lock-in period for the shares issued pursuant to exercise of option.

**Rights of the option holder**

The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.

**Consequence of failure to exercise option**

The amount payable by the employee, if any, at the time of grant of option, -

a) may be forfeited by the company if the option is not exercised by the employee within the exercise period; or

b) may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

**EMPLOYEE STOCK PURCHASE SCHEME (ESPS)**

**Administration and Implementation**

The ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.

**Pricing and Lock-In**

The company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under these regulation. Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment.

However, in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period required under this sub-regulation.

If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

**STOCK APPRECIATION RIGHTS SCHEME (SARS)**

**Administration and Implementation**

The SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated. The company shall have the freedom to implement cash
settled or equity settled SAR scheme. However, in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

SAR shall not be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective SAR grantees.

**Vesting**

There shall be a minimum vesting period of one year in case of SAR scheme. However, in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.

**Rights of the SAR Holder**

The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

**GENERAL EMPLOYEE BENEFITS SCHEME (GEBS)**

**Administration and Implementation**

GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated. At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

**RETIREMENT BENEFIT SCHEME (RBS)**

**Administration and Implementation**

Retirement benefit scheme may be implemented by a company provided it is in compliance with these regulations, and provisions of any other law in force in relation to retirement benefits. The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS.
DIRECTIONS BY SEBI AND ACTION IN CASE OF DEFAULT

SEBI may issue any direction or order or undertake any measure in the interests of the investors or the securities market, and deal with any contravention of these regulations, in exercise of its powers under SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 2013 and any statutory modification or re-enactment thereto.

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LESSON 18
REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES

SEBI (RESEARCH ANALYST) REGULATIONS, 2014

SEBI (Research Analyst) Regulations, 2014, were notified by SEBI on 1st September, 2014 in exercise of the powers conferred by section 30 of SEBI Act, 1992, SEBI made these regulations.

APPLICATION FOR GRANT OF CERTIFICATE

Regulation 3(1) provides that any person shall not act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from SEBI under these regulations. Any person acting as research analyst or research entity before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate of registration within the period of six months, till the disposal of such application.

Further that an investment adviser, credit rating agency, asset management company or fund manager, who issues research report or circulates/distributes research report to the public or its director or employee who makes public appearance, shall not be required to seek registration under regulation 3, subject to compliance of Chapter III of these regulations.

An application for grant of certificate of registration shall be made in Form A as specified in the First Schedule to these regulations and shall be accompanied by a non-refundable application fee to be paid in the manner specified in Second Schedule.

ISSUANCE OF RESEARCH REPORT BY A PERSON LOCATED OUTSIDE INDIA

Regulation 4 provides that any person located outside India engaged in issuance of research report or research analysis in respect of securities listed or proposed to be listed on a stock exchange shall enter into an agreement with a research analyst or research entity registered under these regulations.

Regulation 5 provides that SEBI may require the applicant to furnish further information or clarification for the purpose of consideration of the application. The applicant or his authorised representative, if so required, shall appear before SEBI for personal representation.

CONSIDERATION OF APPLICATION AND ELIGIBILITY CRITERIA
Regulation 6 lays down that SEBI shall take into account all matters which are relevant to the grant of certificate of registration. It shall assess whether:-

(i) the applicant is an individual or a body corporate or limited liability partnership firm;

(ii) in case the applicant is an individual, he is appropriately qualified and certified;

(iii) in case the applicant is a body corporate, the individuals employed as research analyst are qualified and certified;

(iv) in case the applicant is a partnership firm or a limited liability partnership, partners engaged in issuance of research report or research analysis are qualified and certified;

(v) in case the applicant is a research entity, the individuals employed as research analyst are qualified and certified;

(vi) the applicant fulfills the capital adequacy requirements;

(vii) the applicant, individuals employed as research analyst and partners of the applicant, if any, are fit and proper persons;

(viii) the applicant has the necessary infrastructure to effectively discharge the activities of research analyst;

(ix) the applicant or any person directly or indirectly connected with the applicant has in the past been refused certificate by SEBI and if so, the grounds for such refusal;

(x) any disciplinary action has been taken by SEBI or any other regulatory authority against the applicant or any person directly or indirectly connected to the applicant under the respective Act, rules or regulations made thereunder.

QUALIFICATION AND CERTIFICATION REQUIREMENT

Regulation 7 provides that an individual registered as research analyst, individuals employed as research analyst and partners of a research analyst, if any, engaged in preparation and/or publication of research report or research analysis shall have the following minimum qualifications:-

(i) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, financial services or markets provided by:

   a. a university which is recognized by University Grants Commission or by any other commission/council/board/body established under an Act of Parliament in India for the purpose; or

   b. an institute/association affiliated with such university; or
c. an institute/association/university established by the central government or state government; or
d. autonomous institute falling under administrative control of Government of India; or

(ii) professional qualification or post-graduate degree or post graduate diploma which is accredited by All Indian Council for Technical Education, National Assessment and Accreditation Council or National Board of Accreditation or any other council/board/body set up under an Act of Parliament in India for the purpose; or

(iii) a graduate in any discipline with an experience of at least five years in activities relating to financial products or markets or securities or fund or asset or portfolio management.

An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, shall have, at all times, a NISM certification for research analysts as specified by SEBI or other certification recognized by SEBI from time to time.

Research analyst or research entity already engaged in issuance of research report or research analysis seeking registration under these regulations shall ensure that it or the individuals employed by it as research analyst and/or its partners obtain such certification within two years from the date of commencement of these regulations.

**CAPITAL ADEQUACY**

Regulation 8 prescribes the capital adequacy requirement:

(1) of research analyst who is body corporate or limited liability partnership firm shall have a net worth of not less than twenty five lakh rupees.

(2) of research analyst who is individual or partnership firm shall have net tangible assets of value not less than one lakh rupees.

All existing research analysts shall comply with the capital adequacy requirement within one year from the date of commencement of these regulations.

**GRANT OF CERTIFICATE OF REGISTRATION**

Regulation 9 stipulates that SEBI on being satisfied that the applicant is eligible, shall grant a certificate of registration in Form B under First Schedule after receipt
of the payment of registration fees as specified in Second schedule and send intimation to the applicant in this regard.

The certificate of registration granted shall be valid for a period of five years from the date of its issue.

**RENEWAL OF CERTIFICATE**

Regulation 11 provides that the research analyst, desirous of having its certificate renewed shall make an application to SEBI for renewal of the certificate, not less than three months before the expiry of the period of validity. The application for renewal shall be dealt with in the same manner as if it were an application made under regulation 3 for grant of certificate.

**PROCEDURE WHERE REGISTRATION IS REFUSED**

Regulation 12 (1) lays down that after considering an application, if SEBI is of the opinion that a certificate should not be granted to the applicant, it may reject the application after giving the applicant a reasonable opportunity of being heard.

The decision of SEBI rejecting the application shall be communicated to the applicant within thirty days of such decision. Where an application for a certificate is rejected by SEBI, the applicant shall forthwith cease to act as a research analyst.

**CONDITIONS OF CERTIFICATE**

Regulation 13 provides that the certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(i) the research analyst shall abide by the provisions of the Act and these regulations;

(ii) the research analyst shall forthwith inform SEBI in writing, if any information or particulars previously submitted to SEBI are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

(iii) research analyst registered under these regulations shall use the term “research analyst” in all correspondences with its clients.

**RECOGNITION OF BODY OR BODY CORPORATE FOR REGULATION OF RESEARCH ANALYSTS**

Regulation 14 provides that SEBI may recognize any body or body corporate for the purpose of regulating research analysts. SEBI may, at the time of recognition of such body or body corporate, delegate administration, supervision and
regulation of research analysts to such body or body corporate on such terms and conditions as may be specified by SEBI.

SEBI may also specify that any person shall not act as research analyst unless he is a member of a recognized body or body corporate.

**ESTABLISHING INTERNAL POLICIES AND PROCEDURES**

Regulation 15 provides that research analyst or research entity shall have written internal policies and control procedures governing the dealing and trading by any research analyst for:

(i) addressing actual or potential conflict of interest arising from such dealings or trading of securities of subject company;

(ii) promoting objective and reliable research that reflects the unbiased view of research analyst; and

(iii) preventing the use of research report or research analysis to manipulate the securities market.

Research analyst or research entity shall have in place appropriate mechanisms to ensure independence of its research activities from its other business activities.

**LIMITATIONS ON TRADING BY RESEARCH ANALYSTS**

Regulation 16 lays down the following limitations on trading by research analyst:

1. Personal trading activities of the individuals employed as research analyst by research entity shall be monitored, recorded and where ever necessary, shall be subject to a formal approval process.

2. Independent research analysts, individuals employed as research analyst by research entity or their associates shall not deal or trade in securities that the research analyst recommends or follows within thirty days before and five days after the publication of a research report.

3. Independent research analysts, individuals employed as research analysts by research entity or their associates shall not deal or trade directly or indirectly in securities that he reviews in a manner contrary to his given recommendation.

4. Independent research analysts, individuals employed as research analysts by research entity or their associates shall not purchase or receive securities of the issuer before the issuer's initial public offering, if the issuer is principally engaged in the same types of business as companies that the research analyst follows or recommends.

5. Provisions of sub-regulations (2) to (4) shall apply mutatis mutandis to a research entity unless it has segregated its research activities from all other
activities and maintained an arms-length relationship between such activities.

(6) Notwithstanding anything contained in sub-regulations (2) to (4), such restrictions to trade or deal in securities may not apply in case of significant news or event concerning the subject company or based upon an unanticipated significant change in the personal financial circumstances of the research analyst, subject to prior written approval as per the terms specified in the approved internal policies and procedures.

**COMPENSATION OF RESEARCH ANALYSTS**

Regulation 17 provides the compensation of research analysts:-

(1) Research entity shall not pay any bonus, salary or other form of compensation to any individual employed as research analyst that is determined or based on any specific merchant banking or investment banking or brokerage services transaction.

(2) The compensation of all individuals employed as research analyst shall be reviewed, documented and approved annually by board of directors/committee appointed by board of directors of the research entity, which does not consist of representation from its merchant banking or investment banking or brokerage services divisions.

(3) The board of directors/committee appointed by board of directors of the research entity approving or reviewing the compensation of individual employed as research analyst shall not take into account such individual’s contribution to the research entity's investment banking or merchant banking or brokerage services business.

(4) An individual employed as research analyst by research entity shall not be subject to the supervision or control of any employee of the merchant banking or investment banking or brokerage services divisions of that research entity.

**LIMITATIONS ON PUBLICATION OF RESEARCH REPORT, PUBLIC APPEARANCE AND CONDUCT OF BUSINESS, ETC.**

Regulation 18 provides the following limitations on publication of research report, public appearance and conduct of business:

(1) Research analyst or research entity shall not publish or distribute research report or research analysis or make public appearance regarding a subject
company for which he has acted as a manager or co-manager at any time falling within a period of:

a) Forty days immediately following the day on which the securities are priced if the offering is an initial public offering; or

b) Ten days immediately following the day on which the securities are priced if the offering is a further public offering.

Research analyst or research entity may publish or distribute research report or research analysis or make public appearance within such forty day and ten day periods, subject to prior written approval of legal or compliance personnel as specified in the internal policies and procedures.

(2) A research entity who has agreed to participate or is participating as an underwriter of an issuer's initial public offering shall not publish or distribute a research report or make public appearance regarding that issuer before expiry of twenty five days from the date of the offering.

(3) Research analyst or research entity who has acted as a manager or co-manager of public offering of securities of a company shall not publish or distribute a research report or make a public appearance concerning that company within fifteen days prior to date of entering into and fifteen days after the expiration/waiver/termination of a lock-up agreement or any other agreement that the research analyst or research entity has entered into with a subject company that restricts or prohibits the sale of securities held by the subject company after the completion of public offering of securities.

Research analyst or research entity may publish or distribute research report or research analysis or make public appearance regarding that company within such fifteen days subject to prior written approval of legal or compliance personnel as specified in the internal policies and procedures.

(4)Research analyst or individuals employed as research analyst by research entity shall not participate in business activities designed to solicit investment banking or merchant banking or brokerage services business, such as sales pitches and deal road shows.

(5) Research analyst or individuals employed as research analyst by research entity shall not engage in any communication with a current or prospective client in the presence of personnel from investment banking or merchant banking or
brokerage services divisions or company management about an investment banking services transaction.

(6) Investment banking or merchant banking or brokerage services division’s personnel of research entity shall not direct the individuals employed as research analyst to engage in sales or marketing related to an investment banking or merchant banking or brokerage services and shall not direct the research analyst to engage in any communication with a current or prospective client about such division’s transaction.

Provided that sub-regulations (4) to (6) shall not prohibit research analyst or research entity from engaging in investor education activities including publication of pre-deal research and briefing the views of the research analyst on the transaction to the sales or marketing personnel.

(7) Research analyst or research entity shall have adequate documentary basis, supported by research, for preparing a research report.

(8) Research analyst or research entity shall not provide any promise or assurance of favourable review in its research report to a company or industry or sector or group of companies or business group as consideration to commence or influence a business relationship or for the receipt of compensation or other benefits.

(9) Research analyst or research entity shall not issue a research report that is not consistent with the views of the individuals employed as research analyst regarding a subject company.

(10) Research entity shall ensure that the individuals employed as research analyst are separate from other employees who are performing sales trading, dealing, corporate finance advisory or any other activity that may affect the independence of its research report.

However, the individual employed as research analyst by research entity can receive feedback from sales or trading personnel of brokerage division to ascertain the impact of research report.

**DISCLOSURES IN RESEARCH REPORTS**

Regulation 19 stipulates that a research analyst or research entity shall disclose all material information about itself including its business activity, disciplinary history, the terms and conditions on which it offers research report, details of
associates and such other information as is necessary to take an investment
decision, including the following:

(i) Research analyst or research entity shall disclose the following in research
report and in public appearance with regard to ownership and material
conflicts of interest:

a) whether the research analyst or research entity or his associate or his
relative has any financial interest in the subject company and the nature of
such financial interest;

b) whether the research analyst or research entity or its associates or relatives,
have actual/beneficial ownership of 1 per cent or more securities of the
subject company, at the end of the month immediately preceding the date of
publication of the research report or date of the public appearance;

c) whether the research analyst or research entity or his associate or his
relative, has any other material conflict of interest at the time of publication
of the research report or at the time of public appearance;

(ii) Research analyst or research entity shall disclose the following in research
report with regard to receipt of compensation:

a) whether it or its associates have received any compensation from the subject
company in the past twelve months;

b) whether it or its associates have managed or co-managed public offering of
securities for the subject company in the past twelve months;

c) whether it or its associates have received any compensation for investment
banking or merchant banking or brokerage services from the subject
company in the past twelve months;

d) whether it or its associates have received any compensation for products or
services other than investment banking or merchant banking or brokerage
services from the subject company in the past twelve months;

e) whether it or its associates have received any compensation or other benefits
from the subject company or third party in connection with the research
report.

(iii) Research analyst or research entity shall disclose the following in public
appearance with regard to receipt of compensation:

a) whether it or its associates have received any compensation from the subject
company in the past twelve months;

b) whether the subject company is or was a client during twelve months
preceding the date of distribution of the research report and the types of
services provided.
However, research analyst or research entity shall not be required to make a disclosure to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking or merchant banking or brokerage services transactions of the subject company.

(iv) whether the research analyst has served as an officer, director or employee of the subject company;

(v) whether the research analyst or research entity has been engaged in market making activity for the subject company;

(vi) Research analyst or research entity shall provide all other disclosures in research report and public appearance as specified by the Board under any other regulations.

CONTENTS OF RESEARCH REPORT

Regulation 20 stipulates the following contents of research report:-

(1) Research analyst or research entity shall take steps to ensure that facts in its research reports are based on reliable information and shall define the terms used in making recommendations, and these terms shall be consistently used.

(2) Research analyst or research entity that employs a rating system must clearly define the meaning of each such rating including the time horizon and benchmarks on which a rating is based.

(3) If a research report contains either a rating or price target for subject company’s securities and the research analyst or research entity has assigned a rating or price target to the securities for at least one year, such research report shall also provide the graph of daily closing price of such securities for the period assigned or for a three-year period, whichever is shorter.

DISTRIBUTION OF RESEARCH REPORTS

Regulation 22 provides the following distribution of Research Report:-

1) A research report shall not be made available selectively to internal trading personnel or a particular client or class of clients in advance of other clients who are entitled to receive the research report.

2) Research analyst or research entity who distributes any third party research report shall review the third party research report for any untrue statement of material fact or any false or misleading information.

3) Research analyst or research entity who distributes any third party research report shall disclose any material conflict of interest of such third party research provider or he shall provide a web address that directs a recipient to the relevant disclosures.
4) Provisions of sub-regulations (2) and (3) shall not apply to a research analyst or research entity if he has no direct or indirect business or contractual relationship with such third party research provider.

**ADDITIONAL DISCLOSURES BY PROXY ADVISER**

Regulations 23 provides that all the provisions of Chapter II, III, IV, V and VI shall apply mutatis mutandis to the proxy adviser. The employees of proxy advisors engaged in providing proxy advisory services shall be required to have a minimum qualification of being a graduate in any discipline. Further that certification requirements for employees of proxy advisors engaged in providing proxy advisory services shall be as specified by SEBI.

The time period for compliance with capital adequacy for proxy advisors shall be three years. The proxy adviser shall additionally disclose the following:

(i) the extent of research involved in a particular recommendation and the extent and/or effectiveness of its controls and procedures in ensuring the accuracy of issuer data;

(ii) policies and procedures for interacting with issuers, informing issuers about the recommendation and review of recommendations;

Proxy adviser shall maintain the record of his voting recommendations and furnish the same to SEBI on request. In case of any inconsistency or difficulty in respect of applicability of provisions of these regulations to proxy advisers, SEBI may issue such clarifications or exemptions as may be deemed appropriate.

**GENERAL RESPONSIBILITY**

Regulation 24 provides the following responsibility of research analyst or research entity:-

(1) Research analyst or research entity shall maintain an arms-length relationship between its research activity and other activities.

(2) Research analyst or research entity shall abide by Code of Conduct as specified in Third Schedule.

(3) In case of change in control of the research analyst or research entity, prior approval from SEBI shall be taken.

(4) Research analyst or research entity shall furnish to SEBI information and reports as may be specified by SEBI from time to time.

(5) It shall be the responsibility of the research analyst or research entity to ensure that its employees or partners, as may be applicable, comply with the certification and qualification requirements at all times.
MAINTENANCE OF RECORDS

Regulation 25(1) lays down that the research analyst or research entity shall maintain the following records:

(i) research report duly signed and dated;
(ii) research recommendation provided;
(iii) rationale for arriving at research recommendation;
(iv) record of public appearance.

All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years. Where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed. Research analyst or research entity shall conduct annual audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

APPOINTMENT OF COMPLIANCE OFFICER

Regulation 26 provides that every research analyst or research entity which is a body corporate or limited liability partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance of the provisions.

LIABILITY FOR ACTION IN CASE OF DEFAULT

Regulation 32 stipulates the provisions for liability for action in case of default. A Research analyst or research entity who:

(i) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;
(ii) fails to furnish any information relating to its activity as a research analyst as required by SEBI;
(iii) furnishes to SEBI information which is false or misleading in any material particular;
(iv) does not submit periodic returns or reports as required by SEBI;
(v) does not co-operate in any enquiry, inspection or investigation conducted by SEBI;
(vi) fails to resolve the complaints or fails to give a satisfactory reply to SEBI in this behalf, shall be dealt with in the manner provided under the Act or SEBI (Intermediaries) Regulations, 2008.

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The SEBI (Prohibition of Insider Trading) Regulation, 2015 comprises of five chapters and two schedules encompassing the various regulations related to insider trading. Chapter I deal mainly with the definition used in regulation. Chapter II provides for restriction on communication and trading in securities by insiders. Chapter III deals with disclosure of trading by insiders. Company follows chapter IV deals with the code of fair disclosure and conduct to be followed by listed companies and other entities, disclosure requirements. Chapter V deals with miscellaneous matters like sanction for violation, power to remove difficulties, repeal and savings.

**IMPORTANT DEFINITIONS**

**Connected person**

Connected person" means,-

Any person who is or has during the six months prior to the concerned Act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

**Insider**

"Insider" means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

**Person deemed to be connected person**

“Person is deemed to be a connected person”, if such person-

(a) an immediate relative of connected persons specified in clause (i); or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h) an official or an employee of a self-regulatory organization recognised or authorized by SEBI; or

(i) a banker of the company; or

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

**Generally available information**

"Generally available information" means information that is accessible to the public on a non-discriminatory basis.

**Immediate relative**

“Immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

**Trading**

"trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;

**Unpublished price sensitive information**

"Unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) Financial results;  
(ii) Dividends;  
(iii) Change in capital structure;
(iv) Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;

(v) Changes in key managerial personnel; and

(vi) Material events in accordance with the listing agreement

**Compliance officer**

Compliance Officer means

- any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,
- who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,
- monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be;

**RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS**

**COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION**

Regulation 3 provides that any person shall not:-

- communicate, provide, or allow access to any unpublished price sensitive information or
- procure from or cause the communication by any insider of unpublished price sensitive information,

- relating to a company or securities listed or proposed to be listed or proposed to be listed

- Except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
However, above provisions shall not applicable to any, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

- entail an obligation to make an open offer under the takeover regulations or

- not attract the obligation to make an open offer under the takeover regulations

- Where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and

- the information that constitute unpublished price sensitive information is disseminated to be made generally available at least 2 trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

**TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI)**

Regulation 4 prescribes that insider shall not trade in securities which are listed or proposed to be listed on stock exchange when in possession of unpublished price sensitive information.

However there are certain exemptions:

- When there is an off-market transfer between promoters
  
  ➢ who are aware of price sensitive information without being in breach of regulation 3 and

  ➢ both parties had made a conscious and informed trade decision; or

- In the case of non-individual insiders
  
  ➢ the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and
such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and

there is no evidence of such arrangements having been breached;

- the trades were pursuant to a trading plan set up in accordance with regulation 5.

In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on SEBI. SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

**TRADING PLANS**

Regulation 5 states that an insider would be required to submit trading plan in advance to the compliance officer for his approval. The compliance officer is also empowered to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the stock Exchanges, where the securities of the company are listed.

The trading plan shall comply with requirements as follows:

- It shall be submitted for a minimum period of 12 months.
- No overlapping of plan with the existing plan submitted by Insider
- It shall set out either the value of trades to be effected or the number of securities to be traded along with
  - the nature of the trade and
  - the intervals at, or
  - dates on which such trades shall be effected.
- Trading can only commence only after 6 months from public disclosure of plan.
- No trading between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
• Compliance officer to approve the plan.
• The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

(Except in few case like where insider is in possession of price sensitive information at the time of formulation of the plan and such information has not become generally available at the time of the commencement of implementation)

• Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

DISCLOSURES OF TRADING BY INSIDERS

Regulation 6 deals with general provisions of disclosures made :-

• by person shall also include those relating to trading by such person’s immediate relatives, and
• by any other person for whom such person takes trading decisions.
• The disclosures of trading in securities shall also include trading in derivatives of securities if permitted under law.
• Such disclosure shall be preserved for 5 years.

DISCLOSURES OF INTEREST BY CERTAIN PERSONS

INITIAL DISCLOSURE

Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company. Within 30 days from these regulations taking effect.
Any person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within 7 days of such appointment or becoming a promoter.

CONTINUAL DISCLOSURE

Every promoter, employee and director of every company shall disclose to the company the number of securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, exceeds Rs 10 lakh with single or series of transaction in any calendar quarter.

Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Any company whose securities are listed on stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and the company may determine trading in securities of the company in such from and at such frequency as.

CODES OF FAIR DISCLOSURE AND CONDUCT

CODE OF FAIR DISCLOSURE
Where the board of directors of the company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information which shall follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

**PRINCIPLES AND PROCEDURES OF FAIR DISCLOSURE**

The Schedule A lays down the following principles of fair disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information:

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.

2. Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.

3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.

4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.

5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.

6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.

7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.

8. Handling of all unpublished price sensitive information on a need-to-know basis.

**CODE OF CONDUCT**

The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its
employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards as prescribed in this regulations.

Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards as prescribed in these regulations, without diluting the provisions of these regulations in any manner.

Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

**CODE OF CONDUCT**

The board of directors of listed company and market intermediary or Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance.

Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

**MINIMUM STANDARDS FOR CODE OF CONDUCT**

The schedule B lays down the following minimum standards for Code of Conduct to regulate, monitor and report trading by insiders:

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors.
2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of the insider’s legitimate purposes, performance of duties or discharge of his legal obligations.

3. The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to “cross the wall”.

4. Employees and connected persons designated on the basis of their functional role (“designated persons”) in the organisation shall be governed by an internal code of conduct governing dealing in securities.

5. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.

6. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons.

7. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.

8. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

9. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

10. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting, or advising the company.
11. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

12. The compliance officer shall confidentially maintain a list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for preclearance of trades.

13. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

14. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

15. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the Act.

16. The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, recording of reasons for such decisions and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

17. The code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension etc., that may be imposed, by the persons required to formulate a code of conduct for the contravention of the code of conduct.
18. The code of conduct shall specify that in case it is observed by the persons required to formulate a code of conduct, that there has been a violation of these regulations, they shall inform SEBI promptly.

**PENALTY**

*Section 24 of SEBI Act, 1992*

- If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made there under, he shall be punishable with
  - Imprisonment for a term which shall not less than 1 month but which may be extend to 10 years or
  - Fine which may be extended to Rs. 25 crore or
- If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, both
**Penalty for insider trading under section 15G of SEBI Act**

If any Insider who,-

- either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

**ROLE OF COMPANY SECRETARY IN COMPLIANCE REQUIREMENTS**

The obligations cast upon the company secretary in relation to insider trading regulations can be summarized as under:-

1. The Company Secretary acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
2. To frame a code of fair disclosure and conduct in line with the model code specified in the Schedule A of the regulations and get the same approved by the board of directors of the company.

3. To place before the board the “minimum standards for Code of Conduct” to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.

4. To receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter shall disclose its shareholding in the prescribed form within:

- 30 days from these regulations taking effect or
- 7 days of such appointment or becoming a promoter

5. To receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs 10 lakh with single or series of transaction in any calendar quarter in prescribed form within two trading days of:

- receipt of the disclosure or
- from becoming aware of such information

6. To ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.

7. The compliance officer shall approve the trading plan and after the approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

8. The Compliance Officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.

9. The compliance officer has to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the stock Exchanges, where the securities of the company are listed.
10. To maintain confidentially list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for preclearance of trades.

11. To monitor of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

12. To frame and then to monitor adherence to the rules for the preservation of “Price sensitive information”

13. To suggest any improvements required in the policies, procedures, etc to ensure effective implementation of the code.

14. To assist in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and the company’s code of conduct.

15. To maintain a list of all information termed as ‘price sensitive information’.

16. To maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.

17. To ensure that files containing confidential information shall be kept secured.

18. To keep records of periods specified as ‘close period’ and the ’Trading window’.

19. To ensure that the trading restrictions are strictly observed and that all directors/officers/designated employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company’s securities during the period when the trading window is closed.

20. To receive and maintain records of periodic and annual statement of holdings from directors/officers/designated employees and their dependent family members.

21. To implement the punitive measures or disciplinary action for any violation or contravention of the code of conduct.
22. To ensure that the “Trading Window” is closed at the time of:

a) Declaration of financial results (quarterly, half-yearly and annual).

b) Declaration of dividends (“interim and final”)

c) Issue of securities by way of public/right/bonus etc.

d) Any Major expansion plans or execution of new projects.

e) Amalgamation, mergers, takeovers and buy-back.

f) Disposal of whole or substantially whole of the undertaking.

g) Any change in policies, plans or operations of the company.

23. The Compliance Officer shall place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organization/firm.

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Regulation 5A deals with delisting in case of certain cases arising out of open offer which is discussed below:

1. In the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009 but the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement.

2. Where an offer made is not successful-
   
   (i) On account of non–receipt of prior approval of shareholders in terms of regulation 8 (1) (b) of SEBI (Delisting of Equity Shares) Regulations, 2009; or
   
   (ii) in terms of regulation 17 of SEBI (Delisting of Equity Shares) Regulations, 2009; or
   
   (iii) on account of the acquirer rejecting the discovered price determined by the book building process in terms of regulation 16(1) of SEBI (Delisting of Equity Shares) Regulations, 2009,

   the acquirer shall make an announcement within 2 working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

3. In the event of the failure of the delisting offer the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement file with SEBI, a draft of the letter of offer and shall comply with all other applicable provisions of these regulations.

   However, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

   Note: scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.
4. Where a competing offer is made -

(a) the acquirer shall not be entitled to delist the company;

(b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;

(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made, in all the newspapers in which the detailed public statement was made.

5. Shareholders who have tendered shares in acceptance of the offer, shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement.

6. Shareholders who have not tendered their shares in acceptance of the offer shall be entitled to tender their shares in acceptance of the offer made under these regulations.