

EXECUTIVE PROGRAMME

SUPPLEMENT
FOR
CAPITAL MARKETS AND SECURITIES
LAWS
(Relevant for students appearing in June, 2017 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 2017 Examination shall note the following:

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, 2016, applicable for June, 2017 Examination. The students are advised to read their Study Material (2016 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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LESSON 2
CAPITAL MARKET INSTRUMENTS

Page No. 22

Shares with Differential Voting Rights –Insertion of Proviso after Point (1) (g)

However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good.

LESSON 3

CREDIT RATING & IPO GRADING

Page No.52

Registration of Credit Rating Agencies - (Replace with the following)

Any person proposing to commence any activity as a credit rating agency should make an application to SEBI for the grant of a certificate of registration for the purpose. An application for the grant of a certificate should be made to SEBI accompanied by a non-refundable specified application fee.

Page No. 54

Grant of Certificate- (Replace with the following)

SEBI grants a certificate of registration after getting satisfied that the applicant is eligible for the grant of a certificate of registration. The certificate of registration granted under these regulations shall be valid unless it is suspended or cancelled by SEBI. The grant of certificate of registration should be subject to the payment of the specified registration fee in the manner prescribed.

Conditions of Certificate

The certificate granted is subject to the condition that the credit rating agency should comply with the provisions of the Act, the regulations made thereunder and the guidelines, directives, circulars and instructions issued by SEBI from time to time on the subject of credit rating. The credit rating agency should forthwith inform SEBI in writing where any information or particulars furnished to SEBI by a credit rating agency is found to be false or misleading in any material particular; or has undergone change subsequently to its furnishing at the time of the application for a certificate. Where the credit rating agency proposes change in control, it shall obtain prior approval of SEBI for continuing to act as such after the change.

Effect of Refusal to Grant Certificate – (Omitted Page No. 54)

Page No. 55

Guidelines on CRAs standards

SEBI vide its circular no. *SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119* dated November 1, 2016 SEBI constituted a committee on “Strengthening the Guidelines and Raising Industry Standards for Credit Rating Agencies (CRAs)”, which included representatives from all the CRAs. The objective of the Committee was to deliberate upon measures and guidelines to bring about greater transparency in the policies of the CRAs, enhance the standards followed by the industry and, thereby, facilitate ease of understanding of the ratings by the investors.

These guidelines cover the following broad areas:

- I. Formulation of Rating Criteria and rating processes and public disclosure of the same.
- II. Accountability of Rating Analysts
- III. Standardisation of Press Release for rating actions.
- IV. Functioning and evaluation of Rating Committees/Sub-Committees.

V. Disclosure of ratings in case of non-acceptance by an issuer

VI. Disclosure in case of delay in periodic review of ratings.

VII. Policy in respect of non-co-operation by the issuer.

VIII. Strengthening and enhancing the relevance of Internal Audit of CRAs, viz. appointment and rotation of auditors and scope of the audit.

LESSON 5

DEBT MARKET

Page No.118

(Insertion after Mandatory Listing)

Day Count Convention for Interest Payment

SEBI has provided certain clarifications on aspects related to day count convention for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

a) If the interest payment date falls on a holiday, the payment may be made on the following working day however the dates of the future coupon payments would be as per the schedule originally stipulated at the time of issuing the security. In other words, the subsequent coupon schedule would not be disturbed merely because the payment date in respect of one particular coupon payment has been postponed earlier because of it having fallen on a holiday.

For example:

Date of Issue of Corporate bonds: July 01, 2016

Date of Maturity: June 30, 2018

Date of coupon payments: January 01 and July 01

Coupon payable: semi-annually

In this case, January 01, 2017 is a Sunday, thus the coupon would be payable on January 02, 2017 i.e. the next working day. However the calculation for payment of interest will be only till December 31, 2016, which would have been the case if January 01, 2017 were not a holiday. Also, the next dates of payment would remain July 01, 2017 and January 01, 2018 despite the fact that one of the interest payment was made on January 02, 2017.

b) In order to ensure consistency for interest calculation, a uniform methodology shall be followed for calculation of interest payments in the case of leap year, which shall be as follows:

In case of a leap year, if February 29 falls during the tenor of a security, then the number of days shall be reckoned as 366 days (Actual/Actual day count convention) for a whole one year period, irrespective of whether the interest is payable annually, half yearly, quarterly or monthly etc. It is thus emphasized that for a half yearly interest payment, 366 days would be reckoned twice as the denominator; for quarterly interest, four times and for monthly interest payment, twelve times.

c) In order to ensure uniformity for payment of interest/redemption with respect to debt securities, it has been decided that interest/redemption payments shall be made only on the days when the money market is functioning in Mumbai.

Conditions for Private Placement - (Insertion after 3rd point)

SEBI vide its circular no. *SEBI/HO/IMD/DF1/CIR/P/2016/140* dated on December 23, 2016 where SEBI prescribe that section 42(1) of the Companies Act, 2013, a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4. The company shall maintain a complete record of private placement offers in Form PAS-5 and a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the SEBI within a period of thirty days of circulation of the private placement offer letter.

LESSON 12

FOREIGN PORTFOLIO INVESTORS

Page No.291

Offshore Derivative Instruments (ODIs) - (Replace with the following)

- 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.
- A foreign portfolio investor (FPI) shall ensure that any transfer of offshore derivative instruments issued by or on behalf of it, is made subject to the following conditions:
 - Such offshore derivative instruments are transferred to persons subject to fulfilment of sub-regulation (1); and
 - Prior consent of the foreign portfolio investor (FPI) is obtained for such transfer, except when the persons to whom the offshore derivative instruments are to be transferred to are pre-approved by the foreign portfolio investor.
- 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 etc.

LESSON 14

REAL ESTATE INVESTMENT TRUSTS

Page No.312

DEFINITIONS - (Replace with the following)

“*Associate*” of any person shall be as defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include following:-

- 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;

“*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.

Apart the above, following captured within the above mentioned definition of infrastructure shall be considered under “real estate” or “property”,-

- (i) hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating;
- (ii) common infrastructure" for composite real estate projects, industrial parks and SEZ;

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

“*Related Party*” shall be defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include:

- i. Parties to the REIT;
- ii. Sponsors, directors and partners of the persons in clause i.

New Definitions inserted

“*Debt Securities*” shall be as defined under Regulation 2(1) (e) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

“*Holdco*” or “*holding company*” shall mean a company or LLP,-

- (i) in which REIT holds or proposes to hold controlling interest and not less than fifty one per cent of the equity share capital or interest and which it in turn has made investments in other SPV(s), which ultimately hold the property(ies);
- (ii) which is not engaged in any other activity other than holding of the underlying SPV(s), holding of real estate/properties and any other activities pertaining to and incidental to such holdings.

“Sponsor Group” – includes:

- (i) the sponsor(s);
- (ii) in case the sponsor is a body corporate:
 - a. entities or person(s) which are controlled by such body corporate;
 - b. entities or person(s) who control such body corporate;
 - c. entities or person(s) which are controlled by person(s) as referred at clause b.
- (iii) in case sponsor is an individual:
 - a. an immediate relative of such individual (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
 - b. entities or person(s) which are controlled by such individual;

“Valuer” means any person who is a "registered valuer" under section 247 of the Companies Act, 2013 or as defined hereunder and who has/have been appointed by the manager to undertake both financial and technical valuation of the REIT assets:

(a) a valuer in respect of financial valuation, means,-

- (i) a chartered accountant, company secretary or cost accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognize by an order.

However, such foreign qualification is acquired by Indian citizen.

- (ii) a Merchant Banker registered with SEBI, and who has in his employment person(s) having qualifications prescribed under (i) above to carry out valuation by such qualified persons;

(b) a valuer in respect of technical asset valuation, means members of the following institutions for specific asset categories,-

- (i) Institution of Valuers;
- (ii) Institution of Surveyors (Valuation Branch);
- (iii) Institution of Government Approved Valuers;
- (iv) Practicing Valuers Association of India;
- (v) Centre for Valuation Studies, Research and Training;
- (vi) Royal Institution of Chartered Surveyors, UK;
- (vii) American Society of Appraisers, United States;
- (viii) Appraisal Institute, United States;
- (ix) Institute of Engineers;
- (x) Council of Architecture or the Indian Institute of Architects;

However, the persons referred to in sub-sub-clause (i) and qualified person referred to in sub-sub-clause (ii) of sub-clause (a) above, shall have not less than five years continuous experience after acquiring membership of respective institutions.

Further that, the persons referred to in sub-sub-clauses (i) to (x) of sub-clause (b) above, shall have a minimum working experience of five years in relevant areas of valuation practice and in relation to relevant asset value and categories; and be citizens of India.

Page No.313

Registration of Real Estate Investment Trusts - (Replace with the following)

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 on behalf of the trust in such form and on such fees as prescribed in these 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 (Replace with the following)

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

- (a) **Applicant** : The applicant is the sponsor on behalf of 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) **Sponsor**: Each sponsor shall hold or propose to hold not less than 5% of the number of units of the REIT on post-initial offer basis. Each sponsor and sponsor group shall be clearly identified in the application of registration to SEBI and in the offer document/placement memorandum, as applicable. However, for each sponsor group not less than one person shall be identified as a sponsor.
- (c) **Manager**: - It must have net worth of not less than Rs. 10 crore; not less than 5 years of experience in fund management/ advisory services/ property management in the real estate industry or in development of real estate; and not less than 2 key personnel who each have not less than 5 years of experience in fund management/ advisory services/ property management in the real estate industry or in development of real estate.
- (d) **Trustee**: It should be registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993; not an associate of the sponsor/ manager/ principal valuer and the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of SEBI.
- (e) The unit holder of the REIT shall not enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT; Apart the above, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units;
- (f) The applicant has clearly described details related to proposed activities at the time of application for registration.
- (g) The applicant and parties to the REIT shall be fit and proper persons.
- (h) Whether any previous application for grant of certificate by the applicant or any related party has been rejected by SEBI.

- (i) 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 regulations or circulars etc.

Page No.315

Rights and Responsibilities of Trustee - (Replace with the following)

Regulation 9 prescribes the rights and responsibilities of a Trustee of a REIT which are discussed below:-

- (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 or a valuer, as applicable 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 unit holders 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 regulation and from SEBI in case of change in control of the manager.
- (14) The trustee of the REIT 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.

Page No.316

Rights and Responsibilities of Manager- (Replace with the following)

Regulation 10 provides the rights and responsibilities of Manager. These are the followings:-

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 holdco and/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 holdco and/or SPV are legal, valid, binding and enforceable by and on behalf of the REIT or holdco and/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 holdco and/or 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 and the merchant banker(s) shall be responsible for,-
 - (a) filing the draft and final offer document with SEBI and the designated stock exchange.
 - (b) obtaining in-principle approval and final listing and trading approvals from the designated stock exchange;
 - (c) dealing with all matters relating to issue and listing of the units of the REIT.
11. The manager and the merchant banker(s) 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 30 days of end of such quarter;
 - (b) valuation reports within 15 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.
 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 to the stock exchange(s) 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 once in a year and such report is submitted to the designated stock exchange within 60 days of end of such financial year ending March 31st.
 24. The manager may appoint a custodian in order to provide such custodial services as may be 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 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.

Page No.318

Rights and Responsibilities of Sponsor(s) and Sponsor group(s)-(Replace with the following)

Regulation 11 provides the rights and responsibilities of Sponsor(s) which are as under:-

1. The sponsor(s) and sponsor group(s) shall set up the REIT and appoint the trustee of the REIT.
2. The sponsor(s) and sponsor group(s) shall transfer or undertake to transfer, their entire shareholding or interest in the holdco and/or 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 holdco and/or 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, -
 - (a) the sponsor(s) and sponsor group(s) shall collectively hold a minimum of 25% of the total units of the REIT after initial offer on a post-issue basis. However, the minimum sponsor(s) and sponsor group 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(s) and sponsor group 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) the sponsor(s) and sponsor group(s) shall collectively Together hold not less than 15% of the outstanding units of the listed REIT.
 - (c) each of the sponsor individually, shall hold not less than 5% of the outstanding units of the listed REIT.
4. If the sponsor(s) and sponsor group(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) and sponsor group(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 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 or member of sponsor group.
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.

Page No.319

Rights and Responsibilities of the Valuer - (Replace with the following)

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

1. The valuer(s) shall ensure that the valuation of the REIT assets is impartial, true and fair in accordance with these regulations.
2. The valuer(s) shall ensure adequate and robust internal controls to ensure the integrity of its valuation reports.
3. The valuer(s) shall ensure that it has sufficient key personnel with adequate experience and qualification to perform property valuations at all times.
4. The valuer(s) shall ensure that it has sufficient financial resources to enable it to conduct its business effectively and meet its liabilities.
5. The valuer(s) and any of its employees involved in valuing of the assets of the REIT, shall not,-

- (a) invest in units of the REIT or in the assets being valued; and
 - (b) 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;
6. 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;
 7. The valuer(s) shall act with independence, objectivity and impartiality in performing the valuation;
 8. 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;
 9. 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;
 10. The valuer (s) shall before accepting any assignment from any related party to the REIT, shall, disclose to the REIT any direct or indirect consideration which the valuer may have in respect of such assignment;
 11. 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;
 12. The valuer(s) shall not accept an assignment that includes reporting of the outcome based on predetermined opinions and conclusions required by the REIT;
 13. The valuer(s) shall, prior to performing a valuation, acquaint itself with all laws or regulations relevant to such valuation.

Page No.319

Rights and Responsibilities of the Auditor-(Replace with the following)

1. 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.
2. 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.
3. The auditor shall have a right of access at all times to the books of accounts and vouchers pertaining to activities of the REIT.
4. 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 holdco or SPV or any other person in possession of such information.

Issue and Allotment of Units-(Replace with the following)

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,-

	the REIT shall be registered with SEBI under SEBI (Real Estate Investment Trusts) Regulations, 2014
	the value of all the assets owned by REIT is not less than 500 crore rupees; the minimum number of unit holders other than sponsor(s), its related parties and its associates forming part of public shall be not less than two hundred;
	the offer size is not less than 250 crore rupees.

Note:-

The requirement of ownership of assets and size of REIT may be complied at any point of time before allotment of units in accordance with offer document/placement memorandum subject to a binding agreement with the relevant party (ies) that such requirements shall be fulfilled prior to such allotment of units and, a declaration to SEBI and to the designated stock exchanges to that effect and adequate disclosures in this regard in the offer document.

3. For an REIT raising funds through an initial offer, the units proposed to be offered to the public through such initial offer:

(a) shall be not less than twenty five per cent of the total of the outstanding units of the REIT and the units being offered by way of the offer document, if the post issue capital of the REIT calculated at offer price is less than rupees one thousand six hundred crore;

However, the requirement at sub-clause (a) shall be complied along with the requirement under sub-regulation (2) (d) of this Regulation.

(b) shall be of the value of at least Rs 400 crore, if the post issue capital of the REIT calculated at offer price is equal to or more than rupees one thousand six hundred crore and less than rupees four thousand crore;

(c) shall be not less than ten per cent of the total of the outstanding units of the REIT and the units being offered by way of the offer document, if the post issue capital of the REIT calculated at offer price is equal to or more than rupees four thousand crore;

However, any units offered to sponsor or the manager or their related parties or their associates shall not be counted towards units offered to the public.

Further that any listed REIT which has public holding below twenty five per cent on account of sub-clauses (ii) and (iii) above, such REIT shall increase its public holding to at least twenty five per cent, within a period of three years from the date of listing pursuant to initial offer.

4. 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.
5. REIT, through the merchant banker, shall file a draft offer document along with the fee as specified in Schedule II with the designated stock exchange(s) and SEBI, not less than thirty working days before filing the offer document with the designated stock exchange and SEBI.

6. The draft offer document filed with SEBI shall be made public, for comments, by hosting it on the websites of SEBI, designated stock exchanges and merchant bankers associated with the issue for a period of not less than twenty one days.
7. The draft offer document and/ or offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker.
8. 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.
9. 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.
10. In case no observations are issued by SEBI on 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 file the offer document or follow-on offer document with SEBI and the exchange(s).
11. The 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 Schedule II and such filing with SEBI shall be accompanied by filing fees as specified under these regulations.
12. The initial offer or follow-on offer or rights issue shall be made by the REIT within a period of not more than one year from the date of issuance of observations by SEBI. However, if the initial offer or follow-on offer or rights issue is not made within the specified time period, a fresh draft offer document shall be filed.
13. The REIT may invite for subscriptions and allot units to any person, whether resident or foreign. 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.
14. 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.
15. 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.
16. Initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days.
17. 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.
18. 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.
19. The REIT shall issue units only in dematerialized form to all the applicants.
20. 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.
21. The REIT shall refund money to , -

(a) all applicants in case it fails to collect subscription amount of exceeding 90% of the fresh issue size as specified in the offer document;

(b) applicants to the extent of oversubscription in case the moneys received is in excess of the extent of oversubscription as specified in the offer document.

(c) all applicants in case the number of subscribers to the initial offer forming part of the public is less than 200.

Note: - In case of Clause (b), right to retain such over subscription cannot exceed twenty five percent of the issue size. Further, that the offer document shall contain adequate disclosures towards the utilisation of such oversubscription proceeds, if any, and such proceeds retained on account of oversubscription shall not be utilised towards general purposes.

22. 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.
23. 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 holdco and/or 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.
24. The amount for general purposes, as mentioned in objects of the issue in the draft offer document filed with SEBI, shall not exceed Ten per cent of the amount raised by the REIT by issuance of units.
25. 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. SEBI if it deems fit, may extend the period by another one year. Further, the REIT may later re-apply for registration, if it so desires.
26. 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.

Page No.322

Offer Document or Placement Memorandum and Advertisements - (Replace with the following)

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. SEBI has prescribed disclosures to be made in an offer document and placement memorandum respectively. The said disclosures, *inter-alia*, include disclosures for financial information of the InvIT as well as the Investment Manager and the Sponsor.

Page No.323

Listing and Trading of Units - (Replace with the following)

1. 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.
2. 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.
3. In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by the Board, wherever applicable, the units shall not be eligible for listing and the REIT shall be liable to refund the subscription monies, if any, to the respective allottees immediately alongwith interest at the rate of fifteen per cent per annum from the date of allotment.
4. 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.
5. Trading lot for the purpose of trading of units of the REIT shall be one lakh rupees.
6. The REIT shall redeem units only by way of a buy-back or at the time of delisting of units.
7. The units of REIT shall be remain listed on the designated stock exchange unless delisted under these regulation.
8. The minimum public holding for the units of the listed REIT shall in accordance with the sub-regulation (2A) of Issue and Allotment of Units, 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.
9. 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.
10. 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.

Page No.323

Delisting of Units - (Replace with the following)

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

- e. Unitholders apply for such delisting in accordance with these regulations.
 - f. 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.
2. 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.
 3. 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.
 4. 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.
 5. 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.
 6. 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.
 7. 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.

Page No.324

Investment Conditions and Distribution Policy - (Replace with the following)

- The Investment by a REIT shall only be in holdco and/or SPVs or properties or securities or TDR in India and the investment strategy as detailed in the offer document as may be amended in accordance with these regulations.
- 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 and an agreement shall be entered into with such shareholders or partners to that effect prior to investment in the SPV;
 - b) the manager, in consultation with the trustee, shall the majority of the Board of directors or governing board of such SPVs as applicable;
 - c) the manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the REIT is exercised.
- The REIT may invest in properties through holdco subject the following,-
 - a) the ultimate holding interest of the REIT in the underlying SPV(s) is not less than twenty six per cent;

- b) no other shareholder or partner of the holdco or the SPV(s) shall have any rights that prevent the REIT, the holdco or the SPV(s) 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 holdco and/or SPVs;
- c) the manager, in consultation with the Trustee, shall appoints the majority of the Board of directors or governing board of the holdco and/or SPV(s);
- d) the manager shall ensure that in every meeting including annual general meeting of the holdco and/or SPV(s), the voting of the REIT is exercised;
- Not less than 8% of value of the REIT assets shall be invested in completed and rent generating properties subject to the following,-
 - (a) If the investment has been made through a holdco and/or SPV, whether by way of equity or debtor equity linked instruments or partnership interest, only the portion of direct investments in properties by such holdco and/or 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 in assets other than as provided above and such other investment shall only be in,-

(a) Properties, which are:

- under-construction properties which shall be held by the REIT for not less than 3 years after completion;
- 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 3 years after completion;
- completed and not rent generating properties which shall be held by the REIT for not less than 3 years from date of purchase;

(b) Listed or unlisted debt of companies or body corporate in real estate sector. This shall not include any investment made in debt of the holdco and/or SPVs.

(c) Mortgage Backed Securities;

(d) 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;

(e) Government Securities

(f) Unutilized FSI of a project where it has already made investment;

(g) TDR acquired for the purpose of utilization with respect to a project where it has already made investment;

(h) Money Market Instruments or Cash equivalents.;

- The investment conditions as specified at above of this regulation shall be complied at the time of Offer document and thereafter.
- Not less than fifty one percent of the revenues of the REIT, holdco 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 75% 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 holdco and/or 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 a half-yearly basis and at the time of acquisition of an asset. If such conditions are breached, then 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, 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 holdco or SPV, for a period of not less than three years from the date of purchase of such property by the REIT or holdco or SPV.
- For any sale of property, whether by the REIT or holdco or the SPV or for sale of shares or interest in the SPV by the holdco or 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, holdco and/or and the SPV,-

- (a) Not less than 90% 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 LLP Act, 2008;
- (b) with regard to distribution of net distributable cash flows by the holdco to the REIT, subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008, the following shall be complied:
- with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the REIT; and
 - with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the REIT;
- (c) Not less than 90% of net distributable cash flows of the REIT shall be distributed to the unit holders;
- (d) 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 15 days from the date of such declaration;
- (e) If any property is sold by the REIT or holdco or SPV or if the equity shares or interest in the holdco/SPV are sold by the REIT, then -
- (i) If the REIT proposes to reinvest sale proceeds into another property, it shall not be required to distribute any sale proceeds from such sale to the unit holders;
 - (ii) if the REIT proposes not to invest the sales proceeds made into any other property, within a period of 1 year it shall be required to distribute not less than ninety per cent of the sales proceeds in accordance with clauses (a) (b), (c) and (d) of Listing and trading of units;
- (f) If the distributions are not made within 15 days of declaration, then the manager shall be liable to pay interest to the unit holders at the rate of 15% 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.

Page No. 327

RELATED PARTY TRANSACTIONS- (Replace with the following)

- 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 regulations 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 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 one hundred ten percent and ninety percent of the, 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 point, 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,-
 - the total value of all the related party transactions, in a financial year, pertaining to acquisition or sale of properties whether directly or through holdco and/or SPVs, or investments into securities exceeds ten per cent of the value of REIT; or
 - 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 holdco and/or SPVs;

Approval from the unit holders shall be obtained prior to entering into any such subsequent transaction with any related party.
 - c) 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. In case of ready reckoner rate are not available, then 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 regulation 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 regulation 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 regulation 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 such related party (ies) 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.

Page No.329

Borrowings and Deferred Payments - (Replace with the following)

- The aggregate consolidated borrowings and deferred payments of the REIT, holdco and/or the SPV(s) 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, holdco and/or the SPV(s) 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 shall satisfied within six months of such breach.

Page No.329

Valuation of Assets - (Replace with the following)

- 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 atleast 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 45 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 15 days from the receipt of such valuation reports.
- Prior to any issue of units to the public, the valuer shall undertake full valuation of all the REIT assets and include a summary of the report in the offer document. Such valuation report shall not be more than six months old at the time of such offer.

Further, 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 whether directly or through holdco and/or SPVs,-
 - 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 ,-
 - 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;
 - 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. 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. 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.

Page No.331

Rights and Meetings of Unit Holders - (Replace with the following)

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 21 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 case of issue related to manager such as change in manager including removal of the manager or change in control of the manager, then trustee shall convene and handle all activities pertaining to conduct of the meetings.

Further, In case of issues related to 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 120 days from the end of financial year and the time between two meetings shall not exceed 15 months.
4. With respect to the annual meeting of unit holders,-
 - (a) any information which is required to be disclosed to the unit holders and any issue, 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 REIT;
 - approval of auditor and fees of such auditor, as may be required;
 - latest valuation reports;
 - appointment of valuer, as may be required;
 - 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 be more than the votes cast against the resolution.

5. In case of,-

- ⇒ any approval from unit holders required for investment conditions, related party transactions and valuation of assets under these regulation;
- ⇒ any transaction, other than any borrowing, value of which is equal to or greater than 25% of the REIT assets;
- ⇒ any borrowing in excess of specified limit as required under these regulations;
- ⇒ 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);
- ⇒ increasing period for compliance with investment conditions to one year in accordance with these regulations.
- ⇒ 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;
- ⇒ 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 more than 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;
- g) any issue taken up on request of the unit holders including:
 - removal of the manager and appointment of another manager to the REIT;
 - removal of the auditor and appointment of another auditor to the REIT;
 - removal of the valuer and appointment of another valuer to the REIT;
 - delisting of the REIT if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unitholders;
 - any issue which the unit holders have sufficient reason to believe that acts detrimental to the interest of the unit holders;

- 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 one and half 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 under clause (g) of sub-regulation (6),-
 - a. not less than 25% 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. with respect to sub-regulation (6)(g)(vi) , not less than 60% 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,-
 - 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;
 - if such change does not receive the required approval,-
 - a) 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;
 - b) 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;
 - If on account of such sale, the number of unit holders forming part of the public falls below as required under sub-regulation (2A) of Issue and allotment of units two hundred or below the trustee may provide a period of one year to the manager to rectify the same, failing which the manager shall apply for delisting of the units of the REIT in accordance with these regulations.

Page No.333

Disclosures - (Replace with the following)

- 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,-
 - Acquisition or disposal of any properties, value of which exceeds 5% of value of the REIT assets;
 - Additional borrowing, at level of holdco or SPV or the REIT, resulting in such borrowing exceeding 5% of the value of the REIT assets during the year;
 - Additional issue of units by the REIT;
 - Details of any credit rating obtained by the REIT and any change in such rating;
 - Any issue which requires approval of the unit holders;
 - Any legal proceedings which may have significant bearing on the functioning of the REIT;
 - Notices and results of meetings of unit holders;
 - Any instance of non-compliance with these regulations including any breach of limits specified under these regulations;
 - 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.

Regulation 23 prescribes that disclosures shall be made by a REIT as well as the Manager and the Sponsor to the Stock Exchange(s) where its units are listed. This said disclosures, inter-alia, include disclosures for financial as well as non-financial information.

Page No.334

Maintenance of Records - (Replace with the following)

- The manager shall maintain records pertaining to the activity of the REIT including **for a period of not less than seven years,-**
 - decisions of the manager with respect to investments or divestments and documents supporting the same;
 - details of investments made by the REIT and documents supporting the same;
 - agreements entered into by the REIT or on behalf of the REIT;
 - documents relating to appointment of persons as specified in regulation 10(5);
 - insurance policies for real estate assets;

- investment management agreement;
 - 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.;
 - distributions declared and made to the unit holders;
 - disclosures and periodical reporting made to the trustee, SEBI, unit holders and designated stock exchanges including annual reports, half yearly reports, etc.;
 - valuation reports including methodology of valuation;
 - books of accounts and financial statements;
 - audit reports;
 - reports relating to activities of the REIT placed before the Board of Directors of the manager;
 - unit holders' grievances and actions taken thereon including copies of correspondences made with the unit holders and SEBI, if any;
 - any other material documents.
- The trustee shall maintain records pertaining to,-
 - certificate of registration granted by SEBI;
 - registered trust deed;
 - documents pertaining to application made to SEBI for registration as a REIT;
 - titles of the real estate assets, 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.
 - notices and agenda send to unit holders for meetings held;
 - minutes of meetings and resolutions passed therein;
 - periodical reports and disclosures received by the trustee from the manager;
 - disclosures, periodically or otherwise, made to SEBI, unit holders and to the designated stock exchanges;
 - any other material documents.
 - The records specified above, may be maintained in physical or electronic form. Where records are required to be duly signed and are maintained in the electronic form, such records shall be digitally signed.

LESSON 15

INFRASTRUCTURE INVESTMENT TRUSTS

Page No. 340

Definition - (Replace with the following)

"Eligible Infrastructure Project" means an infrastructure project which, prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions,—

- For PPP projects,—
 - a) the Infrastructure Project is a completed and revenue generating project or
 - b) the Infrastructure Project, which has achieved commercial operations date and does not have the track record of revenue from operations for a period of not less than one year, or
 - c) the Infrastructure Project is a pre-COD project;
- In non-PPP projects, the infrastructure project has received all the requisite approvals and certifications for commencing construction of the project.

Follow-On Offer Document – Omitted Page No.341

Page No.341 (New definition inserted)

"General Purposes" include such identified purposes for which no specific amount is allocated or any amount so specified towards general purpose or any such purpose by whatever name called, in the draft offer document filed with SEBI.

However, any issue related expenses shall not be considered as a part of general purpose merely because no specific amount has been allocated for such expenses in the draft offer document filed with SEBI.

"Project Implementation Agreement" or **"Project Management Agreement"** means an agreement between the project manager, the concessionaire SPV and the trustee which sets out obligations of the project manager with respect to execution of the project.

Though, in case of PPP projects, such obligations shall be in addition to the responsibilities as under the concession agreement or any such agreement entered into with the concessioning authority.

"Value Of InvIT Assets" means value of InvIT assets as assessed by the valuer based on value of the infrastructure and other assets owned by the InvIT, whether directly or through holdco and/or SPV.

Page No.341 (Replace with the following)

"SPV" Or "Special Purpose Vehicle" means any company or LLP,—

- in which either the InvIT or the holdco holds or proposes to hold controlling interest and not less than 51% of the equity share capital or interest.

However, in case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other

agreement, this clause shall not apply and shall be apply subject to provisions under proviso to sub-regulation (3) of regulation 12.

- which holds not less than 90% of its assets directly in infrastructure projects and does not invest in other SPVs; and
- which is not engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects;

"Under-Construction Project" means an infrastructure project whether PPP or non-PPP, which has either not achieved commercial operation date as defined under the relevant project agreements including:

- the concession agreement,
- Power Purchase Agreement or
- any other agreement of a similar nature entered into in relation to the operation of a project or
- any agreement entered into with the lenders or has achieved commercial operation date and does not have the track record of revenue from operations for a period of not less than one year;

"InvIT assets" means assets owned by the InvIT, whether directly or through a holdco and/or SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

Page No.342

Registration Of Infrastructure Investment Trusts - (Replace with the following)

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 on behalf of the trust 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.

Page No.343

Eligibility Criteria - (Replace with the following)

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

Without prejudice to the generality of the foregoing provisions, the SEBI shall consider the following, mandatory requirements namely,–

- a) **Applicant:** Applicant must be a sponsor on the behalf of Trust and the Trust deed must be duly registered in India under the provisions of the Registration Act, 1908 containing the main objective as undertaking activity of REIT in accordance with the set Regulations.
- b) **Sponsor:** There are not more than 3 sponsors. Each sponsor must have:-

- Net worth of not less than Rs. 100 Crores if it is a body corporate or a company; or
- Net tangible assets of value not less than Rs 100 crore in case it is a limited liability partnership
- On a collective basis and have not less than 5 years' experience in the real estate industry on an individual basis.
- Sound track record in development of infrastructure or fund management in the infrastructure sector.

Explanation:- For the purpose of this clause, 'sound track record' means experience of at least 5 years and where the sponsor is a developer, at least two projects of the sponsor have been completed;

- c) **Investment Manager** : The Investment Manager has:-
- Net worth of not less than rupees 10 crore if the investment manager is a body corporate or a company or
 - Net tangible assets of value not less than 10 crore rupees in case the investment manager is a limited liability partnership.
 - Not less than 5 years' experience in fund management or advisory services or development in the infrastructure sector.
 - Not less than 2 employees who have at least 5 years' experience each, in fund management or advisory services or development in the infrastructure sector;
 - Not less than one employee who has at least 5 years' experience in the relevant subsector (s) in which the InvIT has invested or proposes to invest.
 - 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;
 - An office in India from where the operations pertaining to the InvIT is proposed to be conducted.
 - Entered into an investment management agreement with the trustee which provides for the responsibilities of the investment manager in accordance with these regulations.
- d) **Trustee**: It should be registered with SEBI under SEBI(Debenture Trustees) Regulations, 1993; not an associate of the sponsor/ manager and 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;
- e) The project manager has been identified and shall be appointed in terms of the project implementation/ management agreement. However, the project implementation agreement/ management agreement shall be submitted along with the draft offer document/ or the placement memorandum.
- f) No unit holder of the InvIT enjoys preferential voting or any other rights over another unit holder;
- g) There shall not be multiple classes of units of InvITs;
- h) The applicant has clearly described at the time of registration, details pertaining to proposed activities of the InvIT;

- i) 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;
- j) Whether any previous application for grant of certificate made by the applicant or any related party has been rejected by the SEBI;
- k) 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.

Page No. 349

Rights and Responsibilities of the Valuer and Auditor (Replace with the following)

- The valuers shall comply with the following conditions at all times,—
 - the valuer shall ensure that the valuation of the InvIT assets is impartial, true and fair in accordance with these regulations.
 - the valuer shall ensure adequate and robust internal controls to ensure the integrity of its valuation reports;
 - the valuer shall ensure that it has sufficient key personnel with adequate experience and qualification to perform valuations;
 - the valuer shall ensure that it has sufficient financial resources to enable it to conduct its business effectively and meet its liabilities;
 - the valuer and any of its employees involved in valuing of the assets of the InvIT, shall not,—
 - a. invest in units of the InvIT or in the assets being valued; and
 - b. 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;
 - 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;
 - the valuer shall act with independence, objectivity and impartiality in performing the valuation;
 - 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;
 - 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;

- the valuer shall before accepting any assignment from any related party of the InvIT, disclose to the InvIT any direct or indirect consideration which the valuer may have in respect of such assignment;
 - 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;
 - the valuer shall not make false, misleading or exaggerated claims in order to secure assignments;
 - the valuer shall not provide misleading valuation, either by providing incorrect information or by withholding relevant information;
 - the valuer shall not accept an assignment which interferes with its ability to do fair valuation;
 - 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,–
 - 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;
 - 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;
 - the auditor shall have a right of access at all times to the books of accounts and vouchers pertaining to activities of the InvIT;
 - 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 holdco or parties to the InvIT or holdco or SPV or any other person in possession of such information.

Page No. 350

Issue of units and allotment (Replace with the following)

- No initial offer of units by an InvIT shall be made unless,–
 - The InvIT is registered with SEBI under these regulations;
 - 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 holdco or SPVs;

- The offer size is not less than rupees two hundred fifty crore.

However, the requirement of ownership of assets under clause (b) and offer size under clause (c) may be complied at any point of time before allotment of units in accordance with offer document/placement memorandum subject, to a binding agreement with the relevant party(ies) that such the requirements shall be fulfilled prior to such allotment and a declaration to SEBI and to the designated stock exchanges to that effect, where applicable and adequate disclosures in this regard in the offer document or placement memorandum.

- The minimum offer and allotment to public through an offer document/placement memorandum shall be,-

- atleast twenty five per cent of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is less than rupees one thousand six hundred crore:

However, this requirement shall be complied along with the requirement under Regulation 14(1) (c) of the InvIT Regulations.

- of the value of atleast Rs 400 crore, if the post issue capital of the InvIT calculated at offer price is equal to or more than rupees one thousand six hundred crore and less than rupees four thousand crore;
- atleast ten per cent of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is equal to or more than rupees four thousand crore.

However, any units offered to sponsor or the investment manager or the project manager or their related parties or their associates shall not be counted towards units offered to the public.

Further that any listed InvIT which has public holding below twenty five per cent on account of sub-clauses (b) and (c) above, such InvIT shall increase its public holding to at least twenty five per cent, within a period of three years from the date of listing pursuant to initial offer.

- If the InvIT, raises funds by way of private placement –

- a. it shall do it 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;

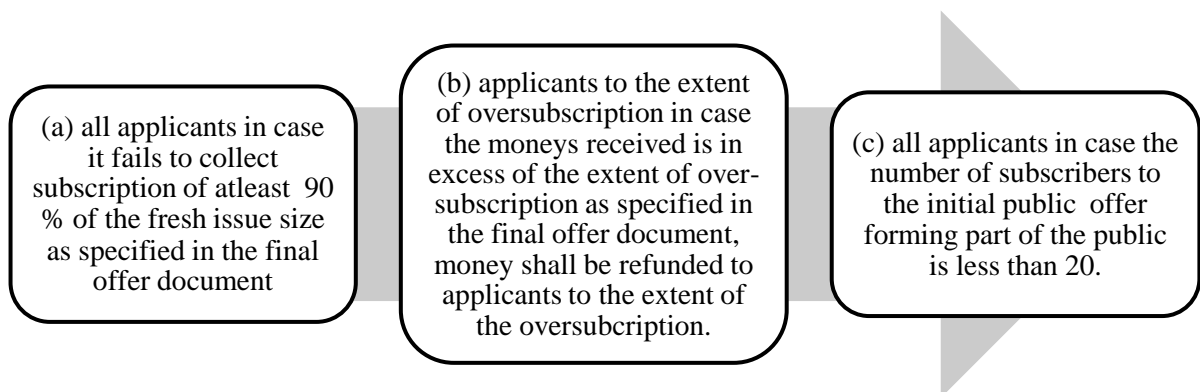
“Apart the above, if such an privately placed InvIT invests or proposes to invest not less than eighty per cent of the value of the InvIT assets, the minimum investment from an investor shall be rupees twenty five crore;”

- d. from not less than five and not more than one thousand investors.
- e. shall file a placement memorandum with SEBI alongwith the specified fee, atleast 5 days prior to opening of the issue.

However, such opening of the issue shall not be at a date later than 3 months from the receipt of in-principle approval for listing, from exchange(s).

- If the InvIT raises funds by public issue InvITs –
 - it shall be by way of initial public offer ;
 - any subsequent issue of units after initial public 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;
 - minimum subscription from any investor in initial and follow-on offer shall be ten lakh rupees ;
 - prior to initial public offer and follow-on offer, the merchant banker shall file the draft offer document along with the fee as specified in Schedule II, with the designated stock exchange(s) and SEBI not less than thirty working days before filing the offer document with the and SEBI;
 - 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 for a period of not less than twenty one days.
 - 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;
 - 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 offer document with the designated stock exchanges;
 - in case no observations are issued 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 file the offer document or follow on offer document with SEBI and the exchange(s);
 - the draft and offer document shall be accompanied by a due diligence certificate signed by the-lead merchant banker;
 - the offer document shall be filed with the designated stock exchanges and SEBI not less than five working days before opening of the offer
 - the InvIT may open the initial public offer or follow-on offer or rights issue within a period of not more than one year from the date of issuance of observations by SEBI. However, if the initial public offer or follow-on offer or rights issue is not made within the prescribed time period, a fresh draft offer document shall be filed.
 - 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.
 - 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;

- initial public offer and follow-on offer shall not be open for subscription for a period of more than thirty days;
- 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.
- 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;
- the InvIT shall issue units in only in dematerialized form to all the applicants;
- 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;
- the InvIT shall refund money,-



Note: - In Clause (b) Further, that the offer document shall contain adequate disclosures towards the utilisation of such oversubscription proceeds, if any, and such proceeds retained on account of oversubscription shall not be utilised towards general purposes.

- 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;
- 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 holdco or 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;
- The amount for general purposes, as mentioned in objects of the issue in the draft offer document filed with SEBI, shall not exceed Ten per cent of the amount raised by the InvIT by issuance of units.

Offer Document or Placement Memorandum and Advertisements (Replace with the following)

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 above sub regulation, the offer document or placement memorandum shall-

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
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The offer document and placement memorandum shall include all information as specified under Schedule III of these regulations.

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,-

- such advertisement material 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 any circulars or guidelines as may be specified by SEBI in this regard.

Listing and Trading of Units (Replace with the following)

- 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.
- In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by the Board, wherever applicable, the units shall not be eligible for listing and the InvIT shall be liable to refund the subscription monies, if any, to the respective allottees immediately alongwith interest at the rate of fifteen per cent per annum from the date of allotment.
- 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 InvIT after listing shall be, in accordance with sub-regulation (1A) of issue of units and allotment 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, its related parties and its associates (s) ,–
 - in case of privately placed InvIT, shall be five, each holding not more than 25% of the units of the InvIT.
 - 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,–
 - its units shall be mandatorily listed on the designated stock exchange(s) within twelve working days from the date of allotment. 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.
 - trading lot for the purpose of trading of units on the designated stock exchange shall be five lakh rupees.

Apart the above, if an InvIT invests not less than eighty per cent of the value of the InvIT assets, the trading lot for the purpose of trading of units on the designated stock exchange of such InvIT shall be rupees two crore.

- With respect to listing of publicly offered units,–
 - Its units shall be mandatorily listed on the designated stock exchange(s) within 12 working days from the date of closure of the initial public offer. This sub-regulation shall not apply if the initial public offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed in these regulations.
 - 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.

Investment Conditions and Dividend Policy (Replace with the following)

- The investment by an InvIT shall only be in holdco and/ or 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 holdco and/ or SPV.
- The InvIT may invest in infrastructure projects through SPVs subject to the following,—
 - a. in case the SPV is a company/LLP, the investment manager, in consultation with the trustee, shall appoint not less than one authorized representative on majority of the board of directors or governing board of such SPVs as applicable;
 - 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 in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.
- The InvIT may invest in infrastructure projects through holdcos subject to the following,-
 - a. the ultimate holding interest of the InvIT in the underlying SPV(s) is not less than twenty six per cent;
 - b. no other shareholder or partner of the holdco or the SPV(s) shall have any rights that prevent the InvIT, the HoldCo or the SPV(s) 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 holdco/SPV;
 - c. the investment manager, in consultation with the Trustee, shall appoint the majority of the Board of directors or governing board of the holdco and SPV(s);
 - d. the investment manager shall ensure that in every meeting including annual general meeting of the Holdco and SPV(s), the voting of the InvIT is exercised;
- In case of InvIT as specified under these regulation, the InvIT shall invest not less than eighty per cent of the value of the InvIT assets in eligible infrastructure projects either directly or through holdcos or through SPVs. However, un-invested funds may be invested in instruments as provided under sub-clause (ii), (iii), (iv) and (v) of clause (b) of sub-regulation 5 of this regulation.
- In case of InvITs as specified above in these regulations,-
 - a) not less than 8% of the value of the InvIT 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 holdco and/ or SPV(s), whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in completed and revenue generating

projects by such holdco and/ or SPV(s) 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 InvIT assets, shall be invested in,—
i. under construction infrastructure projects, whether directly or through holdco and/ or SPVs.

However, investment in such assets shall not exceed ten per cent of the value of the InvIT assets;

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 holdco and/ or SPV(s).

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, 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.

• The investment conditions as specified at sub-regulation (4) and (5) of this regulation and sub-regulation shall be complied at the time of Offer document/placement memorandum and thereafter.

• With respect to distributions made by the InvIT and the holdco and/or SPV,-

a. not less than ninety per cent of net distributable cash flows of the SPV shall be distributed to the InvIT/holdco 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. with regard to distribution of net distributable cash flows by the holdco to the InvIT, the following shall be complied:

(i) with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the InvIT; and

(ii) with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the InvIT.

- d. 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;
- e. subject to sub-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 holdco or SPV or if the equity shares or interest in the holdco/SPV are sold by the InvIT,—
 - a. if the InvIT 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 proposes not to invest the sales proceeds into any other infrastructure asset within a period of one year, 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 unit holders 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 other than the holdco/ SPV(s) in which the InvIT has invested in. 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 holdco and/or 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.

Page No. 359

Related Party Transactions (Replace with the following)

- 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,—
 - 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;
 - 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 InvITs entered into after initial public offer, if,—
 - the total value of all the related party transactions, in a financial year, pertaining to acquisition or sale of assets whether directly or through holdco or through SPV or investments into securities exceeds 5 % of the value of the InvIT; or
 - the value of the funds borrowed from related parties, in a financial year, exceeds 5% of the total consolidated borrowings of the InvIT holdco and the SPV(s), 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.
- With respect to related party transactions with respect to publicly offered InvITs entered into after initial offer, if,—
 - 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
 - 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 such related party (ies) shall be adequately disclosed to the designated stock exchanges.
- 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,—
 - details of the such business including an explanation as to how such business shall compete with the InvIT;
 - a declaration that the related party shall perform its duty in relation to the InvIT independent of its related business;
 - 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.

Page No. 360

Borrowings and Deferred Payments (Replace with the following)

- The aggregate consolidated borrowings and deferred payments of the InvIT holdco and the SPV(s), 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 holdco and the SPV(s), 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 holdco and/or SPVs, for publicly offered InvITs,—
 - o a full valuation of the specific project shall be undertaken by the valuer;
 - o if,—
 - 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;
 - 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 and Meetings of Unit Holders (Replace with the following)

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 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;
 - the voting may also be done by postal ballot or electronic mode;
 - a notice of not less than twenty one days shall be provided to the unit holders;
 - 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;
 - 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.

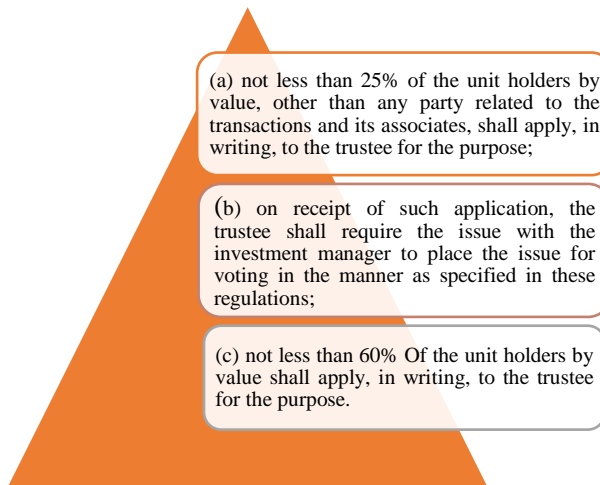
Further that in respect of issues pertaining to the trustee including change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.

3. For an InvITs,-
 - 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;
 - with respect to the annual meeting of unit holders,-
 - 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;
 - 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 be more than the votes cast against the resolution;
4. In case of,-
 - any approval from unit holders required for investment conditions, related party transactions and valuation of assets.

- any transaction, other than any borrowing, value of which is equal to or greater than twenty five per cent of the InvIT assets;
 - any borrowing in excess of specified limit as required above in borrowing and deferred payment regulation;
 - any issue of units after initial public offer by an InvIT, in whatever form, other than any issue of units which may be considered by SEBI under sub-regulation (5);
 - increasing period for compliance with investment conditions to one year in accordance with these regulations.
 - 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;
 - 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 be more than the votes cast against the resolution.
5. In case of,–
- any change in investment manager including removal of the investment manager or change in control of the investment manager;
 - any material change in investment strategy or any change in the management fees of the InvIT.
 - the sponsor(s) or investment manager proposing to seek delisting of units of the InvIT.
 - 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;
 - any issue for which SEBI or the designated stock exchanges requires approval under this sub-regulation;
 - 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 one and a half times the votes cast against the resolution.

However, in case of above clause, 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 under above clauses of sub regulation (5),—



Page No. 364

Disclosures (Replace with the following)

- 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,—
 - Acquisition or disposal of any projects, directly or through holdco or SPV, value of which exceeds 5% of value of the InvIT assets;
 - Additional borrowing, at level of holdco or SPV or the InvIT, exceeding fifteen per cent. of the value of the InvIT assets;
 - Additional issue of units by the InvIT;
 - Details of any credit rating obtained by the InvIT and any change in such rating;
 - Any issue which requires approval of the unit holders;

- Any legal proceedings which may have significant bearing on the functioning of the InvIT;
 - Notices and results of meetings of unit holders,
 - Any instance of non-compliance with these regulations including any breach of limits specified under the regulations;
 - 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, unit holders 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.

As per regulation 23 of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 InvIT shall made disclosures to the Stock Exchange(s) where its units are listed. The said disclosures, inter-alia, include disclosures for financial as well as non-financial information.

Page No. 365

Power to Call For Information (Replace with the following)

SEBI may at any time call for any information from the InvIT or holdco or SPV(s) 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.

Page No. 366

SEBI Right to Inspect (Replace with the following)

SEBI may suo motu or upon receipt of information or complaint appoint one or more persons as inspecting officers to undertake inspection of the books of accounts, records and documents relating to activity of the InvIT or holdco or SPV or parties to the InvIT for any of the following reasons, namely –

- a. to ensure that the books of account, records and documents are being maintained by the InvIT or parties to the InvIT in the manner specified in these regulations;
- b. to inspect into complaints received from unit holders, clients or any other person, on any matter having a bearing on the activities of the InvIT;
- c. to ascertain whether the provisions of the Act and these regulations are being complied with by the InvIT and parties to the InvIT; and
- d. to inspect *suo motu* into the affairs of the InvIT, in the interest of the securities market or in the interest of investors.

LESSON 16

REGULATORY FRAMEWORK GOVERNING STOCK EXCHANGES

Transfer of profits – Omitted Page No. 400

Page No. 400

Insertion -Contribution to the Settlement Guarantee Fund (Inplace of Transfer of Profits)

According to 33 of SECC Regulations, 2012 states that the contribution to the Settlement Guarantee Fund or the Trade Guarantee Fund as specified in regulation 39 of SECC Regulations, 2012 shall be made by the recognised stock exchange, the recognised clearing corporation and the clearing members, in the manner as may be specified by SEBI from time to time.

In case of any shortfall in the Fund, the recognised clearing corporation and the recognised stock exchange shall replenish the Fund to the threshold level as may be specified by SEBI from time to time.

Page No. 401

Insertion after (Investment Policy of Clearing Corporation)

Risk Management Practices

- Clearing corporation shall not accept Fixed Deposit Receipts (FDRs) from trading/clearing members as collateral, which are issued by the trading/ clearing member themselves or banks who are associate of trading/ clearing member.

Explanation - for this purpose, 'associate' shall have the same meaning as defined under Regulation 2 (b) of SECC Regulations 2012.

- Trading/Clearing Members who have deposited their own FDRs or FDRs of associate banks shall replace such collateral, with other eligible collateral as per extant norms, within a period of six months from the date of issuance of the circular.

LESSON 17

SECURITIES AND EXCHANGE BOARD OF INDIA

Page No. 437

Scope of Settlement Proceeding (Replace with the following)

The following proceedings are out of the scope of this regulations, i.e. a specified proceeding cannot be settled, if it involves any of the following defaults:

- (a) defaults involving insider trading and communication of unpublished price sensitive information;
- (b) fraudulent and unfair trade practices including front running, which in the opinion of SEBI are serious and have a market wide impact or have caused substantial losses to or affect the rights of investors in securities, especially retail investors and small shareholders.

Further, the defaults under this clause shall be considered in accordance with these regulations and also the guidelines specified in Schedule-II.

GUIDELINES FOR ARRIVING AT SETTLEMENT TERMS

The following are guidelines issued by SEBI for arriving at settlement terms:-

1. The settlement amount (SA) shall comprise of the Indicative Amount (IA) arrived at in terms of these guidelines and the factors provided in regulation 9, wherever applicable.
2. Except for persons treated as name lenders, the IA shall not be less than Rs. 2 lakh for first time applicants or Rs. 5 lakh for others, as the case may be.

Explanation - A first time applicant is a person who has never obtained a settlement order from the Board as on the date of the present application.
3. Based on the stage at which the proceeding(s), for which the application is made, is/are pending, the proceeding conversion factor (PCF) shall be applied when calculating the IA.
4. In cases, where an existing business or activity of a person is either corporatized or converted into an LLP or partnership or merged or taken over by a new management, the existing record of the erstwhile entity shall be deemed to be the record of the new entity. Considerations such as change of name or management or ownership shall be irrelevant when determining the liability of the said entity.
5. Where an entity desires to obtain the benefit of a lower PCF, in relation to any alleged default it may, *suo motto*, before the receipt of any notice to show cause, intimate the Board of director of such default hereinafter referred to as “intimation defaults” and co-operate with SEBI in the investigation, inquiry, inspection or audit. It may thereafter file a settlement application, upon completion of the investigation, inspection, etc. The application shall be deemed to have been made “Pre- issue of notice to show cause” for the purpose of calculating the PCF.
6. The IA is to be calculated for each applicant. In a case where multiple applicants make a combined application for a default arising from the same cause of action, the IA will be calculated for each applicant, as per the applicable formula except in cases

related to defaults under the Takeover Regulations where the acquirer and persons acting in concert (PAC) may be considered to have joint liability.

7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice to show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA.

In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC) or the Panel of Whole Time Members (WTMs) are of the view that the facts disclose a different default, the same may be taken into account.

8. The alleged defaults shall, wherever applicable, be categorised based on the facts and circumstances as major, minor, serious or miscellaneous, etc., by the IC or HPAC or the Panel of WTMs.
9. Notwithstanding anything contained in these guidelines, the IC or HPAC or Panel of WTMs shall have the discretion to recommend acceptance or rejection or accept or reject an application, to recommend an amount, lower or higher than the amounts arrived at in terms of these guidelines, in accordance with the provisions of securities laws, considering the facts and circumstances of the case and the gravity of the charges.
10. In cases where the formulae for calculating the IA are inapplicable or cannot be adapted due to the nature of the default or the facts and circumstances of the case or where the defaults detailed in the Tables in these guidelines are not covered, the IC or HPAC or Panel of WTMs may arrive at the SA, as they deem fit.

11. It is hereby clarified that—

- (a) the purpose of sub-clause (b) of clause (2) of regulation 5 is not to prohibit the settlements in respect of all kinds of fraudulent and unfair trade practices.
- (b) clause (b) of sub-regulation (2) of regulation 5 disqualifies only the defaults which are 'serious' and —
 - (i) have market wide impact, or
 - (ii) cause substantial losses to investors in securities, or
 - (iii) affect the rights of investors in securities, especially retail investors and small shareholders.
- (c) Thus, in order to fall in disqualification of clause (b), the default must be serious and it must fall in any or all of the categories mentioned in points (i), (ii) and (iii) above.

Notwithstanding the same, where both these criteria are attracted, the application may be considered for settlement, if the applicant has made or intends to make good the losses to the investors in terms of the first proviso to clause (b), provided he undertakes in writing that,—

'for the limited purpose of settling the administrative and civil proceedings I/We admit the charge before the SEBI.'

- (d) While considering its 'seriousness', the default shall be seen in the context of its specific nature and the role played by the applicant. The charges against the

applicant in the show cause notice or the investigation report or the report of the designated authority, as the case may be, may not be the only deciding factor in this regard. The weight and sufficiency of the evidence and the basis of the charge levelled against the applicant or the extent of his co-operation during the investigation /inquiry / inspection, etc., if any may also be taken into account.

- (e) Further, the fact that the case has been referred to the Serious Frauds Investigation Office by the Central Government or the fraudulent and unfair trade practices, directly or indirectly, pose a systemic risk to the functions of any banking or micro-finance institution or a systemically important non-banking financial company or stock exchange or clearing corporation or a depository shall be relevant factors for considering the 'seriousness' of the default.
- (f) Market wide impact shall mean the defaults which have a bearing on the securities market as a whole and not just the listed security and its investors which is under investigation/inquiry/inspection, etc.
- (g) The defaults which affect the right of investors shall refer to the qualitative and quantitative impact on the rights of investors, including the number of complaints received, especially from retail investors and small shareholders. A qualitative impact refers to an indirect impact on the rights of investors, such as reduction in rating of a scrip as a result of the fraudulent and unfair trade practices or an increase in promoter holdings through a fraudulent private placement to related parties in default of minimum public shareholding norms, etc. A quantitative impact refers to the quantifiable losses to investors, to the extent determinable.

12. In case of an amendment(s) or repeal of the securities laws, these guidelines shall continue to apply to similar provisions under the amended or new laws, *mutatis mutandis*.

LESSON 19

LISTING AND DELISTING OF SECURITIES

Page No. 489

Dividend Distribution Policy (Insertion after Regulation 43)

According to regulation 43A provides that the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites.

The dividend distribution policy shall include the following parameters:

- the circumstances under which the shareholders of the listed entities may or may not expect dividend;
- the financial parameters that shall be considered while declaring dividend;
- internal and external factors that shall be considered for declaration of dividend;
- policy as to how the retained earnings shall be utilized; and
- parameters that shall be adopted with regard to various classes of shares:

However, if the listed entity proposes to declare dividend on the basis of parameters in addition to above mentioned clauses or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.

The listed entities excluding top five hundred listed entities, may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.

Page 494 (Insertion after Event Based Compliances)

Consequences of Non-Compliance

To ensure effective enforcement of compliances by listed entity, SEBI has decided in consultation with recognized stock exchanges to freeze the holdings of their promoters and promoter group entities in the manner specified below:

1. Where a non-compliant listed entity fails to pay fine levied as per the notice issued by the concerned recognized stock exchange, the concerned recognized stock exchange shall, upon expiry of the period indicated in the notice issued by it, freeze holdings in other securities in the demat accounts of promoter and promoter group to the extent of liability which shall be calculated on a quarterly basis.
2. In case of non-compliance for two consecutive periods, and failure to comply with the notice issued by the concerned recognized stock exchange, as per the current practice, the concerned recognized stock exchange shall forthwith intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such listed entity. In addition to the freeze of shares in the non-compliant listed entity, the holdings in the demat accounts of promoter and promoter group in other securities

shall also be frozen to the extent of liability which shall be calculated on a quarterly basis.

3. While freezing the holdings, the recognized stock exchange shall have discretion in determining which of the securities and holdings of which promoter or promoter group entity are to be frozen.

The depositories, shall furnish to the exchange upon receipt of request, all such information pertaining to holdings in the demat accounts of promoter and promoter group of such listed entities.

Page No.525

Consequences (Replace with the following)

Where a company has been compulsorily delisted the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

In addition to the restriction imposed above, in order to ensure effective enforcement of exit option to the public shareholders in case of compulsory delisting and taking into account the interests of investors, it is felt necessary to strengthen the regulatory mechanism in this regard. Accordingly, it is hereby directed that in case of such companies whose fair value is positive:-

- such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares and corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters/ promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with regulation 23(3) of the Delisting Regulations, as certified by the concerned recognized stock exchange;
- the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option.

LESSON 20
ISSUE OF SECURITIES

Page No.547

Reservation on Competitive Basis - [Insertion after Point (g)]

However, in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

LESSON 21

REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES-

Page No. 612

Amendment to the SEBI (Merchant Bankers) Regulations, 1992 -(Replace with the following)

Regulation 3 of SEBI (Merchant Bankers) Regulations, 1992 lays down that an application by a person desiring to become merchant banker shall be made to SEBI in the prescribed form (Form A) seeking grant of a certificate of registration alongwith a non-refundable application fee as specified in Schedule II of these Regulations.

Page No. 613

(Replace with the following)

Regulation 8 deals with grant of certificate of registration, where SEBI is satisfied that applicant is eligible, shall grant certificate of registration in Form B and intimate the same information to the applicant. The certificate of registration granted, shall be valid unless it is suspended or cancelled by SEBI.

Page No. 613

(Replace with the following)

Regulation 9A and 10 deals with conditions of registration for registration (granted under regulation 8) and procedure where registration is not granted.

Page No. 613

Regulation 11 - Omitted

Page No. 620

Amendment to the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

(Replace with the following)

Chapter I of the Regulations contains preliminary items and Chapter II consisting of Regulations 3 to 12 dealing with procedure for applying for registration as Registrar to an Issue (RTI) and Share Transfer Agents (STA), either as Category-I to carry on both the activities of RTA and STA or Category-II to carry on the activity either as Registrar to an Issue or as a Share Transfer Agent. The application should be complete and conform to the requirements otherwise it will be rejected. But an opportunity will be given to remove the objections as may be indicated by SEBI. In case of failure the application may be rejected.

Page No. 620

Criteria for Registration (Replace with the following)

In 1st line

Regulation 6 lays down that SEBI shall take into account the following matters while considering the applications for registration.

Regulations 8 to 10 lay down the procedure for registration, renewal of certificate, conditions of registration, period of validity of certificate and the procedure where registration is not granted. It is made clear that the applicant will be given due opportunity of being heard before rejection of his application.

Page No. 620

Regulation 11 - Omitted

Page No. 623

Amendment to the SEBI (Underwriters) Regulations, 1993

(Replace with the following)

Regulations 8 and 9A deal with grant of certificate of registration and conditions of registration.

Regulations 10 deal with the procedure where registration is not granted. Regulation 12 prescribes fees payable and consequences of failure to pay fees.

Page No. 624

Amendment to the SEBI (Bankers to an Issue) Regulations, 1994

(Replace with the following)

Regulations 3 to 5 prescribe that the application by a scheduled bank for grant of certificate of registration as a banker to an issue should be made to SEBI in Form A conforming to the instructions therein failing which, it shall be rejected after giving due opportunity to remove such defects within specified time. SEBI may call for and obtain further information or clarification from the applicant.

Page No. 625

Procedure for Registration (Replace with the following)

Regulations 7 and 8A deals with the grant of certificate of registration and conditions of registration. Regulation 9 relates to the procedure where the registration is not granted, leading to the rejection of the application after giving an opportunity to the applicant to be heard. The applicant has right to appeal for reconsideration and SEBI shall reconsider the application and communicate its decision to the applicant in writing.

Page No. 625

Regulation 10 - Omitted

Page No. 627

Amendment to the SEBI (Debenture Trustees) Regulations, 1993

(Replace with the following)

Chapter II consisting Regulations 3 to 12 deals with the procedure for registration of debenture trustees.

Page No. 628

(Replace with the following)

Regulations 12 deal with non-payment of fees by the applicant. In the absence of a valid certificate the trustee shall cease to act as a debenture trustee.

Page 643

Amendment to the SEBI (Portfolio Managers) Regulations, 1993

Norms for Registration as Portfolio Managers (Replace with the following)

The requirements to be satisfied by the applicant for getting the certificate of registration as mentioned in Regulation 6 are as follows:

- (a) the applicant is a body corporate;
- (b) the applicant has the necessary infrastructure like adequate office space, equipment's and the manpower to effectively discharge the activities of a portfolio manager;
- (c) the principal officer of the applicant has either professional qualifications in finance, law, accountancy or business management from an institution recognised by the Government or a foreign university or an experience of at least 10 years in related activities in the securities market including in a portfolio manager, stock broker or as a fund manager or a CFA charter from the CFA Institute.
- (d) the applicant has in its employment minimum of two persons who, between them, have at least five years' experience as portfolio manager or stock broker or investment manager or in the areas related to fund management;
- (e) any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by SEBI;
- (f) any disciplinary action has been taken by SEBI against a person directly or indirectly connected with the applicant under the Act or the Rules or the Regulations made thereunder.
- (g) the applicant fulfils the capital adequacy requirements;
- (h) the applicant, its director, principal officer or the employee as specified in Clause (d) is involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;
- (i) the applicant, its director, principal officer or the employee as specified in Clause (d) has at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;
- (j) the applicant is a fit and proper person;
- (k) grant of certificate to the applicant is in the interests of investors.

Page No. 643

Renewal of Certificate (Regulation 9)- Omitted

Page No. 645

Conditions of Registration (Replace with the following)

Any registration granted under these regulations shall be subject to the following conditions, namely:

- (a) where the portfolio manager proposes to change its status or constitution, it shall obtain prior approval of SEBI for continuing to act as such after the change;
- (b) it shall pay the fees for registration, in the manner provided in these regulations;
- (c) it shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep SEBI informed about the number, nature and other particulars of the complaints received;
- (d) it shall maintain capital adequacy requirements specified in these regulation at all times during the period of the certificate;
- (e) it shall abide by the regulations made under the Act in respect of the activities carried on by it as portfolio manager.

Page No. 645

Period of Validity of Certificate (Replace with the following)

The certificate of registration granted under regulation 8 shall be valid unless it is suspended or cancelled by SEBI.

Amendment to the SEBI (Research Analysts) Regulations, 2014

Page No. 675

Grant of Certificate of Registration (Replace with the following)

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 till it is suspended or cancelled by SEBI.

Page No. 676

Renewal of Certificate (Replace with the following)

Regulation 11 provides that the research analyst who has already been granted certificate of registration by SEBI, prior to the commencement of the SEBI (Research Analysts) (Amendment) Regulations, 2016 shall be deemed to have been granted a certificate of registration, subject to payment of fee, as prescribed in Schedule II of these regulations.

Amendment to the SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011

Page No. 684

Grant of Certificate of Registration (Replace with the following)

SEBI on being satisfied that the applicant is eligible, shall send intimation to that effect to the applicant, for the grant of certificate of registration, and grant a certificate in the Form as specified by SEBI. The KRA which has already been granted certificate of registration by SEBI, prior to the commencement of the SEBI (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2016 shall be deemed to have been granted a certificate of registration, in terms of these regulation. The certificate of registration granted shall be valid unless it is suspended or cancelled by SEBI. The grant of certificate of registration shall be subject to the payment of such fees and in such manner as specified in these regulations. The KRA shall immediately intimate SEBI, details of changes that have taken place in the information that was submitted, while seeking registration.

Page No. 684

Grant of Certificate of Permanent Registration – Omitted

LESSON 24
INVESTOR PROTECTION

Page No.746

Investor Education and Protection Fund (Replace with the following)

Investor Education and Protection Fund (IEPF) has been established under Section 125 of the Companies Act, 2013, for promotion of investors' awareness and protection of the interests of investors. The Ministry of Corporate Affairs (MCA) vide its notification dated 13th January, 2016 notified the provisions of section 125 of the Companies Act, 2013. The Ministry of Corporate Affairs (MCA) vide Notification dated 5 September, 2016 has also notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer & Refund) Rules 2016, which are effective from 7 September, 2016.

SECTION 125 OF THE COMPANIES ACT, 2013

Section 125 of the Companies Act, 2013 read with Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 provides the provisions for establishment of a Fund which is called the Investor Education and Protection Fund.

Amount to be credited

As per section 125(2) of the Act, the following amount is required to be credited to the Fund (IEPF):-

- a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;
- e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- f) the interest or other income received out of investments made from the Fund;
- g) the amount received under sub-section (4) of section 38;
- h) the application money received by companies for allotment of any securities and due for refund;
- i) matured deposits with companies other than banking companies;
- j) matured debentures with companies;
- k) interest accrued on the amounts referred to in clauses (h) to (j);

- l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- n) such other amount as may be prescribed.

As per Rule 3(2) of IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 provides the following additional amounts to be credited in the Fund:-

- a) all amounts payable as mentioned in clause (a) to (n) of sub-section (2) of section 125 of the Act;
- b) all shares in accordance with sub-section (6) of section 124 of the Act;
- c) all the resultant benefits arising out of shares held by the Authority under clause (b);
- d) all grants, fees and charges received by the Authority under these rules;
- e) all sums received by the Authority from such other sources as may be decided upon by the Central Government;
- f) all income earned by the Authority in any year;
- g) all amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 10B of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; and
- h) all other sums of money collected by the Authority as envisaged in the Act.

Utilisation of Fund

As per section 125(3) of the Act, the following amount shall be utilised for —

- a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- b) promotion of investors' education, awareness and protection;
- c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed:

However, the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C of the Companies Act, 1956 transferred to IEPF, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

Explanation — The disgorged amount refers to the amount received through disgorgement or disposal of securities.

Any person can claim the amount specified in section 125(2), he shall apply to the authority constituted by Central Government by making an application in Form IEPF 5 online available on website www.iepf.gov.in along with fee, as decided by the Authority from time to time in consultation with the Central Government, under his own signature.

The Central Government by notification, shall constitute an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint. The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with IEPF Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.

The accounts of the Fund shall be audited by the Comptroller and Auditor- General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.
