

EXECUTIVE PROGRAMME

UPDATES FOR CAPITAL MARKETS AND SECURITIES LAWS

(Relevant for students appearing in December, 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 December 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 June, 2017, applicable for December, 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

SUPPLEMENT FOR CAPITAL MARKETS AND SECURITIES LAWS**TABLE OF CONTENT**

NOTIFICATIONS AND CIRCULARS ISSUED DURING (January 2017 - June, 2017)			
Sl. No.	Topic	Page No.	Reference Lesson No. of Study Material
	PART A- Capital Markets		
1.	Capital Market Instruments	1	Lesson 2
2.	Credit Rating & IPO Grading	2	Lesson 3
3.	Debt Market	5	Lesson 5
4.	Mutual Funds	15	Lesson 7
5.	Alternative Investment Fund	17	Lesson 8
6.	Foreign Portfolio Investors	19	Lesson 12
7.	Real Estate Investment Trusts	23	Lesson 14
8.	Infrastructure Investment Trusts	49	Lesson 15
	PART B- Securities Laws		
9.	Regulatory Framework Governing Stock Exchanges	75	Lesson 16
10.	Securities and Exchange Board of India	78	Lesson 17
11.	Depositories	80	Lesson 18
12.	Listing and Delisting of Securities	82	Lesson 19
13.	Issue of Securities	89	Lesson 20
14.	Regulatory Framework relating to Securities Market Intermediaries	94	Lesson 21
15.	Takeover Code – An Overview	103	Lesson 23
16.	Investor Protection	104	Lesson 24

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 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 credit rating agency who 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 regulations. The grant of certificate of registration should be subject to the payment of the specified registration fee in the manner prescribed.

Conditions of Certificate (Replace with the following)

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)

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.

Page No. 56

Insertion after Agreement with the Client

SEBI advised the CRAs to refrain from giving Indicative Ratings without having a written agreement in place. In case such Indicative Ratings are provided by the CRA, it shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

Page No. 57

Insertion after Procedure for Review of Rating

Dissemination of information on ratings through press releases

In order to enable CRAs to disseminate information on ratings promptly through press releases as per requirements of Monitoring of Ratings and Procedure for Review of Rating under SEBI (CRA) Regulations, following is clarified:

I. Initial Rating:

Scenario	Timelines – immediately but not later than
Acceptance of Rating/ Appeal for Review of Rating by the Issuer	5 working days of communication of rating by the CRA to the Issuer
Disclosure of rating as non-accepted Rating	In case rating is not accepted by the Issuer within a month of communication of rating by the CRA to the Issuer, the same shall be disclosed as Non-Accepted Rating on the CRA's website
Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee	2 working days of acceptance of Rating by the Issuer

II. Periodic Surveillance:

Dissemination of Press Release immediately but not later than 5 working days of Rating Committee Meeting on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee.

III. Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee in case of event based review:

Scenario	Timelines – immediately but not later than
Intimation from Issuer/ Debenture Trustee/ Bankers of the Issuer regarding delay in servicing debt obligation	2 working days of intimation
Material Events requiring review (as stated in point 1B)	7 working days of occurrence of the event

Page No. 57

Disclosure of Rating Definitions (Replace with the following)

Credit rating agency should make public the definitions of the concerned rating, along with the symbol and state that the ratings do not constitute recommendations to buy, hold or sell any securities. It should also make available to the general public information relating to the rationale of the ratings, which shall cover an analysis of the various factors justifying a favourable assessment, as well as factors constituting a risk.

It is further clarified by SEBI that if the issuer does not share information sought by the CRA within 7 days of seeking such information from the Issuer, even after repeated reminders (within these 7 days) from the CRA, the CRA shall take appropriate rating action depending upon the severity of information risk of the issuer.

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, interest/redemption payments shall be made only on the days when the money market is functioning in Mumbai.

Page No. 118

Conditions for Private Placement (Insertion after 3rd point)

As per 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.

Page No. 123

Insertion after SEBI (Issue and Listing of Debt Securities) Regulations, 2008

GREEN DEBT SECURITIES

SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“SEBI ILDS Regulations”), governs public issue of debt securities and listing of debt securities issued through public issue or on private placement basis, on a recognized stock exchange. For public issue and listing of Green Debt Securities and listing of privately placed Green Debt Securities, in addition to the requirements as prescribed under SEBI ILDS Regulations and Circulars made thereunder, following shall also be applicable.

Meaning of Green Debt Securities

A Debt Security shall be considered as “**Green or Green Debt Securities**”, if the funds raised through issuance of the debt securities are to be utilised for project(s) and/or asset(s) falling under any of the following broad categories:

- a) Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology etc.;
- b) Clean transportation including mass/public transportation etc.;
- c) Sustainable water management including clean and/or drinking water, water recycling etc.;
- d) Climate change adaptation;
- e) Energy efficiency including efficient and green buildings etc.;
- f) Sustainable waste management including recycling, waste to energy, efficient disposal of wastage etc.;
- g) Sustainable land use including sustainable forestry and agriculture, afforestation etc.;
- h) Biodiversity conservation;
- i) Any other category as may be specified by SEBI, from time to time.

Disclosures in Offer Document/Disclosure Document and other requirements

The issuer of a Green Debt Securities shall make following disclosures:

- a) A statement on environmental objectives of the issue of Green Debt Securities;
- b) Brief details of decision-making process issuer has followed/would follow for determining the eligibility of project(s) and/or asset(s), for which the proceeds are been raised through issuance of Green Debt Securities. An indicative guideline of the details to be provided is as under:
 - process followed/to be followed for determining how the project(s) and/or asset(s) fit within the eligible green projects categories;

- the criteria, making the project(s) and/or asset(s) eligible for using the Green Debt Securities proceeds; and
 - environmental sustainability objectives of the proposed green investment.
- c) Issuer shall provide the details of the system/procedures to be employed for tracking the deployment of the proceeds of the issue.
- d) Details of the project(s) and/or asset(s) or areas where the issuer, proposes to utilise the proceeds of the issue of Green Debt Securities, including towards refinancing of existing green project(s) and/or asset(s), if any.
- e) The issuer may appoint an independent third party reviewer/certifier, for reviewing /certifying the processes including project evaluation and selection criteria, project categories eligible for financing by Green Debt Securities, etc. Such appointment is optional and shall be disclosed in the offer document.

Continuous Disclosure

An issuer who has listed its Green Debt Securities, alongwith compliances as under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, shall provide following disclosures along with its annual report and financial results:

- a) Details of utilisation of the proceeds and unutilized proceeds of the issue, as disclosed in offer document/disclosure document. These details shall be provide along with the half yearly and annual financial results.

However, the utilisation of the proceeds shall be verified by the report of an external auditor, to verify the internal tracking method and the allocation of funds towards the project(s) and/or asset(s), from the proceeds of Green Debt Securities.

- b) Other additional disclosures have to be provided along with annual report:

- List of project(s) and/or asset(s) to which proceeds of the Green Debt Securities have been allocated/invested including a brief description of such project(s) and/or asset(s) and the amounts disbursed.

However, where confidentiality agreements limit the amount of details that can be made available about specific project(s) and/or asset(s), information shall be presented about the areas in which such project(s) and/or asset(s) fall into.

- Qualitative performance indicators and, where feasible, quantitative performance measures of the environmental impact of the project(s) and/or asset(s). If the quantitative benefits/impact cannot be ascertained, then the said fact may be appropriately disclosed along with the reasons for non-ascertainment of the benefits/impact on the environment.
- Methods and the key underlying assumptions used in preparation of the performance indicators and metrics;

Obligations of the issuer

An issuer of Green Debt Securities shall:

- Maintain a decision-making process which it uses to determine the continuing eligibility of the project(s) and/or asset(s). This includes, without limitation a statement on the environmental objectives of the Green Debt Securities and a process to determine whether the project(s) and/or asset(s) meet the eligibility requirements.

- Ensure that all project(s) and/or asset(s) funded by the proceeds of Green Debt Securities, meet the documented objectives of Green Debt Securities.
- Utilise the proceeds only for the stated purpose, as disclosed in the offer document.

An issuer of Green Debt Securities or any agent appointed by the issuer, if follows any globally accepted standard(s) for the issuance of Green Debt Securities including measurement of the environmental impact, identification of the project(s) and/or asset(s), utilisation of proceeds, etc., shall disclose the same in the offer document/disclosure document and/or in continuous disclosures.

Page No. 129

General conditions (Replace with the following)

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

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

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

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

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

(c) municipality shall have surplus income as per its Income and Expenditure Statement, in any of the immediately preceding three financial years or any other financial criteria as may be specified by SEBI from time to time. However, a corporate municipal entity shall not have negative net worth in any of immediately preceding three financial years.

(d) municipality shall not have defaulted in repayment of debt securities or loans obtained from banks or financial institutions, during the last three hundred and sixty five days. However, where the issuer is a corporate municipal entity, the requirements at clauses (b) and (d) shall be complied by the municipality which is being financed.

Page No. 132

Insertion after Conditions for listing of debt securities issued on private placement basis

Submission of accounts for Private Placement

Any issuer proposing to issue debt securities on private placement basis under SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015, in the FY 2017-18, shall submit the following documents:

- a) Audited accounts for the financial years 2013-14, 2014-15 and 2015-16 in the information memorandum to the stock exchanges.

- b) For the immediately preceding FY i.e. FY 2016-17, the issuers shall submit the half yearly financial statements, as available (audited or unaudited) as on September 2016.

Although, the audited accounts for 2016-17 would have to be submitted within one year from the end of March 31, 2018 to stock exchanges where the debt securities have been listed. Such audited accounts would have to be displayed on the website of the recognised stock exchanges and the issuer. In addition, the issuers would be required to provide, on request, a copy (physical or electronic) of such audited accounts to its investors.

Page No. 133

Insertion after Continuous listing conditions

SEBI issued disclosures norms under regulation 23 of SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015 ('ILDM Regulation'). All the issuers making public issues of debt securities or seeking listing of debt securities issued on private placement basis, shall comply with conditions of listing including continuous disclosure and other requirements specified by SEBI. The said disclosures, *inter-alia*, include disclosures for financial as well as non-financial information.

The following are disclosures norms:

1. Disclosure of financial information

While disclosing its financial information to the Stock Exchanges, an issuer of debt securities under SEBI ILDM Regulations shall comply with the following:

a) Frequency and time period for disclosures

- The issuer shall prepare and submit un-audited financial results on a half yearly basis to the stock exchange and debenture trustee, wherever applicable, as soon as the same is available but not later than three months from the end of the half year.
- The issuer shall prepare and submit the annual audited financial results with the stock exchange and debenture trustee, wherever applicable, as soon as the same is available but not later than six months from the end of the financial year. The audited financial results shall be accompanied by the annual report of the issuer.

b) Comparative information:

- The annual financial information shall contain comparative information for the immediately preceding financial year.
- The comparative information would consist of corresponding amounts (comparative figures) for all the items shown in the key financial statements, including notes.

c) Key financial statements:

The key financial statements shall include the following:

- Balance Sheet;
- Income and Expenditure Statement;

- Statement of Cash flows (a summary of an enterprise's cash flow over a given period of time);
- Receipts and Payments Account (detailed as per the account heads);
- Notes to Accounts; and
- Financial Performance Indicators.

d) Annual report:

The annual report shall include the following:

- Key Financial statements;
- Report of the Auditor;
- Municipal commissioner's Report on the Annual Financial Statements and the qualifications and comments made in the Report of the Auditor; and
- Standing Committee's Action Taken Report on the qualifications and comments made in the Report of the Auditor and the Report of the Municipal commissioner.

e) Approval and authentication of financial information:

Before submission of the financial information to the Stock Exchanges, the financial information shall be taken on record by Standing Committee or General Body or Board of Directors or Board of Trustee, as applicable or equivalent.

f) Audit of Financial Information:

The annual financial information shall be audited, by the auditor appointed by the issuer as per the SEBI ILDM Regulations.

2. Other Continuous Disclosures to Stock Exchange(s) and Other Compliances

a) Listing Agreement

- An issuer shall enter into a simplified listing agreement, with all the Stock Exchanges where it proposes to list debts securities.
- However, with respect to the compliance with the listing conditions, an issuer shall follow the SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015 and circulars issued therein.

b) Intimation to/ Approval from Stock Exchange(s)

i) Intention to raise funds:

The issuer shall intimate the stock exchange(s), its intention to raise funds through debt securities or it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities:

Provided that the above intimation may be given prior to the meeting of the Standing Committee/General Body wherein the proposal to raise funds through new debt securities shall be considered.

ii) Disclosure of Material and Price sensitive information:

The issuer shall first disclose to stock exchange(s) of all events or information having bearing on the performance/operation of the listed entity, material or price sensitive information or any action that shall affect payment of interest or redemption of debt securities issued under SEBI ILDM Regulations as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.

iii) Timely payment of interests or principal obligations or both:

The issuer shall submit a certificate to the stock exchange within five working days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the debt securities issued under SEBI ILDM Regulations.

iv) Approval from the stock exchange(s) for any material modification:

The issuer shall not make material modification such as the structure of the debt security in terms of coupon, redemption, or otherwise, without prior approval of the stock exchange(s) where the debt securities issued under SEBI ILDM Regulations are listed, to :

Provided that an application for approval from the stock exchange(s) shall be made only after approval of the designated committee/competent authorities and with the approval of the consent of requisite majority of holders of that class of securities.

v) Record Date:

The issuer shall fix a record date for purposes of payment of interest to the holder of debts securities and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange. The issuer shall also give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognized stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

3. Other conditions:

a) Documents and information to holders of debt securities:

The listed entity shall send the following documents and information to holders of debt securities issued under SEBI ILDM Regulations:

- Soft copies of full annual reports to all the holders of the debt securities who have registered their email address (es) for the purpose;
- Hard copies of full annual reports to those holders of debt securities, who request for the same.

b) Credit Rating:

Every credit rating, wherever required to be obtained by an issuer as per Regulation 5(2) (c) and 15(1) (g) of the SEBI ILDM Regulations, shall be reviewed at least once a year, by the registered credit rating agency.

c) Grievance Redressal Mechanism:

- An issuer of debt securities under SEBI ILDM Regulations shall ensure that adequate steps are taken for expeditious redressal of investor complaints.
- An issuer of debt securities under SEBI ILDM Regulations shall ensure that it is registered on the SCORES platform or such other electronic platform or system of SEBI as shall be mandated from time to time, in order to handle investor complaints electronically in the manner specified by SEBI.
- An issuer of debt securities under SEBI ILDM Regulations shall file with the recognized stock exchange(s), where its securities are listed, on half yearly basis, within thirty working days from the end of each half year a statement giving the following details:
 - 1) Number of investor complaints pending at the beginning of the half year
 - 2) Number of investor complaints received during the half year
 - 3) Number of investor complaints disposed of during the half year
 - 4) Number of investor complaints pending at the end of the half year

d) The standing Committee or General Body or Board of Directors or Board of Trustee, as applicable shall review the aforementioned statement, before submission of the same to the Stock Exchange(s), and shall ensure that all investor complaints are redressed by the issuer in timely manner.

(e) Periodic disclosures to be made on half yearly basis in terms of para 2 of Schedule V of SEBI ILDM Regulations shall be submitted within 30 working days from the end of the half year.

4. Appointment of compliance officer:

An issuer shall appoint a compliance officer who shall be responsible for:

- i. ensuring conformity with the regulatory provisions applicable to the issuer in letter and spirit.
- ii. co-ordination with and reporting to SEBI, recognized stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- iii. ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the issuer under these regulations.
- iv. monitoring email of grievance redressal division as designated by the issuer for the purpose of registering complaints by investors.

The issuer who has listed its debt securities under the SEBI ILDM regulations shall forward to the stock exchange any other information in the manner and format as specified by SEBI from time to time.

Page No. 144

Insertion after Compliances under SEBI (listing obligations and disclosure requirements) Regulations, 2015

Listing of NCRPS/ NCDs through a Scheme of Arrangement

Listing of Non-Convertible Redeemable Preference Shares (NCRPS) / Non-Convertible Debentures (NCDs) through a Scheme of Arrangement which established the obligations with respect to Scheme of Arrangement on Listed Entities and Stock Exchange(s) in regulation 11, 37 and 94 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In cases where NCRPS/NCDs are issued, in lieu of specified securities, vide a scheme of arrangement and where such NCRPS/NCDs are proposed to be listed on recognized stock exchanges, the listed entity shall additionally comply with the requirements of the new norms as specified below :

1. Eligibility for seeking listing of NCRPS/ NCDs

A listed entity which has listed its specified securities may seek listing of NCRPS/NCDs issued pursuant to a scheme of arrangement only in case where the listed entity is a part of such scheme of arrangement and such NCRPS/NCDs are issued to the holders of specified securities of such listed entity. Such conditions may broadly include the following:

- a) A listed entity, which has listed its specified securities, (demerged entity) demerges a unit and transfers the same to another entity (resultant entity), and the resultant entity issues NCRPS/NCDs to the holders of the specified securities of listed entity (i.e. demerged entity) as a consideration under the scheme of arrangement.
- b) A listed entity, which has listed its specified securities, (amalgamating entity) is merged with another entity (amalgamated entity), and the amalgamated entity issues NCRPS/NCDs to the holders of the specified securities of listed entity (i.e. amalgamating entity) as a consideration under the scheme of arrangement.

However, if the same series of securities are also allotted to other investors (other than the allotment done to the holders of listed specified securities as per the scheme of arrangement) then such securities would not be eligible for listing.

2. Tenure/ Maturity

The minimum tenure of the NCRPS/NCDs shall be one year.

3. Credit Rating

The NCRPS/NCDs have been assigned minimum such credit rating, if any, specified for public issue of NCRPS under SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 or for public issue of NCDs in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008, as the case may be by a credit rating agency registered with SEBI.

4. Valuation Report

Valuation of the underlying NCRPS/ NCDs issued pursuant to the scheme of arrangement shall be included in the valuation report.

5. Disclosures in the Scheme of Arrangement

Various documents including face value and price, terms of payment of dividends coupon including frequency, credit rating, maturity, details about terms of redemption, amount,

date, early redemption scenarios, other embedded features (put option, call option, dates, notification times, etc), other terms of instruments (i.e. term sheet) and any other information/details pertinent for the investors that need to be disclosed in Draft Scheme of Arrangement.

6. Other Conditions which would be required to be followed are as under

The issue of NCRPS/NCDs shall be in compliance with all the applicable provisions of the Companies Act, 2013 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 including the provisions related to creation and maintenance of Capital Redemption Reserve/Debenture Redemption Reserve, appointment of Debenture Trustee and create an appropriate charge or security. All such NCRPS/NCDs shall be issued in dematerialised form only.

7. Additional conditions to be complied after the Scheme is sanctioned by the Hon'ble High Court / NCLT and at the time of making application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

The application for relaxation under Sub-rule (7) of rule 19 of SCRR for listing of NCRPS/ NCDs shall include a detailed compliance report, duly certified by the Company Secretary and the Managing Director.

LESSON 7

MUTUAL FUNDS

Page No. 188

Insertion after Investment Valuation Norms

Instant Access Facility and Use of e-wallet for investment in Mutual Funds

SEBI issued guidelines on Instant Access Facility and Use of e-wallet for investment in Mutual Funds (MFs). Instant Access Facility (IAF) simplifies the credit of redemption proceeds in the bank account of the investor on the same day of redemption request. E-Wallet is an electronic device that allows an individual to make electronic transactions.

Guidelines about Instant Access Facility (IAF) in Mutual Funds

Mutual Funds (MFs)/Asset Management Companies (AMCs) may offer IAF subject to the following conditions:-

- It shall be allowed through online mode to resident individual investors only.
- The applicable Net Asset Value (NAV) shall be in case:
 - (a) where the IAF application is received up to 3.00 pm, then NAV of previous calendar day and NAV of calendar day on which application is received, whichever is lower;
 - (b) where the IAF application is received after 3.00 pm, then NAV of calendar day on which such application is received and NAV of the next calendar day, whichever is lower.
- MFs/AMCs can offer instant access facility of up to Rs 50,000 or 90% of folio value, whichever is lower, to resident individual investors in liquid schemes. This limit shall be applicable per day per scheme per investor.
- Liquidity has to be provided out of the available funds from the scheme and AMCs to put in place a mechanism to meet the liquidity/redemption demands.
- Appropriate disclosures in the scheme related documents about IAF and ensure that no mis-selling is done on the pretext of instant availability of funds to the investors.
- Appropriate disclosures shall be made to the investors stating the situations under which IAF may be suspended and that IAF request would be processed as a normal redemption request in such circumstances.
- Currently, any scheme providing this facility would reduce the limit to Rs 50,000, immediately and other than liquid schemes providing this facility would completely stop this facility within one month from the date of circular.

Guidelines about Use of e-wallet for investment in Mutual Funds

In order to promote digital payments in the MF industry and channelize household savings into the capital market. MFs/ AMCs can accept investment by an investor through e-wallets (Prepaid Payment Instruments (PPIs)) subject to the following:

- MFs/ AMCs shall ensure that extant regulations such as cut-off timings, time stamping, etc., are complied with for investment in MFs using e-wallets.
- MFs/ AMCs shall enter into an agreement / arrangement with issuers of PPIs for facilitating payment from e-wallets to MF schemes.
- Redemption proceeds should be made only to the bank account of the investor/ unit holder.
- MFs/ AMCs shall ensure that total subscription through e-wallets for an investor is restricted to INR 50,000/- per MF per financial year. Further, in partial modification by SEBI, the limit of INR 50,000/- would be an umbrella limit for investments by an investor through both e-wallet and/or cash, per MF per financial year.
- MFs/ AMCs shall ensure that e-wallet issuers shall not offer any incentives such as cashback, vouchers, etc., directly or indirectly for investing in MF schemes.
- MFs/ AMCs shall ensure that only amounts loaded into e-wallet through cash or debit card or net banking, can be used for subscription to MF schemes.
- MFs/ AMCs shall ensure that amount loaded into e-wallet through credit card, cash back, promotional scheme etc. should not be allowed for subscription to MF schemes.
- MFs/ AMCs shall also comply with the requirement of no third party payment norm for investment made using e-wallets.

LESSON 8

ALTERNATIVE INVESTMENT FUND

Page No. 205

Categories of AIF (Replace with the following)

SEBI has classified AIF into the following three broad categories:

Category I: - Fund that invest in start-up or early stage ventures or social ventures or Small Medium Enterprises (SMEs) or infrastructure or other sectors which the government or regulators consider as socially or economically desirable which include VCF, SME Funds, Social Venture Funds (SVF), Infra Funds and such other AIFs as may be specified in the AIF Regulations.

Category II: - Funds that do not fall in Category I and III AIF and those that do not undertake leverage or borrowing other than to meet the permitted day to day operational requirement including Private Equity Funds or Debt Funds.

Category III: - Funds that employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives, for e.g. Hedge Funds.

SEBI has allowed the **Category-III Alternative Investment Funds (AIFs)** to participate in the commodity derivatives market.

Page No. 206

Investment in Angel Funds (Replace with the following)

Angel funds shall only raise funds by way of issue of units to angel investors. An angel fund shall have a corpus of at least ten crore rupees. Angel funds shall accept, up to a maximum period of three years, an investment of not less than twenty five lakh rupees from an angel investor. An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time.

Investment by Angel Funds (Replace with the following)

Angel funds shall invest in venture capital undertakings which:

(a) complies with the criteria regarding the age of the venture capital undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force;

(b) have a turnover of less than twenty five crore rupees;

(c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds three hundred crore rupees; and

Explanation I: For the purpose of this clause, “industrial group” shall include a group of body corporates with the same promoter(s)/promoter group, a parent company and its subsidiaries, a group of body corporates in which the same person/ group of persons exercise control, and a group of body corporates comprised of associates/subsidiaries/holding companies.

Explanation II: For the purpose of this clause, “group turnover” shall mean combined total revenue of the industrial group.

(d) are not companies with family connection with any of the angel investors who are investing in the company.

(e) Investment by an angel fund in any venture capital undertaking shall not be less than twenty five lakh rupees and shall not exceed five crore rupees.

(f) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one years.

(g) Angel funds shall not invest in associates.

(h) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

(i) An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time.

Page No. 208

Schemes (Replace with the following)

The angel fund may launch schemes subject to filing of a scheme memorandum at least ten working days prior to launch of the scheme with SEBI. Such scheme memorandum shall contain all material information about the investments proposed under such scheme. No scheme of the angel fund shall have more than two hundred angel investors.

LESSON 12

FOREIGN PORTFOLIO INVESTORS

Page No. 284

DEFINITIONS (Replace with the following)

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

Page No. 289

Investment Restrictions (Replace with the following)

- A foreign portfolio investor shall invest only in the following securities, namely-
 - Shares, debentures and warrants of companies, listed or to be listed on a recognized stock exchange in India through primary and secondary markets;
 - Units of schemes floated by domestic mutual funds, whether listed on a recognized stock exchange or not;
 - Units of schemes floated by a collective investment scheme;
 - Derivatives traded on a recognized stock exchange;
 - Treasury bills and dated government securities;
 - Commercial papers issued by an Indian company;
 - Rupee denominated credit enhanced bonds;
 - Security receipts issued by asset reconstruction companies;
 - Perpetual debt instruments and debt capital instruments, as specified by the Reserve Bank of India from time to time;
 - Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant External Commercial Borrowings (ECB) guidelines;
 - Non-convertible debentures or bonds issued by Non-Banking Financial Companies categorized as 'Infrastructure Finance Companies'(IFCs) by the Reserve Bank of India;
 - Rupee denominated bonds or units issued by infrastructure debt funds;
 - Indian depository receipts;
 - Unlisted non-convertible debentures/bonds issued by an Indian company subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time;
 - Securitised debt instruments, including,-
 - (i) any certificate or instrument issued by a special purpose vehicle set up for securitization of asset/s with banks, financial institutions or non-banking financial institutions as originators; and

(ii) any certificate or instrument issued and listed in terms of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008;

- Such other instruments specified by SEBI from time to time.
- Where a foreign institutional investor(FII) or a sub account, prior to commencement of these regulations, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to shares held by a foreign direct investor placed in similar position, under the policy of the Government of India relating to foreign direct investment for the time being in force.
- In respect of investments in the secondary market, the following additional conditions shall apply:
 - a) A foreign portfolio investor shall transact in the securities in India only on the basis of taking and giving delivery of securities purchased or sold;
 - b) Clause (a) shall not apply to, in case of :
 - Any transactions in derivatives on a recognized stock exchange;
 - Short selling transactions in accordance with the framework specified by SEBI;
 - Any transaction in securities pursuant to an agreement entered into with the merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - Any other transaction specified by SEBI.
 - c) No transaction on the stock exchange shall be carried forward;
 - d) The transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by SEBI.
 - e) Clause (d) shall not apply to, in case of :
 - transactions in Government securities and such other securities falling under the purview of the RBI.
 - sale of securities in response to a letter of offer sent by an acquirer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - sale of securities in response to an offer made by any promoter or acquirer in accordance with SEBI (Delisting of Equity shares) Regulations, 2009;
 - sale of securities, in accordance with SEBI (Buy-back of securities) Regulations, 1998;
 - divestment of securities in response to an offer by Indian Companies in accordance with Operative Guidelines for Disinvestment of Shares by Indian Companies in the overseas market through issue of ADR or GDR as notified by the Government of India and directions issued by RBI from time to time;
 - any bid for, or acquisition of, securities in response to an offer for disinvestment of shares made by the Central Government or any State Government;

- any transaction in securities pursuant to an agreement entered into with merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - Transactions by Category I and II foreign portfolio investors, in corporate bonds, as may be specified by SEBI;
 - transactions on the electronic book provider platform of recognized stock exchanges;
 - any other transaction specified by SEBI.
- f) A foreign portfolio investor shall hold, deliver or cause to be delivered securities only in dematerialized form. However, any shares held in non-dematerialized form, before the commencement of these regulations, can be held in non-dematerialized form, if such shares cannot be dematerialized.
- In respect of investments in the debt securities, the foreign portfolio investors shall also comply with terms, conditions or directions, specified or issued by SEBI or RBI, from time to time, in addition to other conditions specified in these regulations.
 - Unless otherwise approved by SEBI, securities shall be registered in the name of the foreign portfolio investor as a beneficial owner for the purposes of the Depositories Act, 1996.
 - The purchase of equity shares of each company by a single foreign portfolio investor or an investor group shall be below ten percent of the total issued capital of the company.
 - The investment by the foreign portfolio investor shall also be subject to such other conditions and restrictions as may be specified by the Government of India from time to time.
 - In cases where the Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.
 - A foreign portfolio investor may lend or borrow securities in accordance with the framework specified by SEBI in this regard.

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. Such offshore derivative instruments shall not be issued to or transferred to persons who are resident Indians or non-resident Indians and to entities that are beneficially owned by resident Indians or non-resident Indians.

- Unregulated broad based funds which are classified as Category II FPIs by virtue of their investment manager being appropriately regulated shall not deal in ODIs.
- Category III FPIs also cannot deal in ODIs.
- FPIs shall ensure that further issue or transfer of any ODIs issued by or on behalf of it is made only to persons who are regulated by an appropriate foreign regulatory authority.
- Foreign portfolio investors shall fully disclose to SEBI any information concerning the terms of and parties to off-shore derivative instruments such as participatory notes, equity linked notes or any other such instruments, by whatever names they are called, entered into by it relating to any securities listed or proposed to be listed in any stock exchange in India.
- Outstanding ODIs shall be deemed to have been issued under the corresponding provision of the FPI Regulations.

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 from 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 Special Economic Zone;

“*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.

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 the regulations.

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

Eligibility Criteria (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 from 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.

Rights and Responsibilities of Trustee (Replace with the following)

Regulation 9 prescribed the rights and responsibilities of a Trustee of a REIT. These are discuss 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 regulation.
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 regulation.
 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). These are the followings:-

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 regulation.
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

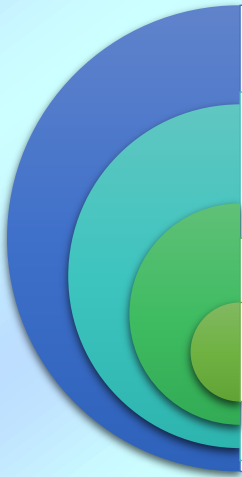
Rights and Responsibilities of the Auditor (Replace with the following)

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.

Page No. 320

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 shall be 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 shall be 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). 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) 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 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 over-subscription 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 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.

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 SEBI, 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.

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.

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 under this sub-regulation,

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 under this sub-regulation;
- 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 prescribed 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. With reference to the aforesaid Regulations, the requirements for disclosure of financial information and pertinent compliances on continuous basis are placed at 'Annexure - A', and the requirements for disclosure of non-financial information and pertinent compliances on continuous basis are placed at 'Annexure - B'.

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

DEFINITIONS (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

DEFINITIONS (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,–

- 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.
- Sponsor:** Each sponsor shall be clearly identified in the application of registration to SEBI and in the offer document/ placement memorandum, as applicable. 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(Debt 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 superior voting or any other rights over another unit holder and there shall not be multiple classes of units of InvITs. Notwithstanding 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;

- g) The applicant has clearly described at the time of registration, details pertaining to proposed activities of the InvIT;
- h) 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;
- i) Whether any previous application for grant of certificate made by the applicant or any related party has been rejected by the SEBI;
- j) 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. 344

Rights and Responsibilities of Trustee (Replace with the following)

- The trustee shall hold the InvIT assets in the name of the InvIT for the benefit of the unit holders in accordance with the trust deed and these regulations.
- The trustee shall enter into an investment management agreement with the investment manager on behalf of the InvIT.
- The trustee shall oversee activities of the investment manager in the interest of the unit holders, ensure that the investment manager shall comply its rights and responsibilities with these regulation and shall obtain compliance certificate from the investment manager, in the form as may be specified, on a quarterly basis.
- The trustee shall oversee activities of the project manager with respect to compliance with these regulations and the project implementation agreement/project management agreement and shall obtain compliance certificate from the Project manager, in the form as may be specified, on a quarterly basis.
- The trustee shall ensure that the investment manager complies with reporting and disclosures requirements in accordance with these regulations and in case of any delay or discrepancy, require the investment manager to rectify the same on an urgent basis.
- The trustee shall review the transactions carried out between the investment manager and its associates and where the investment manager has advised that there may be a conflict of interest, shall obtain confirmation from a practising chartered accountant or valuer, as applicable that such transaction is on arm's length basis.
- The trustee shall periodically review the status of unit holders' complaints and their redressal undertaken by the investment manager.
- The trustee shall make distributions and ensure that investment manager makes timely declaration of distributions to the unit holders in accordance with Investment conditions and dividend policy as specified in these regulation.
- The trustee may require the investment manager to set up such systems and procedures and submit such reports to the trustees, as may be necessary for effective monitoring of the functioning of the InvIT.
- The trustee shall ensure that subscription amount is kept in a separate bank account in name of the InvIT and is only utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.
- The trustee shall ensure that the remuneration of the valuer is not be linked to or based on the value of the assets being valued.

- The trustee shall ensure that the investment manager convenes meetings of the unit holders in accordance with these regulations and oversee the voting by unit holders.
- The trustee shall ensure that the investment manager convenes meetings of unit holders not less than once every year and the period between such meetings shall not exceed fifteen months.
- The trustee may take up with SEBI or with the designated stock exchange, as may be applicable, any matter which has been approved in any meeting of unit holders, if the matter requires such action.
- In case of any change in investment manager due to removal or otherwise,—
 - prior to such change, the trustee shall obtain approval from unitholders in accordance with these regulations and from SEBI;
 - the trustee shall appoint the new investment manager within three months from the date of termination of the earlier investment management agreement;
 - the previous investment manager shall continue to act as such at the discretion of trustee till such time as new investment manager is appointed;
 - the trustee shall ensure that the new investment manager shall stand substituted as a party in all the documents to which the earlier investment manager was a party;
 - the trustee shall ensure that the earlier investment manager continues to be liable for all its acts of omissions and commissions notwithstanding such termination.
- In case of any change in the project manager due to removal or otherwise,—
 - the trustee shall appoint the new project manager within three months from the date of termination of the earlier project implementation agreement/project management agreement;
 - the trustee may, either *suo motu* or based on the advice of the concessioning authority appoint an administrator in connection with a infrastructure project(s) for such term and on such conditions as it deems fit;
 - the previous project manager shall continue to act as such at the discretion of trustee till such time as new project manager is appointed;
 - all costs and expenses in this regard will be borne by the new project manager;
 - the trustee shall ensure that the new project manager shall stand substituted as a party in all the documents to which the earlier project manager was a party;
 - the trustee shall ensure that the earlier project manager continues to be liable for all its acts of omissions and commissions for the period during which it served as the project manager, notwithstanding such termination.
- The trustee shall obtain prior approval from the unit holders under these regulations and from SEBI, in case of change in control of the investment manager.
- In case of change in control of the project manager in a PPP project, the trustee shall ensure that written consent of the concessioning authority is obtained in terms of the concession agreement prior to such change.
- The trustee of the InvIT shall not invest in units of the InvIT in which it is designated as the trustee.
- The trustee shall ensure that the activity of the InvIT is being operated in accordance with the provisions of the trust deed, these regulations and the offer document or placement

memorandum and if any discrepancy is noticed, shall inform the same to SEBI immediately in writing.

- The trustee shall provide to SEBI and to the designated stock exchanges, where applicable, such information as may be sought by SEBI or by the designated stock exchanges pertaining to the activity of the InvIT.
- The trustee shall immediately inform SEBI in case any act which is detrimental to the interest of the unit holders is noted.

Page No. 346

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

The investment manager:-

- Shall make the investment decisions with respect to the underlying assets or projects of the InvIT including any further investment or divestment of the assets.
- Shall oversee activities of the project manager with respect to compliance with these regulations and the project implementation agreement/project management agreement and shall obtain compliance certificate from the project manager, in the form as may be specified, on a quarterly basis.
- Shall ensure that the infrastructure assets of the InvIT or holdco or SPV have proper legal titles, if applicable, and that all the material contracts entered into on behalf of InvIT or SPV are legal, valid, binding and enforceable by and on behalf of the InvIT or SPV.
- Shall ensure that the investments made by the InvIT are in accordance with the investment conditions specified in regulation 18 and in accordance with the investment strategy of the InvIT.
- Shall in consultation with trustee, appoint the valuer(s), auditor, registrar and transfer agent, merchant banker, custodian and any other intermediary or service provider or agent as may be applicable with respect to activities pertaining to the InvIT in a timely manner and in accordance with these regulations.
- Shall appoint an auditor for a period of not more than five consecutive years. However, the auditor, not being an individual, may be reappointed for a period of another five consecutive years, subject to approval of unit-holders in the annual meeting in accordance with these regulations.
- Shall arrange for adequate insurance coverage for the assets of the InvIT. However, this clause shall not apply in case the assets are required to be insured by any other person under any agreement including a concession agreement or under any Act or regulations or circulars or guidelines of any concessioning authority or government or local body.
Further that in case of assets held by holdco or SPV, the investment manager shall ensure that assets held by the holdco or SPV are adequately insured.
- Shall ensure that it has adequate infrastructure and sufficient key personnel with adequate experience and qualification to undertake management of the InvIT at all times.
- And the merchant banker(s) shall responsible for all activities pertaining to issue of units and listing of units of the InvIT including,—
 - filing of placement memorandum with SEBI;

- filing of the offer document with SEBI and the exchanges within the prescribed time period;
 - dealing with all matters up to allotment of units to the unit holders;
 - obtaining in-principle approval and final listing and trading approvals from the designated stock exchanges;
 - dealing with all matters relating to issue and listing of the units of the InvIT as specified under these regulations and any guidelines as may be issued by SEBI in this regard.
- And the merchant bankers(s) shall ensure that disclosures made in the offer document or placement memorandum contains material, true, correct and adequate disclosures and are in accordance with these regulations and guidelines or circulars issued hereunder.
 - Shall declare distributions to the unit holders in accordance with these regulations.
 - Shall review the transactions carried out between the project manager and its associates and where the project manager has advised that there may be a conflict of interest, shall obtain confirmation from the practicing chartered accountant or the valuer, as applicable that such transaction is on arm's length basis.
 - Shall ensure adequate and timely redressal of all unit holders' grievances pertaining to activities of the InvIT.
 - Shall ensure that the disclosures or reporting to the unit holders, SEBI, trustees and designated stock exchanges, are in accordance with these regulations and guidelines or circulars issued hereunder.
 - Shall provide to SEBI and to the designated stock exchanges, where applicable, any such information as may be sought by SEBI or the designated stock exchanges pertaining to the activities of the InvIT.
 - Shall ensure that the valuation of the InvIT assets is done by the valuer(s) in accordance with these regulations.
 - Shall submit to the trustee :-
 - quarterly reports on the activities of the InvIT including receipts for all funds received by it and for all payments made, position on compliance with these regulations, specifically compliance with investment conditions, related parties transactions and borrowing and deferred payments, performance report, status of development of under-construction projects, within thirty days of end of such quarter;
 - valuation reports as required under these regulations within fifteen days of the receipt of the valuation report from the valuer;
 - decision to acquire or sell or develop or bid for any asset or project or expand existing completed assets or projects along with rationale for the same;
 - details of any action which requires approval from the unit holders as maybe required under the regulations;

- details of any other material fact including change in its directors, change in its shareholding, any legal proceedings that may have a significant bearing on the activity of the InvIT, within seven working days of such action.
- In case the investment manager fails to timely submit to the trustee information or reports as specified above, the trustee shall intimate the same to SEBI and SEBI may take action, as it deems fit.
- Shall coordinate with trustee, as may be necessary, with respect to operations of the InvIT.
- Shall ensure that computation and declaration of NAV of the InvIT based on the valuation done by the valuer shall be disclosed to the stock exchange(s) not later than fifteen days from the date of valuation.
- Shall ensure that the audit of accounts of the InvIT by the auditor is done not less once in a year and such report is submitted to the stock exchange(s) within forty five days of end of financial year ending March 31st.
- Shall appoint a custodian in order to provide such custodial services as may be authorised by the trustees.
- Shall place before its board of directors in case of company or the governing board in case of an LLP a report on activity and performance of the InvIT at least once every quarter within thirty days of end of every quarter.
- Shall designate an employee or director as the compliance officer for monitoring of compliance with these regulations and guidelines or circulars issued hereunder and intimating SEBI in case of any non-compliance.
- Shall convene meetings of the unit holders and maintain records pertaining to the meetings in accordance in accordance with these regulations
- Shall ensure that all activities of the intermediaries or agents or service providers appointed by the investment manager are in accordance with these regulations and guidelines or circulars issued hereunder.

Page No. 346

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

- The sponsor(s) shall set up the InvIT and appoint the trustees of the InvIT.
- The sponsor(s) shall transfer or undertake to transfer to the InvIT, its entire shareholding or interest in the holdco and/ or SPV or ownership of the infrastructure projects, subject to a binding agreement and adequate disclosures in the offer document or placement memorandum, prior to allotment of units of the InvIT.

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

- With respect to holding of units in the InvIT, the sponsor(s) together shall hold not less than fifteen per cent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units, subject to the following:

- (i) Sponsor(s) would be responsible for all acts, omissions and representations/covenants of the InvIT related to formation of InvIT, sale/ transfer of assets/holdco/SPV to the InvIT.
- (ii) The InvIT/the trustee of the InvIT shall also have recourse against the Sponsor for any breach in this regard.
- (iii) Project Manager of the InvIT shall be the sponsor or an associate of the sponsor and shall continue to act in such capacity for a period of minimum three years from the date of listing of InvIT units unless suitable replacement is appointed by the unitholders through the Trustee:

However, the condition as specified at sub clause (iii) above shall not be applicable where the sponsor(s) together hold not less than twenty five per cent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units.

However, in case of PPP projects where the InvIT is investing in infrastructure assets through SPV(s), in case such acquiring or holding is disallowed by government or under any provisions of the concession agreement or any other such agreement,—

- the sponsor may continue to maintain such holding at the SPV level;
 - the consolidated value of all such holdings at the SPV level and the value of the units of InvIT held by the sponsor shall not be less than the value of fifteen per cent of the total units of the InvIT after initial issue of units on a post-issue basis;
 - such units of the InvIT and shares or interest in the SPV shall be held for a period of not less than three years from the date of the listing of units of the InvIT;
 - in case such holding of sponsor in the SPV results in the InvIT not having controlling interest and not having more than fifty one per cent shareholding or interest in the SPV, the sponsor shall enter into a binding agreement with the InvIT to ensure that decisions taken by the sponsor including voting with respect to the SPV are in compliance with these regulations and not against the interest of the InvITs or the unit holders and shall be subject to further guidelines as may be specified by SEBI.
- Any holding by sponsor in InvIT, exceeding fifteen per cent on a post issue basis, shall be held for a period of not less than one year from the date of listing of such units.

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,–

- at least 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 at least 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 fee as specified in Schedule II, 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,-

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

(b) applicants to the extent of oversubscription in case the moneys received is in excess of the extent of over-subscription as specified in the final offer document, money shall be refunded to applicants to the extent of the oversubscription.

(c) all applicants in case the number of subscribers to the initial public offer forming part of the public is less than 20.

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.

Page No. 354

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

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.

Page No. 355

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 SEBI, 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) ,-
 - o in case of privately placed InvIT, shall be five, each holding not more than 25% of the units of the InvIT.
 - o 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.

Page No. 357

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 the 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,—
 - a full valuation of the specific project shall be undertaken by the valuer;
 - 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.

Page No. 361

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.

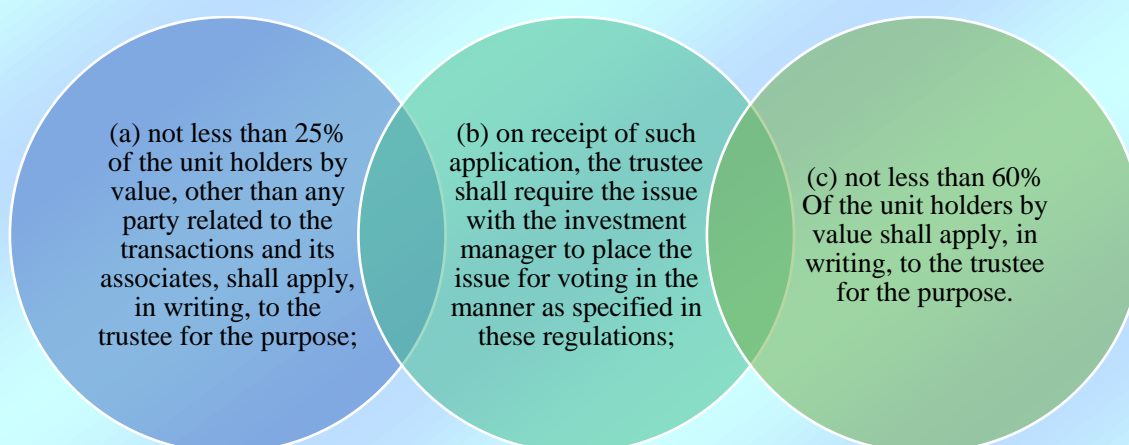
5. In case of,—

- 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 extend 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.

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

Page No. 397

DEFINITIONS (Replace with the following)

“**Commodity derivatives exchange**” means a recognized stock exchange which assists, regulates or controls the business of buying, selling or dealing in commodity derivatives and option in securities with the prior approval of SEBI.

“**National commodity derivatives exchange**” means a commodity derivatives exchange that is demutualized, has an electronic trading platform and is permitted to assist, regulate or control the business of buying, selling or dealing in commodity derivatives and option in securities with the prior approval of SEBI.

Page No. 398

Ownership of Stock Exchanges (Replace with the following)

Shareholder	Equity share holding limit
Equity Share Capital to be held by Public	Atleast 51% of paid up equity capital
Individual resident in India [either directly or indirectly and either individually or with person acting in concert (PAC)]	Not more than 5%
Further • Stock exchange • Depository • Banking company • Insurance company • Public financial Institution (acquire or hold either directly or indirectly and either individually or with PAC)	up to 15% of the paid up equity capital
An Individual resident outside India (either directly or indirectly and either individually or with PAC) shall acquire or hold	Not more than 5% of the paid up equity capital
However, - (i) a foreign stock exchange; (ii) a foreign depository; (iii) a foreign banking company; (iv) an foreign insurance company; and (v) a foreign commodity derivatives exchange, (may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert)	Upto 15 per cent of the paid up equity share

	capital of a recognised stock exchange.
All the residents outside India taken together	Not more than 49% of total paid up equity capital
No Clearing Corporation shall hold any right, stake or interest in any recognized Stock Exchange.	
Any person who directly or indirectly and either individually or with PAC acquires 2% or more in equity capital would require to apply for approval of SEBI within 15 days of such acquisition. If the approval is not granted the shares so acquired shall be forthwith divested. Shareholders of existing recognized Exchange holding more than 2% equity may apply for approval within 90 days of commencement of these Regulations.	
Stock exchange, Depository, Banking company, Insurance company, Public financial Institution allowed to hold upto 15% equity capital, cannot acquire either directly or indirectly and either individually or with PAC any holding over and above 5% without the prior approval from SEBI.	
Every shareholder of the recognized Stock Exchange is required to be a Fit & Proper person.	

Transfer of profits – Omitted

Page No. 400

Insertion - Contribution to the Settlement Guarantee Fund (In place 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.

Disclosure by Clearing Corporation

In order to improve transparency in disclosing the regulatory orders and arbitration matters as issued by Clearing Corporation, the clearing corporations shall post all the past regulatory orders as well as arbitration and appellate awards (i.e., issued since June 20, 2012) on their websites within 30 days, while fresh orders should be uploaded immediately.

The Clearing Corporation shall disseminate information with respect to brief profile, qualification, areas of experience / expertise, number of arbitration matters handled, pre-arbitration experience, etc. of the arbitrators on their website and the status of the implementation of the norm in the monthly development report shall be communicate to SEBI.

LESSON 17

SECURITIES AND EXCHANGE BOARD OF INDIA

Page No. 437

Scope of Settlement Proceeding (Replace with the following)

Regulation 5 deals with the scope settlement proceedings. It provides that an application for settlement of any specified proceeding shall not be considered, if:

(a) the alleged default was committed within a period of 24 calendar months from the date of the last settlement order where the applicant was a party.

(b) An earlier application with regard to the same alleged default has been rejected;

However, such an application may be considered in exceptional circumstances, such as the lapse of time since the commission of the alleged default, the weight of evidence against the applicant, etc and subject to the payment of such additional fees and/or interest on the settlement amount from the date of rejection of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee.

(c) the applicant has been party to two settlement orders during the period of thirty six calendar months, prior to the date of applications;

(d) the audit or investigation, if any, in respect of any alleged default, is not complete.

Page No. 438

Settlement Terms (Replace with the following)

Regulation 8 provides for the terms of settlement in monetary as well as non-monetary terms or both. The nonmonetary terms may include appropriate directions, such as:

(a) Voluntary suspension of certificate of registration or closure of business for a specified period;

(b) Removal from management;

(c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant;

(d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by SEBI, for specified periods;

(e) Cancellation of securities and reduction in shareholding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and reimbursement of any dividends received, etc;

(f) Voluntary lock-in of securities;

(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures;

(h) Direction to provide enhanced training and education to employees of intermediaries;

(i) Directions relating to internal audit and reporting requirements;

(j) Any other directions that may be issued by SEBI under the securities laws in the interest of the investors.

The amount of settlement will be credited in the Consolidated Fund of India. The application fee, the additional processing fee accompanying the application for condonation of delay and the legal cost will be included in the general fund of SEBI. The ill-gotten profits made (if any) will be credited in SEBI's Investor Protection and Education Fund.

LESSON 18

DEPOSITORIES

Page No. 450

Insertion after Register of Beneficial Owner

Recording of Non Disposal Undertaking (NDU) in the Depository System

SEBI has allowed depositories to offer a system for recording of non-disposal undertaking (NDU). In this direction, the depositories are advised the following:

- Depositories shall develop a separate module/ transaction type in their system for recording NDUs.
- Both parties to the NDU shall have a demat account with the same depository and be KYC compliant.
- Pursuant to entering the NDU, the Beneficial Owner (BO) along with the other party shall make an application through the participant (where the BO holds his securities) to the depository, for the purpose of recording the NDU transaction.
- The application shall necessarily include details of BO ID, PAN, email-id, signature(s), name of the entity in whose favour such NDU is entered and the quantity of securities. Such entity in whose favour NDU is entered shall also authorize the participant of the BO holding the shares, to access the signatures as recorded in that entity's demat account.
- The participant after being satisfied that the securities are available for NDU shall record the NDU and freeze for debit the requisite quantity of securities under NDU in the depository system. .
- The depositories shall make suitable provisions for capturing the details of BO ID and PAN of the entity in whose favour such NDU is entered by the participant. The depositories shall also make available to the said participant, the details of authorized signatories as recorded in the demat account of the entity in whose favour such NDU is entered.
- On creation of freeze in the depository system, the depository/ participant of the BO holding shares, shall inform both parties of the NDU regarding creation of freeze under NDU.
- The depositories shall make suitable provisions for capturing the details of company/ promoters if they are part of the NDU.
- In case if the participant does not create the NDU, it shall intimate the same to the parties of the NDU along with the reasons thereof.
- Once the freeze for debits is created under the NDU for a particular quantity of shares, the depository shall not facilitate or effect any transfer, pledge, hypothecation, lending, rematerialisation or in any manner alienate or otherwise allow dealing in the shares held under NDU till receipt of instructions from both parties for the cancellation of NDU.
- The entry of NDU made as per para 5.5 above may be cancelled by the depository/ participant of the BO through unfreeze of specified quantity if parties to the NDU jointly make such application to the depository through the participant of the BO.

- On unfreeze of shares upon termination/ cancellation of NDU, the depository shall inform both parties of the NDU in the form and manner agreed upon at the time of creating the freeze. The unfreeze shall be effected in the depository system after a cooling period of 2 clear business days but no later than 4 clear business days.

The freeze and unfreeze instructions executed by the Participant for recording NDUs will be subject to 100% concurrent audit. The DPs shall not facilitate or be a party to any NDU outside the depository system as outlined herein.

Page No. 451

Insertion after Depositories to Indemnify Loss in Certain Cases

Framework of Capacity Planning for the Depositories

SEBI has issued Capacity Planning Framework for the Depositories which prescribes mandatory requirements for depositories while planning capacities for their operations as discussed below:

- The installed capacity shall be at least 1.5 times of the projected peak load.
- The projected peak load shall be calculated for the next 60 days based on the per hour peak load trend of the past 180 days.
- The Depositories shall ensure that the utilisation of resources in such a manner so as to achieve work completion in 70% of the allocated time.
- All systems pertaining to Depository operations shall be considered in this process including all technical components such as network, hardware, software, etc., and shall be adequately sized to meet the capacity requirements.
- In case the actual capacity utilisation exceeds 75% of the installed capacity for a period of 15 days on a rolling basis, immediate action shall be taken to enhance the capacity.
- The actual capacity utilisation shall be monitored especially during the period of the day in which pay-in and pay-out of securities takes place for meeting settlement obligations.

Depositories shall implement suitable mechanisms, including generation of appropriate alerts, to monitor capacity utilisation on a real-time basis and shall proactively address issues pertaining to their capacity needs.

LESSON 19

LISTING AND DELISTING OF SECURITIES

Page No. 477

(Insertion before table)

Integrated Report

According to Regulation 4(1) (d) of SEBI LODR states "the listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors". In this regard, the International Integrated Reporting Council ('IIRC') has prescribed Guiding Principles which support the preparation of an integrated report.

In order to improve disclosure standards, the listed entities are advised to adhere to the following:

- a. Integrated Reporting may be adopted on a voluntary basis from the financial year 2017-18 by top 500 companies which are required to prepare BRR.
- b. The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion & Analysis or by preparing a separate report (annual report prepared as per IR framework).
- c. In case the company has already provided the relevant information in any other report prepared in accordance with national/international requirement / framework, it may provide appropriate reference to the same in its Integrated Report so as to avoid duplication of information.
- d. As a green initiative, the companies may host the Integrated Report on their website and provide appropriate reference to the same in their Annual Report.

REQUIREMENTS BEFORE THE SCHEME OF ARRANGEMENT IS SUBMITTED FOR SANCTION BY THE NATIONAL COMPANY LAW TRIBUNAL (NCLT)

According to Regulation 37 of SEBI (LODR), 2015 provides that the listed entities desirous of undertaking scheme of arrangement or involved in a scheme of arrangement shall file the draft scheme with Stock Exchange(s) for obtaining Observation Letter or No- objection Letter, before filing such scheme with any court or Tribunal.

A. REQUIREMENTS TO BE FULFILLED BY LISTED ENTITY

1. **Designated Stock Exchange:** Listed entities shall choose one of the Stock Exchanges having nationwide trading terminals as the designated Stock Exchange for the purpose of coordinating with SEBI.

2. Submission of Documents

The Listed entity shall submit the following documents to the Stock Exchanges:-

- (a) Draft Scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital, etc.

(b) Valuation Report;

(c) Report from the Audit Committee recommending the Draft Scheme, taking into consideration, *inter alia*, the Valuation Report. The Valuation Report is required to be placed before the Audit Committee of the listed entity;

(d) Fairness opinion by a SEBI Registered merchant banker on valuation of assets / shares done by the valuer for the listed entity and unlisted entity;

(e) Pre and post amalgamation shareholding pattern of unlisted entity;

(f) Audited financials of last 3 years (financials not being more than 6 months old) of unlisted entity;

(g) Auditor's Certificate;

(h) Detailed Compliance Report as per the format specified by SEBI duly certified by the Company Secretary, Chief Financial Officer and the Managing Director, confirming compliance with various regulatory requirements specified for schemes of arrangement and all accounting standards.

3. Conditions for schemes of arrangement involving unlisted entities

In case of schemes of arrangement between listed and unlisted entities, the following conditions shall be satisfied:

(a) The listed entity shall include the applicable information pertaining to the unlisted entity/ies involved in the scheme in the format specified for abridged prospectus as provided in Part D of Schedule VIII of the ICDR Regulations, in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders while seeking approval of the scheme.

The accuracy and adequacy of such disclosures shall be certified by a SEBI Registered Merchant Banker after following the due diligence process. Such disclosures shall also be submitted to the Stock Exchanges for uploading on their websites.

(b) The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the "merged" company shall not be less than 25%.

(c) Unlisted entities can be merged with a listed entity only if the listed entity is listed on a Stock Exchange having nationwide trading terminals.

4. Valuation Report: All listed entities are required to submit a valuation report from an Independent Chartered Accountant. However, Valuation Report is not required in cases where there is no change in the shareholding pattern of the listed entity/resultant company.

'Change in the Shareholding Pattern' means:

(i) change in the proportion of shareholding of any of the existing shareholders of the listed entity in the resultant company; or

(ii) new shareholder being allotted equity shares of the resultant company; or

(iii) existing shareholder exiting the company pursuant to the Scheme of Arrangement

'Resultant Company' means a company arising / remaining after the listed entity undertakes a Scheme of Arrangement.

5. Auditor's certificate: An auditor's certificate shall be filed to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting

Standards specified by the Central Government under Section 133 of the Companies Act, 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable, and other generally accepted accounting principles.

However, in case of companies where the respective sectoral regulatory authorities have prescribed norms for accounting treatment of items in the financial statements contained in the scheme, the requirements of the regulatory authorities shall prevail.

Explanation – For this purpose, mere disclosure of deviations in accounting treatments as prescribed in the aforementioned Accounting Standards and other generally accepted Accounting Principles shall not be deemed as compliance with the above.

6. Redressal of Complaints: The Listed entity shall submit to Stock Exchanges a ‘Report on Complaints’ which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the listed entity or forwarded to it by the Stock Exchanges/SEBI) prior to obtaining Observation Letter from Stock Exchanges on Draft Scheme. The Report shall be submitted within 7 days of expiry of 21 days from the date of filing of Draft Scheme with Stock Exchanges and hosting the Draft Scheme along with documents specified above on the websites of Stock Exchanges and the listed entity.

7. Disclosure on the Website Immediately upon filing of the Draft Scheme of arrangement with the Stock Exchanges, the listed entity shall disclose the Draft Scheme of arrangement and all the documents on its website. The Listed entity shall also disclose the Observation Letter of the Stock Exchanges on its website within 24 hours of receiving the same.

8. Explanatory Statement or notice or proposal accompanying resolution sent to shareholders for seeking approval of scheme

The Listed entity shall include the Observation Letter of the Stock Exchanges, in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders seeking approval of the Scheme.

The listed entity shall ensure that in the explanatory statement or notice or proposal accompanying resolution to be passed, it shall disclose the pre and post-arrangement or amalgamation, expected capital structure and shareholding pattern, and the “fairness opinion” obtained from a merchant bankers on valuation of assets / shares done by the independent chartered accountant for the listed entity and unlisted entity.

9. Approval of Shareholders to Scheme through e- Voting: The Listed entities shall ensure that the Scheme of Arrangement submitted with the NCLT for sanction, provides for voting by public shareholders through e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution.

B. OBLIGATIONS OF STOCK EXCHANGE(S)

The designated Stock Exchange, upon receipt of the Draft Scheme of Arrangement and documents mentioned above shall forward the same to SEBI within three working days.

The Stock Exchanges where the specified securities are listed / proposed to be listed shall also disclose on their websites. It shall also disclose the Observation Letter on its website immediately upon issuance.

C. PROCESSING OF THE DRAFT SCHEME BY SEBI

Upon receipt of Observation Letter’ or ‘No-Objection’ letter from the Stock Exchanges, SEBI shall provide its comments on the Draft Scheme of arrangement to the Stock Exchanges.

While processing the Draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the Stock Exchanges and may also seek an opinion from an Independent Chartered Accountant.

SEBI shall endeavour to provide its comments on the Draft Scheme to the stock exchanges within 30 days from the later of the following:

- (a) date of receipt of satisfactory reply on clarifications, if any sought from the listed entity by SEBI; or
- (b) date of receipt of opinion from Independent Chartered Accountant, if sought by SEBI; or
- (c) date of receipt of Observation Letter' or 'No-Objection' letter from the Stock Exchanges.
- (d) date of receipt of copy of in-principle approval for listing of equity shares of the company seeking exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 on designated Stock Exchange, in case the listed entity is listed solely on regional Stock Exchange.

All complaints/comments received by SEBI on the Draft Scheme of arrangement shall be forwarded to the designated Stock Exchange, for necessary action and resolution by the listed entity.

II. REQUIREMENTS AFTER THE SCHEME IS SANCTIONED BY THE HON'BLE HIGH COURT / NCLT (HEREINAFTER REFERRED TO AS "APPROVED SCHEME")

Upon sanction of the Scheme by the Hon'ble High Court / NCLT, the listed entity shall submit the documents mentioned below to the Stock Exchanges:-

- (a) Copy of the High Court/ NCLT approved Scheme;
- (b) Result of voting by shareholders for approving the Scheme;
- (c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme of arrangement vis-à-vis the Draft Scheme of arrangement;
- (d) Status of compliance with the Observation Letter or No Objection Letter of the Stock Exchange(s);
- (e) The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable; and
- (f) Report on Complaints.

Page No. 487

Regulation 37 (Replace with the following)

- Before filing the draft scheme of arrangement before any Court or Tribunal, it shall be filed with the stock exchanges.
- An observation letter or no-objection letter shall be obtained before filing such draft scheme.
- Such observation letter or no-objection letter shall be placed before the Court or Tribunal at the time of seeking approval of the scheme of arrangement.

- The observation or no-objection letter shall be valid for a period of 6 Months from the date of issuance within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.
- Upon sanction of the Scheme by the Court or Tribunal the listed entity shall submit such prescribed documents to the stock exchanges.
- Nothing contained in this regulation shall apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding company. However, such draft schemes shall be filed with the stock exchanges for the purpose of disclosures.

Page No. 489

Dividend Distribution Policy (Insertion after Regulation 43)

According to regulation 43A the top 500 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 500 listed entities, may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.

Page No. 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. 504

Regulation 26 (Replace with the following)

Regulation 26 Heading

Obligations with respect to employees including senior management, key managerial persons, directors and promoters

For the purpose of considering the limit of companies: Private Company, Foreign Company and Section 8 of Companies Act, 2013 company are excluded.

A Director shall not be:-

- Member in more than 10 committees
- Chairman in more than 5 committees

For reckoning the limit, ONLY Audit committee and Stakeholder's relationship Committee are considered.

No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution.

However, such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination.

Further that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting.

If the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting.

All interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

Explanation -For the purposes of this sub-regulation, 'interested person' shall mean any person holding voting rights in the listed entity and who is in any manner, whether directly or indirectly, interested in an agreement or proposed agreement, entered into or to be entered into by such a person or by any employee or key managerial personnel or director or promoter of such listed entity with any shareholder or any other third party with respect to compensation or profit sharing in connection with the securities of such listed entity.

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 (g) Point]

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.

Page No. 579

NON-APPLICABILITY (Replace with the following)

(1) These regulations are not applicable in case of the following:

(a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of Sections 62 of the Companies Act, 2013.

(b) pursuant to a scheme approved by a High Court under Section 230 to 232 of the Companies Act, 2013. However, the pricing provisions of this Chapter shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;

(c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable.

However, the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).

(2) Pricing and lock-in provisions of SEBI (ICDR) Regulations, 2009 shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of Clause (h) of Section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

(3) Disclosure and pricing relating to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where SEBI has granted relaxation to the issuer in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.

(4) Criteria relating to Lock –in and selling of equity shares during six months preceding the preferential issue shall not apply to preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with SEBI or Insurance Company registered with Insurance Regulatory and Development Authority of India or a Scheduled Bank listed under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013.

(5) Conversion of debt into equity under strategic debt restructuring scheme. The provisions of this Chapter shall not apply where the preferential issue of equity shares is made to the consortium of banks and financial institutions pursuant to conversion of their debt, as part of the strategic debt restructuring scheme in accordance with the guidelines specified by RBI, subject to the following conditions:

(a) conversion price shall be determined in accordance with the guidelines specified by the RBI for strategic debt restructuring scheme, which shall not be less than the face value of the equity shares.

(b) conversion price shall be certified by two independent qualified valuers and for this purpose 'valuer' shall have the same meaning as assigned to it under regulation 2(1)(r) of the SEBI (Issue of Sweat Equity) Regulations, 2002.

(c) Equity shares so allotted shall be locked in for a period of one year from the date of trading approval.

However, for the purposes of transferring the control, the consortium of banks and financial institutions may transfer their shareholding to an entity before completion of the lock in period subject to continuation of the lock in on such shares for the remaining period with the transferee;

(d) Applicable provisions of Companies Act, 2013 are complied with, including the requirement of special resolution.

(6) The provisions of this Chapter shall not apply when any other secured lenders opt to join the strategic debt restructuring scheme in accordance with the guidelines specified by RBI and convert their debt into equity share.

Page No. 581

QUALIFIED INSTITUTIONAL BUYER (Replace with the following)

A QIB means –

(i) A mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with SEBI;

(ii) A foreign portfolio investor other than Category III foreign portfolio investor registered with SEBI;

(iii) A public financial institution as defined in section 2(72) of the Companies Act, 2013;

(iv) A scheduled commercial bank;

(v) A multilateral and bilateral development financial institution;

(vi) A state industrial development corporation;

(vii) An insurance company registered with the Insurance Regulatory and Development Authority;

(viii) A provident fund with minimum corpus of twenty five crore rupees;

(ix) A pension fund with minimum corpus of twenty five crore rupees;

(x) National Investment Fund set up by the Government of India published in the Gazette of India;

(xi) Insurance funds set up and managed by army, navy or air force of the Union of India;

(xii) Insurance funds set up and managed by Department of Posts, India.

(xiii) systemically important non-banking financial companies.

Systemically Important Non-Banking Financial Company means a non-banking financial company registered with the Reserve Bank of India and having a net-worth of more than five hundred crore rupees as per the last audited financial statements.

Page No. 597

IMPLEMENTATION OF SCHEMES THROUGH TRUST (Replace with the following)

1. A company may implement schemes either :-

- a) directly or
- b) by setting up an irrevocable trust(s)

However, if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes.

However, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).

2. A company may implement several schemes as permitted under these regulations through a single trust.

However, such single trust shall keep and maintain-

- proper books of account,
- records and documents,

for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

3. SEBI may specify the minimum provisions to be included in the trust deed under which the trust is formed, and such trust deed and any modifications thereto shall be mandatorily filed with the stock exchange in India where the shares of the company are listed.

4. A person shall not be appointed as a trustee, if he-

(i) is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or

(ii) beneficially holds ten percent or more of the paid-up share capital of the company;

However, where individuals or 'one person companies' as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

5. The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

6. The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

7. The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition as permitted by these regulations.
8. The company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).
9. For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding.

Explanation: For the removal of doubts, it is clarified that shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957

10. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.
11. The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the year in which the shareholder approval is obtained for such secondary acquisition:

Sr. No.	Particulars	Limit
A	for the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations	5%
B	for the schemes enumerated in Part D, or Part E of Chapter III of these regulations	2%
C	for all the schemes in aggregate	5%

12. The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year.
However, if such trust(s) existing as on the date of notification of these regulations are not able to appropriate the un-appropriated inventory within one year of such notification, the same shall be disclosed to the stock exchange(s) at the end of such period and then the same shall be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification of these regulations.
13. The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred

in the circumstances enumerated in this regulation, whether off market or on the platform of stock exchange.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:
 - a) transfer to the employees pursuant to scheme(s);
 - b) when participating in open offer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.
15. The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:
 - a) cashless exercise of options under the scheme as prescribed in these regulations;
 - b) on vesting or exercise, as the case may be, of SAR under the scheme as prescribed in these regulations;
 - c) in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose -
 - (i) the trustee shall record the reasons for such sale; and
 - (ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
 - d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
 - e) for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided above.
 - f) winding up of the scheme(s); and
 - g) based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered in these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable at Mumbai in favour of SEBI.
16. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

LESSON 21

REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES

Page No. 612

Amendment to the Securities and Exchange Board of India (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 Securities and Exchange Board of India (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 Securities and Exchange Board of India (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 Securities and Exchange Board of India (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 Securities and Exchange Board of India (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 No. 630

Duties of Debenture Trustees (Replace with the following)

Regulation 15 casts the following duties on the debenture trustees:

- (1) call for periodical reports from the body corporate. In order to make the quarterly reports by the issuer companies available to the DTs on timely basis, the DTs shall call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier;
- (2) take possession of trust property in accordance with the provisions of the trust deed;
- (3) enforce security in the interest of the debenture holders;
- (4) do such acts as necessary in the event the security becomes enforceable;
- (5) carry out such acts as are necessary for the protection of the debenture holders and to do all things necessary in order to resolve the grievances of the debenture holders;
- (6) ascertain and specify that:
 - (a) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with ROC;
 - (b) debenture certificates have been despatched to the debenture holders in accordance with the provisions of the Companies Act;
 - (c) interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;
 - (d) debenture holders have been paid the monies due to them on the date of redemption of the debentures;
- (7) ensure on a continuous basis that the property charged to the debenture is available and adequate at all time to discharge the interest and principal amounts payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee.
- (8) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed;
- (9) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;
- (10) to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders;
- (11) inform SEBI immediately of any breach of trust deed or provision of any law;
- (12) appoint a nominee director on the Board of the body corporate in the event of:
 - (i) two consecutive defaults in payment of interest to the debenture holders; or

(ii) default in creation of security for debenture holders; or

(iii) default in redemption of debentures.

(13) communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor;

(14) The debenture trustee shall –

(a) obtain reports from the leading bank regarding the project.

(b) monitor utilization of funds raised in the issue.

(c) obtain a certificate from the issuer's auditors.

(i) in respect of utilization of funds during the implementation period of the project;
and

(ii) in the case of debentures issued for financing working capital at the end of accounting year.

(15) A debenture trustee may call or cause to be called by the body corporate a meeting of all the debenture holders on –

(a) a requisition in writing signed by at least one-tenth of the debenture holders in value for the time being outstanding.

(b) the happening of any event, which constitutes a default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

(16) No debenture trustee can relinquish its assignment in respect of the debenture issue of any body corporate, unless and until another debenture trustee is appointed in its place by the body corporate.

(17) A debenture trustee is required to maintain the networth requirements on a continuous basis. He is under an obligation to inform SEBI immediately in respect of any shortfall in the networth. He is also not entitled to undertake new assignments until it restores the networth to the level of specified requirement within the time specified by SEBI.

(18) Debenture trustee may inspect books of accounts, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations.

(19) Supervise the implementation of the conditions regarding creation of security for the debentures and debenture redemption reserve, wherever applicable.

(20) The DTs shall have adequate systems to ascertain the status of payment of interest/ principal by issuer companies on due dates in timely manner and efficiently share such information with the CRAs in order to comply with the abovementioned provisions, which shall include the following:

i) The DTs shall, at least 7 days prior to the due date of interest/ principal payment, seek International Securities Identification Number (ISIN) -wise information from issuer companies under intimation to CRAs advising them to confirm the status of payment of interest/ principal on or before the due date.

ii) If the issuer company confirms the status of payment or where no information is received from the issuer company on or before the due date, the DTs shall accordingly provide ISIN-wise information to the CRAs latest by one day after such due date which shall state the following:

- a) Information about payment made on or before the due date or;
- b) Information about delay/ default in payment or;
- c) No information forthcoming from the issuer company on the payment status.

iii) In cases where the CRAs have been informed that no information is forthcoming from the issuer company on the payment status, the DTs shall update the payment status to CRAs as and when any such information is available with the DTs.

Additionally, the DTs shall also ascertain the status of payment by the Issuer Company on the due dates from various sources available at their disposal which, *inter alia*, include the websites of stock exchange & Issuer Company, debenture holders and quarterly reports submitted by Issuer Companies.

(21) DTs shall inform to CRAs that non-furnishing of information regarding status of payment by due date or non-disclosure of information with respect to timely payment by them on stock exchange website may be considered as suppression of material information and may attract provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Page No. 643

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 and 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.

Page No. 650

ELIGIBLE FUND MANAGERS (Insertion after Portfolio Managers)

The term “eligible fund manager” shall have the same meaning as assigned to it in sub section (4) of Section 9A of the Income-tax Act, 1961.

- (ii) The term “eligible investment fund” shall have the same meaning as assigned to it in sub section (3) of Section 9A of the Income-tax Act, 1961.

Applicability

Regulation 12B of the SEBI (Portfolio Managers) Regulations, 1993 provides that the provisions of this regulations shall apply to eligible fund managers exclusively, pertaining to their activities as portfolio managers to eligible investment funds.

All other provisions of these regulations and the guidelines and circulars issued thereunder, unless the context otherwise requires or repugnant to the provisions of these regulations, shall apply to eligible fund managers in relation to their activities as portfolio managers to eligible investment funds.

Procedure to be followed by an existing Portfolio Manager

According to Regulation 12C stipulates that an existing portfolio manager may act as a portfolio manager to an eligible fund manager if:

- a) it fulfills all the conditions specified in sub section (4) of Section 9A of the Income-tax Act, 1961; and
- b) it intimates SEBI prior to undertaking such activity and submit declarations as specified in clause (1) of Schedule VI.

Procedure to be followed by an applicant for fresh registration

Regulation 12D provides that an applicant who is a company or a limited liability partnership or a body corporate who intends to act as an eligible fund manager may be granted registration if:

- a) it fulfills all the conditions specified in sub section (4) of Section 9A of the Income-tax Act, 1961;
- b) it complies with the requirements specified under Chapter II of these regulations, unless specified otherwise in this Chapter;
- c) it pays the fees as specified in Schedule II; and
- d) it provides a declaration to SEBI as specified in clause (2) of Schedule VI.

Obligation and Responsibilities of Eligible Fund Managers

Regulation 12E stipulates that an eligible fund manager shall be required to:

- 1) comply with the requirements specified under Section 9A of the Income-tax Act, 1961 or any amendment, notification, clarification, guideline issued thereon;
- 2) offer discretionary or non-discretionary or advisory services or a combination thereof to eligible investment funds;
- 3) operate in accordance to its mutually agreed contract with the eligible investment funds;
- 4) provide all material disclosures to eligible investment funds;
- 5) segregate funds and securities of each eligible investment fund;
- 6) segregate the funds and securities of eligible investment funds from that of its other clients;
- 7) maintain and segregate its books and accounts pertaining to its activities as a portfolio manager to eligible investment funds and other clients;

- 8) appoint a custodian; however, requirement of compliance to this sub-regulation does not arise in case an eligible investment fund has already appointed a custodian under the applicable act or regulations;
- 9) keep the funds of eligible investment funds in scheduled commercial banks; however, requirement of compliance to this sub-regulation does not arise in case an eligible investment fund does not intend to invest in Indian securities;
- 10) maintain any additional records as may be specified by SEBI and disclose the same to SEBI as and when required;
- 11) provide quarterly reports to SEBI;
- 12) ensure compliance with the Prevention of Money Laundering Act, 2002 and rules and regulations prescribed thereunder;
- 13) abide by the provisions in these regulations and circulars / guidelines issued from time to time by SEBI.

Page No. 655

Maintenance of Records and Documents (Replace with the following)

Regulation 19(1) provides that every custodian of securities is required to maintain the following records and documents, containing details of:

- (a) securities, assets or documents received and released on behalf of each client;
- (b) monies received and released on behalf of each client;
- (c) rights or entitlements of each client arising from the securities held on behalf of the client;
- (d) registration of securities in respect of each client;
- (e) ledger for each client;
- (f) instructions received from and sent to clients; and records of all reports submitted to SEBI.

The Custodian of securities would intimate to SEBI the place where the records and documents are maintained and custodian of securities shall preserve the records and documents maintained for a minimum period of five years.

The custodians shall submit the monthly reports latest by either the end of the third working day of the succeeding month or the 5th of the succeeding month, whichever is later. [SEBI Circular No. IMD/FPIC/CIR/P/2017/12 dated February 14, 2017]

Amendment to the Securities and Exchange Board of India (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 Securities and Exchange Board of India {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 23

TAKEOVER CODE – AN OVERVIEW

Page No. 734

Regulation 10 - Automatic Exemptions (Replace (7) Point)

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to SEBI giving all details in respect of acquisitions, along with a non-refundable fee of rupees one lakh fifty thousand by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a , banker's cheque or demand draft payable in Mumbai in favour of SEBI.

Page No. 734

Regulation 11 – Exemption by SEBI (Replace with the following)

Regulation 11 provides that on an application being made by the acquirer in writing giving the details of the proposed acquisition and grounds on which the exemption is sought along with duly sworn affidavit, SEBI may grant exemption to the acquirer from the Open Offer obligations subject to the compliance with such conditions as it deems fits. For instance, in case where the exemptions is sought from the Open Offer obligations which has been triggered pursuant to the issue of shares by way preferential allotment, SEBI may require that the approval of shareholders should be obtained by way of postal ballot. Further, along with the application, the acquirer is also required to pay a non-refundable fee of Rs. 5,00,000 by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of banker's cheque or demand draft in payable in favour of Mumbai.

However, it is to be noted that the Acquirer is not exempted from making other compliances related to the disclosure requirements as provided under regulation 29, 30 and 31 of the SEBI Takeover Regulations, 2011.

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

- a) As per section 125(3) of the Act, the following amount shall be utilised for —
- b) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- c) promotion of investors' education, awareness and protection;
- d) 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;
- e) 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
- f) 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.

SEBI (Investor Protection and Education Fund) Regulations, 2009

Page No. 746

(Replace with the following)

Regulation 4 provides for the amounts to be credited to the Fund. The following amounts shall be credited to the Fund:

- (a) contribution as may be made by SEBI to the Fund;
- (b) grants and donations given to the Fund by the Central Government, State Government or any other entity approved by SEBI for this purpose;
- (c) proceeds in accordance with the sub-clause (ii) of clause(e) of sub-regulation (10) of regulation 17 and the sub- regulation (3) of regulation 21 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (d) security deposits, if any, held by stock exchanges in respect of public issues and rights issues, in the event of de-recognition of such stock exchanges;
- (e) amounts in the Investor Protection Fund and Investor Services Fund of a stock exchange, in the event of de-recognition of such stock exchange;
- (f) amounts forfeited for non-fulfilment of obligations specified in regulation 15B of the SEBI (Buy-back of Securities) Regulations, 1998;
- (g) monies transferred in accordance with sub-regulation (9) of regulation 45 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (h) amounts disgorged under section 11B of the Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996
- (i) interest or other income received out of any investments made from the Fund;
- (j) such other amount as SEBI may specify in the interest of investors.

The received amount shall be credited to the Fund through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a demand draft in favour of the SEBI payable in Mumbai.

Explanation to Regulation 4(g) of SEBI (Investor Protection and Education Fund) Regulations, 2009, any proceeds due to:

a) Disinvestment:

In case a custodian is unable to deliver the securities or ascertain the claimant for the securities that are received subsequent to write off due to any unforeseen circumstances viz. deemed Foreign Portfolio Investor/Foreign Portfolio Investor no longer existing/operating or expiry of SEBI registration/FEMA approval, etc., the sale of these securities through stock exchange and proceeds thereof net of expenses shall be credited to the Investors Protection and Education Fund of SEBI not later than 7 days from the date of receipt thereof.

b) Corporate benefits:

In case of receipt of corporate benefits in the form of securities arising out of shares written off, the same shall be reported to SEBI in the normal manner. Similarly, corporate benefits received in the form of cash viz. dividend shall be credited to the Investors Protection and Education Fund of SEBI not later than 7 days from the date of receipt of the same.

Page No. 751

What are the limitations in dealing with complaints? (Replace with the following)

To make efficient complaints redressal mechanism through SCORES, it is mandated by SEBI to all stock brokers and DPs that they shall redress the complaints **within 15 days from the date of receipt of compliant**. In case of additional information required from the complainant, then it should be redress **within 7 days** from the date of receipt of compliant, the period of 15 days shall be count from the receipt of additional information.

Sometimes a complaint is successfully resolved and the entity is advised to send reply to complainant. But in certain cases, the entity or company denies wrongdoing, and it remains unclear as to who is wrong or whether any wrongdoing occurred at all. If this happens, SEBI cannot act as a judge or an arbitrator and force the entity or company to resolve the complaint. Further, SEBI cannot act as personal representative or attorney of the complainant. Securities laws and other laws provide important legal rights and remedies if an investor has suffered wrongdoing. On their own, investors can also seek to resolve their complaint through the courts, consumer courts, or arbitration.
