



CAPITAL MARKETS

N. A. SHAH **BULLETIN**

April 2017


N. A. SHAH ASSOCIATES LLP
Chartered Accountants

INDEX

EXECUTIVE SUMMARY	3
1. Streamlining the process of acquisition of shares pursuant to Tender Offer 5	
2. Disclosure and compliances by InvITs	5
3. Increase in employee reservation portion in public offers	5
4. Amendment to InvIT and REIT Regulations.....	6
5. Online reporting to SEBI for Form PAS 4 and PAS 5.....	9
6. Guidelines, Disclosure and compliances by REITs	9
7. Conditions for registration of Intermediaries	10
8. Credit of proceeds due to write off of securities held by FPIs.....	11
9. Participation of EFIs and FPIs in International Financial Services Centre	11
10. Derivative contracts on Commodities.....	12
11. Guidance Note on Board Evaluation	12
12. Investments by Mutual Funds in REITs and InvITs.....	13
13. No objection certificate of stock exchanges not required in merger of wholly owned subsidiary and holding company.....	14
14. Integrated reporting by listed entities:.....	14
15. Change in sector exposure towards HFCs in debt oriented mutual funds ...	15
16. Participation in derivatives market by Mutual Funds.....	15
17. Investments by Foreign Portfolio Investors in corporate debt securities	16
18. Issue of Capital and Disclosure Requirements Regulations	16
19. Foreign Direct Investment in Limited Liability Partnerships	16
20. Investment by FPIs in Government Securities	18

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

EXECUTIVE SUMMARY

- Amendment of procedure for tendering and settlement of shares through Stock Exchange to simplify the process of implementation.
- Financial and non-financial disclosures by Infrastructure Investment Trusts ("InvITs") notified by SEBI.
- SEBI raises the employee quota to INR 5 Lacs in public offer.
- Amendments in InvITs and REIT regulations.
- As a green initiative, with immediate effect, Forms PAS-4 and PAS-5 to be filed with SEBI in soft copy in PDF Format only, in a compact disc.
- SEBI has notified guidelines on public issues, financial disclosures in offer documents and other financial and non-financial disclosures for Real Estate Investment Trusts ("REITs").
- SEBI has amended certain conditions for registration of Intermediaries such as Merchant Bankers, Custodians, Research Analysts, Portfolio Managers etc.
- Unclaimed proceeds on sale of securities as well as dividend received by the Custodian on behalf of FPIs no longer existing, to be credited to the Investors Protection and Education Fund of SEBI not later than 7 days from the date of receipt.
- SEBI (IFSC) Guidelines, 2015 have been partially modified.
- Criteria for eligibility, retention and re-introduction of derivative contracts on commodities has been prescribed and the same shall be followed by all national commodity derivatives exchanges.
- A guidance note on evaluation of the Board of Directors of listed companies has been issued, to provide directions to listed entities on various aspects to be considered for Board evaluation.

- Mutual fund schemes can now invest in units of REIT & InvIT subject to certain conditions.
- As per SEBI Listing Obligations & Disclosure Requirement Regulations, merger of a wholly owned subsidiary with its holding company shall no longer require a no objection certificate (NOC) from the stock exchange.
- SEBI has mandated the submission of Business Responsibility Report for top 500 listed entities under LODR Regulations.
- The sectoral exposure towards investments in housing finance companies by debt oriented mutual funds has been increased from an additional 10% to 15% of the corpus.
- Existing mutual fund schemes whose scheme information documents didn't contemplate investing in derivatives can now participate in derivatives market without getting consent of the majority of the unit holders.
- Foreign Portfolio Investors are now permitted to invest in unlisted corporate debt securities and Securitised Debt Instruments, subject to certain conditions.
- The Issue of Capital and Disclosure Requirements Regulations of SEBI have been amended wherein the stock exchanges have powers to take certain actions against a listed entity if it fails to pay any fine imposed upon it by the stock exchange.
- Amendments to the existing regulations by the RBI for liberalizing FDI in LLPs. Conversion of a company (having foreign investment) has now been allowed under the automatic route. Restriction of availing External Commercial Borrowings removed.
- The limit for investment by Foreign Portfolio Investors (FPI) in Government securities has been revised by the Reserve Bank of India (RBI).

1. Streamlining the process of acquisition of shares pursuant to Tender Offer

- a. In the current mechanism of acquisition of shares pursuant to tender offer, the shareholders submit their bid through stock brokers and subsequently the brokers transfer the shares to the special account of the clearing corporation. Likewise, the consideration payable to shareholders for the shares accepted in the offer are routed through stock brokers. Also, the shares not accepted in the offer are returned to shareholders through the stock brokers.
- b. It has now been decided that transfer of shares under the tender offers would be made directly to the account maintained by the clearing corporation. After such transfer of securities, the clearing corporation will be allowed to utilize the securities towards the settlement obligations under such offers. Further, consideration for the accepted shares in the tender offer and shares tendered but not accepted under such offer would be credited directly to shareholders' bank and demat accounts respectively.
- c. The revised procedure shall be applicable to all the offers for which Public Announcement is made on or after January 02, 2017.

2. Disclosure and compliances by InvITs

Pursuant to Regulation 23 of the SEBI (Infrastructure Investment Trusts) Regulations, 2014, SEBI has prescribed disclosures to be made by an InvIT to the Stock Exchange where its units are listed.

The disclosures are bifurcated into 2 parts namely financial information and non-financial information.

3. Increase in employee reservation portion in public offers

Currently, the maximum value of the allotment under employee reservation portion in public offers is up to a maximum of INR 2 lacs.

Allowing companies to allot more shares for their employees during public offers, SEBI today increased the limit for the value of such allotments to INR 5 lakhs. The application for shares of the value in excess of INR 2 lakh shall be considered only in the event of under- subscription in the employee reservation portion.

The unsubscribed shares available in the employee reservation portion shall be allotted on a proportionate basis to the employees who have applied for the additional shares.

4. Amendment to InvIT and REIT Regulations

SEBI has amended the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 ('InvIT Regulations') and the SEBI (Real Estate Investment Trust) Regulations, 2014 ('REIT Regulations').

The following amendments are common to both the Regulations:

- a. The limit on sponsors has now been removed. However each sponsor has to be clearly identified in the SEBI application as well in the offer document/ placement memorandum.
- b. The sponsors would be responsible to the InvIT/REIT for all acts, omissions and representations/ covenants related to formation and transfer of assets/ securities;
- c. Issue of multiple class of units is not permitted. However, subordinate units (carrying inferior rights) may be issued only to the sponsor and its associates.
- d. InvITs/REITs allowed to hold assets through two-level entity structure. Holding company (Hold Co) shall mean a company or a LLP in which it holds or proposes to hold controlling interest and minimum 51% of the equity share capital/ interest and which is not engaged in any activity other than holding of underlying SPVs/ infrastructure projects.
- e. For the purposes of valuation, categories of "valuer" has been broadened to include "financial valuer" to carry out valuation from the financial perspective and "technical valuer" in respect of technical valuation of the InvITs/REITs assets. List of the person to be qualified as financial and technical valuer has been prescribed.
- f. Definition of "associate" and "related party" have been aligned with the definition of as provided in the Companies Act, 2013 or under the applicable accounting standard.
- g. A unitholder holding more than 20% of the units of the InvITs/REITs (directly or indirectly) shall no longer be treated as a "related party."
- h. Minimum percentage voting in favour of resolutions has been revised as under:
 - i. Issues requiring unitholder approval in the ordinary course of business has been revised from not less than 60% to more than 50%
 - ii. Important issues (such as investment conditions, distribution policy, related parties, valuation, etc.) has been revised from not less than 60% to more than 50%
 - iii. Material changes (such as removal of investment manager, material change in investment strategy, delisting of units, change in trustee, etc.) has been revised from not less than 75% to not less than 60%.

- i. Investment through Hold Co should be subject to the following:
 - i. ultimate holding interest of the InvIT in the SPVs is atleast 26%;
 - ii. other shareholders/ partners do not restrict the InvIT, Hold Co or SPV from complying with the InvIT Regulations, and an agreement shall be entered into with such other shareholders/ partners to that effect; n
 - iii. the investment manager shall appoint majority of the board members of Hold Co and SPV;
 - iv. in every meeting of Hold Co and SPV, the voting of the InvITs/REITs shall be exercised
- j. Distribution of net distributable cash flows by the holdco to the InvITs/REITs, the following shall be complied:
 - a. 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
 - b. 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 InvITs/REITs.
- k. InvIT shall not undertake lending to any person except to Hold Co and or SPV in which InvITs/REITs has invested. However investments by InvITs/REITs into Debt Securities as defined under Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 shall be permitted.
- l. Audit of accounts of the InvITs/REITs shall be undertaken once in a year as against twice a year as per the old regulations.
- m. Minimum offer size

Post issue Capital	Offer Size
If post-issue capital is less than INR 1,600 crore	Minimum 25% of the total outstanding units of the Invlt or INR 250 crore, whichever is higher
If post-issue capital is equal to or more than INR 1,600 crore but less than INR 4,000 crore	Minimum INR 400 crore
If post-issue capital is equal to or more than INR 4,000 crore	Minimum 10% of the total outstanding units of the Invlt.

Provided further that any listed InvIT/REIT which has public holding below twenty five per cent on account of sub-clauses (b) and (c) above, such InvIT/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

- n. Minimum subscription percentage increased from 75% to 90%.
- o. Maximum 10% of the amount raised by InvIT/REIT by public issue of units can be used for "general purposes" as mentioned in the offer document. Issue-related expenses shall not be considered as a part of general purposes. Retained oversubscription proceeds shall not be utilised towards such general purposes.

Changes specific to InvIT Regulations:

- a. If a privately placed InvIT invests or proposes to invest 80% or more of the value of the InvIT assets in completed and revenue generating project then the minimum investment from an investor shall be INR 25 crore and the trading lot shall be INR 2 crores.
- b. The minimum sponsor holding has been reduced from twenty five percent to fifteen percent, computed on a post-issue basis.
- c. 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 shall qualify to be an eligible infrastructure project.

Changes specific to REIT Regulations:

- a. Sponsor group has been defined and includes the following:
 - i. in case the sponsor is a body corporate:
 - entities/ persons controlled by such body corporate
 - entities/persons controlling such body corporate and entities controlled by such person.
 - ii. in case the sponsor is an individual
 - relatives of such individual
 - entities/ controlled by such individual
- b. Clarification inserted to provide the following shall be considered as "real estate" or "property"
 - i. hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating.
 - ii. common infrastructure" for composite real estate projects, industrial parks and SEZ.
- c. No valuation required for purchase or sale of properties from related parties prior to public offer.

5. Online reporting to SEBI for Form PAS 4 and PAS 5

Under the Companies Act, 2013, the listed companies are required to submit Forms PAS 4 and PAS 5 to ROC and SEBI. Whilst the filing with ROC is through an online portal, SEBI was done manually. As a green initiative, it has been decided that with immediate effect, Forms PAS-4 and PAS-5 are to be filed with SEBI in soft copy in PDF Format only, in a compact disc.

6. Guidelines, Disclosure and compliances by REITs

a. Guidelines on Public issue of units of REITs

Pursuant to the Regulation 14(24) and 15(5) of REIT Regulations, SEBI has provided guidelines on the following areas:

- i. Appointment and obligations of merchant banker and others
- ii. Filing of offer document
- iii. Allocation in public issue
- iv. Application and Abridged version of the offer document
- v. Security Deposit
- vi. Opening of an issue and subscription period
- vii. Underwriting
- viii. Price and price band
- ix. Bidding process
- x. Allotment procedure and basis of allotment
- xi. Maintenance of books and records
- xii. Post- issue reports
- xiii. Public communications, publicity materials, advertisements and research reports
- xiv. Other Obligations of Post-issue merchant banker
- xv. General conditions
- xvi. Alteration of rights of holders of units
- xvii. Prohibition on payment of incentives
- xviii. Appointment of Compliance Officer
- xix. General obligations of Merchant Bankers

b. Financial disclosure required in Offer Document of REITs

Pursuant to the Regulation 15 (2), read with Schedule III of REIT Regulations, SEBI has prescribed disclosures to be made in an offer document. The said disclosures, inter-alia, include disclosures for financial information of the REIT as well as the Manager and the Sponsor.

c. Disclosures and compliances by REITs

Pursuant to the Regulation 23 of REIT Regulations, SEBI has prescribed disclosures to be made by a REIT 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.

7. Conditions for registration of Intermediaries

- a. For Merchant Bankers, Registrars to be an Issue and Share Transfer Agents, Underwriters, Bankers to an issue, Credit Rating Agencies, Depositories and Participants and Debenture Trustees:
 - i. The requirement of obtaining an initial and permanent registration has been done away with. Now, registration obtained once would suffice.
 - ii. The certificate of registration granted shall be valid unless it is suspended or cancelled by the Board.
 - iii. Any change of details that have taken place in the information that was submitted while seeking registration has to be intimated to the Board immediately.
 - iv. Where an application for grant of a certificate of registration does not fulfil the requirements, the Board shall reject the application after giving an opportunity of being heard. The refusal to grant registration shall be communicated by the Board within thirty days of such refusal to the applicant stating therein the grounds on which the application has been rejected.
 - v. Where initial registration has been obtained prior to the revised regulations, the same shall be deemed to have been granted a certificate of registration under the revised regulations.
 - vi. The fees for registration and recurring fees has been revised for all intermediaries.
- b. For Portfolio Managers, Research Analysts and Investment Advisors
 - i. The concept of renewal of registration has been done away with.
 - ii. The certificate of registration granted under regulation (8) shall be valid unless it is suspended or cancelled by the Board.
 - iii. The portfolio manager who has already been granted certificate of registration by the Board, prior to to the revised regulations, the same shall be deemed to have been granted a certificate of registration under the revised regulations.
 - iv. The fees for registration and recurring fees has been revised.

8. Credit of proceeds due to write off of securities held by FPIs

Earlier, cases where in the custodian was unable to deliver the securities, or credit the corporate benefits received in cash viz. dividend to a FPI on account of the FPI ceasing to exist either on expiry of the SEBI registration or non-receipt of FEMA approval etc., the sale proceeds net of expenses of such securities through a listed stock exchange was to be credited to the Investor Protection Fund of the regional stock exchange of the company not later than 7 days from the date of receipt thereof.

Now, in the above scenarios, the proceeds on sale of the securities as well as the corporate benefits received in cash, shall be credited to Investors Protection and Education Fund of SEBI not later than 7 days from the date of receipt thereof.

9. Participation of EFIs and FPIs in International Financial Services Centre

The SEBI (IFSC) Guidelines, 2015 have been partially modified. The highlights of the modifications are as under-

- a. SEBI registered FPIs shall be permitted to operate in IFSC without additional documentation or prior approval process.
- b. Members of recognised stock exchange in IFSC may rely on the due diligence process already carried out by SEBI registered intermediary during the course of registration and account opening in India for FPIs.
- c. The trading member of the recognised stock exchange in IFSC may rely on the due diligence carried out by a bank, which is permitted by RBI to operate in IFSC, during the account opening process of Eligible Foreign Investor (EFI), not registered with SEBI as an FPI, which is desirous of operating in IFSC.
- d. FPIs, who presently operate in Indian securities market and propose to operate in the IFSC, shall be required to ensure clear segregation of funds and securities. Custodians shall, monitor the compliance of this provision for their FPI clients.
- e. Recognised stock exchange in IFSC shall maintain, at all times necessary details of EFIs.
- f. EFIs shall abide by all the applicable Indian laws applicable in IFSC issued by GOI/ SEBI/ RBI etc.

The definition of the intermediary has been modified to exclude foreign portfolio investor to be considered as an intermediary.

10. Derivative contracts on Commodities

All national commodity derivative exchanges shall examine certain parameters and the commodity may be permitted to be included under derivatives if such commodity satisfies these parameters. The parameters are:

- a. Commodity Fundamentals
 - i. Size of the market / Volume of the market
 - ii. Homogeneity/Standardization:
 - iii. Durable / Storable
- b. Trade Factors
 - i. Global
 - ii. Value chain
 - iii. Geographical coverage
- c. Ease-of-doing-business
 - i. Price Control
 - ii. Applicability of other laws
- d. Risk Management
 - i. Correlation with International Market
 - ii. Seasonality
 - iii. Price Volatility

For any commodity to continue to be eligible for Futures trading on Exchange, it should have annual turnover of more than `500 Crore across all National Commodity Derivatives Exchanges in at least one of the last three financial years.

For validating this criteria, gestation period of three years is provided for commodities from the launch date/re-launch date, as may be applicable.

On a commodity becoming ineligible for derivative trading due to the above retention criteria or is discontinued/suspended by the exchange, it cannot be relaunched for at least one year.

11. Guidance Note on Board Evaluation

The Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR") contain broad provisions on Board evaluation.

A guidance note in this matter has been prepared in order to guide listed entities by elaborating various aspects of Board evaluation that may help them to improve the evaluation process and achieve the objective of the entire process.

The guidance note covers all major aspects of Board evaluation inter alia includes the following:

- a. Evaluation to be done at multiple levels. Evaluation of the Board as a whole; Committees of the Board; Individual Directors and Chairperson.
- b. Process of Evaluation including laying down of objectives and criteria to be adopted for evaluation of different persons. First being identifying the objectives of evaluation, then deciding the criteria of evaluation and then deciding the method of evaluation. The method can be based on an internal assessment or on assessment by experts.
- c. Feedback to be provided either orally or by way of written assessment to the persons being evaluated.
- d. Action Plan to be provided based on the results of the evaluation process.
- e. Disclosure to stakeholders on various aspects including mandatory disclosures as per SEBI LODR and Companies Act on an annual basis.
- f. It is mandatory for the company to conduct a board evaluation once a year, however it can conduct the evaluation more frequently. The responsibility of such review of the evaluation process lies with the Board of Directors in accordance with SEBI LODR
- g. Responsibility of Board Evaluation lies on different persons depending on the subject of the evaluation as per Companies Act and SEBI LODR. However, on a global basis, the primary role of steering the evaluation and of ensuring its effectiveness lies on the Chairperson.

[click here](#) or copy the link below to see the guidance note containing parameters and questions for an effective Board evaluation.

http://www.sebi.gov.in/legal/circulars/jan-2017/guidance-note-on-board-evaluation_33961.html

12. Investments by Mutual Funds in REITs and InvITs

A mutual fund may invest in the units of the REITs and InvITs subject to the following:

- a. A mutual fund under all its schemes shall not own more than 10% of the units issued by a single issuer of REIT & InvIT.
- b. A mutual fund scheme shall not invest
 - i. more than 10% of its net asset value (NAV) in the units of REIT & InvIT ;
 - ii. more than 5% of its NAV in the units of REIT & InvIT issued by a single user

The limits mentioned in clause b) shall not be applicable for investments in case of index fund or sector or industry specific scheme pertaining to REIT and InvIT.

If an existing mutual fund scheme wishes to invest in units of REITs/InvIT then Regulation 18 (15A) of the SEBI (Mutual Fund) Regulations shall apply. As per Regulation 18 (15A), change in any fundamental attribute of the mutual fund scheme shall not apply unless, written communication is sent to all unit holders and advertisements are given in an English language and regional language newspapers and the unitholders shall be given an option to exit at the prevailing Net Asset Value (NAV) without any exit load. The unit holders of the scheme shall be given a time period of at least 15 days for the purpose of exercising the exit option.

13. No objection certificate of stock exchanges not required in merger of wholly owned subsidiary and holding company

As per Regulation 37 of SEBI Listing Obligations and Disclosure Requirements Regulations (LODR Regulations), listed entities are required to obtain a no objection letter from stock exchanges for a scheme of arrangement.

As per the recent amendment to LODR regulations, the above condition shall not apply in case of merger of a wholly owned subsidiary with its holding company, provided the draft scheme has been filed with the stock exchanges for disclosures.

14. Integrated reporting by listed entities:

SEBI has mandated the submission of Business Responsibility Report (BRR) for top 500 listed entities under LODR Regulations. The key principles which are required to be reported by the entities pertain to areas such as environment, governance, stakeholder's relationships, etc.

Towards the objective of improving the disclosure standards the listed entities should adhere to the following:

- a. Integrated reporting may be adopted on the voluntary basis from the financial year 17-18 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 info 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 & provide appropriate reference to the same in their annual report.

15. Change in sector exposure towards HFCs in debt oriented mutual funds

Earlier, the guidelines for sectoral exposure in debt oriented mutual fund schemes had a limit of 25% at the sector level and an additional exposure not exceeding 10% (over and above the limit of 25%) in financial services sector restricted only to investments in Housing Finance Companies (HFC), The additional exposure limits in HFCs in financial services sector has now been enhanced from 10% to 15% provided:

- a. An additional exposure to financial services sector (over and above the limit of 25%) not exceeding 15% of the net assets of the scheme shall be allowed only by way of increase in exposure in HFCs.
- b. The additional exposure in such securities should be rated AA and above.
- c. The investee HFCs are registered with National Housing Board.
- d. Total investment or exposure to HFCs shall not exceed 25% of the net assets of the scheme.
- e. Appropriate disclosure shall be made in Scheme Information Documents and Key Information Memorandum for debt schemes.

16. Participation in derivatives market by Mutual Funds

Earlier, existing schemes of mutual funds whose Scheme Information documents that did not contemplate investing in derivatives required positive consent of majority of unit holders before commencement of investments in derivatives. An exit option had to be provided to the dissenting unit holders for one month prior to the scheme commencing trading in derivatives.

Now the investors shall be given an exit option for as per Regulation 18 (15A) of the SEBI (Mutual Fund) Regulations. The unit holders of the scheme shall be given a time period of at least 30 days for the purpose of exercising the exit option at the prevailing NAV without any exit load.

17. Investments by Foreign Portfolio Investors in corporate debt securities

In line with the RBI circulars dated as on 24th October, 2016 and 17th November, 2016, FPIs have been permitted to invest in the following securities:

- a. Unlisted Corporate debt securities in the form of non-convertible debenture/bonds issued by the public or private Indian companies with minimum residual maturity of 3 years and with end use-restriction on investment in real estate business, capital market and purchase of land.
- b. Securitised debt instruments (not subject to the minimum 3 year residual maturity requirement):
 - i. Any certificate or instrument issued by a special purpose vehicle set up for securitisation of assets where banks, FIs or NBFCs are originators; and/or
 - ii. Any certificate or instrument issued and listed in terms of the SEBI Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.

Investment in the unlisted corporate debt securities and securitised debt instruments shall not exceed INR 35,000 crore within the extant corporate debt limit which currently is INR 2, 44,323 cr.

18. Issue of Capital and Disclosure Requirements Regulations

Regulation 111A has been inserted wherein the listed entity or any other person who contravenes any of the provisions of these regulations, shall, in addition to the liability for action in terms of the securities laws, also be liable for the following actions by the stock exchanges, in the manner specified in the circulars or guidelines issued by the Board:

- a. imposition of fines
- b. suspension of trading
- c. freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories
- d. any other action as may be specified by SEBI from time to time

Regulation 111B has been inserted wherein if the listed entity fails to pay any fine imposed upon it by a recognised stock exchange, the stock exchange may initiate such other action after giving a notice in writing.

19. Foreign Direct Investment in Limited Liability Partnerships

Radical changes have been made to Schedule 9 (FDI in LLP) of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 ("ODI Regulations") in tandem with the Government's initiative for ease of doing business in India.

The following are the salient features of the revised regulations:

Eligible Investor	<ul style="list-style-type: none"> a. Person Resident Outside India or any entity incorporated outside India. b. Not permitted: Foreign Portfolio Investors, Foreign Institutional Investors and Foreign Venture Capital Investors
Eligibility of LLP (target)	<p>FDI in LLPs is permitted subject to the following conditions:</p> <ul style="list-style-type: none"> a. FDI permitted under the automatic route in LLP engaged in sectors where 100% FDI is allowed and there are no performance linked conditions. b. Investment is in compliance with the provisions of the Limited Liability Partnership Act, 2008.
Downstream Investment	<p>Indian Company or LLP, having foreign investment will be permitted to make downstream investment, under automatic route, in another company or LLP if:</p> <ul style="list-style-type: none"> a. Indian company or LLP is engaged in sector where 100% FDI is allowed and there are no performance linked conditions. b. Onus on such downstream Indian Company or LLP (accepting investment) to ensure compliances with the provisions of this schedule.
Conversion	<p>A company having foreign investment can be converted into an LLP under the automatic route if it is engaged in sector where 100% FDI is allowed and there are no performance linked conditions.</p>
Eligible Investment	<ul style="list-style-type: none"> a. Contribution of capital of LLP. b. Investment by way of profit share will fall under the category reinvestment of earnings.

Valuation or Pricing	<p>a. <u>For investment</u>: Investment by way of capital contribution or by transfer of profit share should be more than or equal to the fair price determined as per any internationally accepted valuation methodology as certified by a Chartered Accountant or Cost Accountant.</p> <p>b. <u>Transfer of profit share</u>: Transfer of profit share:</p> <p>i. From a resident to non-resident: Consideration to be more than or equal to fair price.</p> <p>ii. From a non-resident to resident: Consideration to be less than or equal to fair price.</p>
----------------------	--

20. Investment by FPIs in Government Securities

The revised aggregate FPI limits are as follows:

(INR in billions)		
Particulars	Existing limit	Revised limit w.e.f 1 st April, 2017
FPIs in Central Government securities	1520	1565
Long term FPIs in Central Government securities	680	745
FPIs in State Development Loans	210	
Total	2410	

All other existing conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, will continue apply.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com