



CAPITAL MARKETS

N. A. SHAH BULLETIN

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EXECUTIVE SUMMARY

- In line with its endeavor to ensure appropriate disclosure, the Securities and Exchange Board of India (SEBI) has amended the Securities Board of India (Infrastructure Investment Trusts) Regulations and the Securities Board of India (Real Estate Investment Trusts) Regulations.
- SEBI has issued a circular outlining the operational modalities for participation by strategic investors in Infrastructure Investment Trusts ("InvITs") and Real Estate Investment Trusts ("REITs").
- For ensuring uniformity, format for making application for availing exemption from making open offer (Regulation 11 of the SAST Regulations) has been prescribed.
- Self Certified Syndicate Banks ("SCSB") shall henceforth compensate the Retail Individual Investors (RIIs) if there is failure on their part to make allotment in spite of the RII's eligibility.
- To expedite the processing of draft schemes and also to prevent misuse of schemes to bypass regulatory requirements, SEBI has decided to amend the framework for Schemes of Arrangement by Listed Entities.
- SEBI introduced online portal for seeking observations and filing draft documents related to public issues, rights issues, institutional placement programme, schemes of arrangement, takeovers and buy backs.
- Securities and Exchange Board of India (SEBI) has provided two additional measures to listed companies to ensure such entities comply with 25 percent minimum public shareholding norms.
- PAN should be submitted alongwith details of shareholding pattern filed by the listed entity.

1. Amendment to InvIT and REIT Regulations

SEBI has amended InvIT and REIT Regulations. The common amendments are as under:

- a. A REIT/ InvIT which is listed on the stock exchange can now issue debt securities in the form of non-convertible debentures, bonds or such other securities; provided these securities are listed on the stock exchange.
- b. In case the units are offered for sale to public, the units must be held by existing unit holders for a period of at least one year prior to filing the draft offer documents with SEBI. This holding period included equity shares or partnership interest in the holding company or SPV against which such units have been received. Now, compulsorily convertible securities will also be included in the holding period provided these are converted into equity shares prior to filing of offer document.
- c. The REIT/ InvIT has to disclose all monies lent by REIT/InvIT to their holding company or the special purpose vehicle in which it has its investments.
- d. Valuer has been defined as "registered valuer" under section 247 of the Companies Act, 2013 or as specified by SEBI.

The following amendments are specific to REIT regulations:

- a. Strategic Investors have now been allowed to participate in REITs and have been defined to include:
 - i. Infrastructure finance company registered with the RBI as a NBFC
 - ii. Scheduled Commercial Bank
 - iii. Multilateral and bilateral development financial institution
 - iv. Systemically important NBFC registered with RBI
 - v. Foreign portfolio investor

who invests, either jointly or individually, not less than 5% of the total offer size of the REIT or as specified by SEBI, subject to the compliance with FEMA Act, rules, regulations & guidelines made thereunder.

- b. Commitment received from strategic investors is a mandatory disclosure in the initial offer document / follow on document.
- c. As per the investment conditions, not less than 80% income shall now be invested in completed and, rent and/or income generating properties.
- d. The requirement of holding at least 2 projects with not more than 60% of the value of assets in one project, is done away with.

- e. REITs are now permitted to lend to the holding company / special purpose vehicles in which REIT has invested in.

The following amendments are 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 projects:
 - i. Minimum investment from an investor shall be INR 25 crore against INR 1 crore; and
 - ii. Trading lot shall be INR 2 crore against INR 1 crore.

2. Participation by Strategic Investors in InvITs and REITs

SEBI has laid down following operational modalities for InvITs and REITs who intend to invite subscriptions from the Strategic Investor(s):

- a. The strategic investor(s) shall, either jointly or severally, invest not less than 5% and not more than 25% of the total offer size.
- b. The investment manager of InvITs / REITs has to enter into a binding unit subscription agreement with the strategic investor(s)
- c. Subscription price per unit shall be set out in the subscription agreement and the entire subscription amount shall be deposited in a special escrow account prior to opening of the public issue.
- d. The price at which the strategic investor(s) has/have agreed to buy units of the InvITs / REITs shall not be less than the issue price determined in the public issue. Thus, if the price determined is higher than, the differential amount shall be brought in by strategic investor(s) within two working days. However, if the price is lower than, the excess amount shall not be refunded to the strategic investor.
- e. The unit subscription agreement shall not be terminated except in the event the issue fails to collect minimum subscription

- f. Units subscribed by strategic investors will be locked in for a period of 180 days from the date of listing in the public issue.

3. Application for exemption from open offer under SAST Regulations

SEBI has the power to grant exemption to the acquirer from making an open offer to acquire the shares on making an application with the Board. In this regard, a standard format has been provided to ensure uniformity of disclosures in such applications.

4. Compensation to Retail individual Investors (RIIs)

Self Certified Syndicate Banks ('SCSB') shall henceforth compensate the RIIs if there is failure on their part to make allotment in spite of the RII's eligibility. Compensation shall be (Listing price less issue price) x (no. of shares that would have been allotted if bid was successful) x (probability of allotment of shares determined on the basis of the allotment)

The RII shall be compensated for all the shares which they would have been allotted, in case of issues which are non-oversubscribed issues. If the listing price is below the issue price, SCSBs will not be liable to pay any compensation to the RII.

5. Procedural Amendments for Schemes of Arrangement

Topic	Extant Provision	Revised Provision
Disclosure on the Website	The listed entity, upon filing of the draft scheme with the Stock Exchanges, shall disclose the draft scheme and all the documents on its website.	The schemes which solely provides for merger of a wholly owned subsidiary (WOS) or its division with the parent company are exempted from such disclosure requirement.

Valuation report	Listed entity is required to submit a valuation report and fairness opinion issued by Independent Chartered Accountant and Independent SEBI Registered Merchant Banker respectively.	A new para has been inserted which states that a Chartered Accountant and Merchant Banker shall not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.
Condition for schemes of arrangement involving unlisted entities	In merged company the percentage shareholding of public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity shall not be less than 25%.	The 25% shareholding criteria in the merged company shall be on a fully diluted basis.
Requirements after scheme is sanctioned by National Company Law Tribunal (NCLT)	Every listed entity has to submit specified set of documents to the stock exchanges.	Now the said requirement is done with.
Requirements to be fulfilled by Listed Entity for Listing of Equity Shares	Scheme involving demerger of a division from a listed entity into an unlisted entity, the entire share capital of unlisted entity seeking listing shall be locked in as follows: <ul style="list-style-type: none"> • Shares held by Promoters to the extent of 20% post - merger for a period of 3 years • Balance shares shall be locked in for a period of one year 	Now the lock-in provision shall be applicable in case of merger also. Further new proviso has been added which states that the shares under lock-in may be pledged with scheduled commercial bank/ public financial institution as collateral security for obtaining loan. Also shares locked-in can be transferred 'inter-se' among the promoters.

	• No lock-in in case of mirror shareholding.	
Listing of equity shares	The listed entity and/or unlisted transferee entity shall complete the steps of listing within 30 days from the date of receipt of NCLT order.	Now the said requirement is done with.
Commencement of trading of equity shares	The trading in securities shall commence within 45 days from the date of receipt of NCLT order.	The said time limit for commencement of trading in securities has been increased to 60 days.

6. Online Filing by stock exchanges and merchant bankers.

Recognized stock exchanges and Merchant Bankers that are required to file the draft scheme and offer documents respectively with SEBI now will have to only file the same online through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>.

7. Additional measures to achieve minimum public shareholding

In November 2015, SEBI had prescribed various methods that may be used by a listed entity to achieve compliance with the minimum public shareholding requirements.

With a view to further facilitate listed entities to comply with the minimum public shareholding requirements, SEBI has prescribed the following additional methods:-

a. Open market sale:

Sale of shares held by the promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to five times' average monthly trading volume of the shares of the listed entity. The following are the vital conditions:

- i. The listed company shall, atleast one trading day prior to such sale, provide details and undertakings, as prescribed by SEBI.
 - ii. The listed entity and the promoter shall ensure compliance with all applicable legal provisions.
- b. Qualified Institutions Placement:
The listed company can allot eligible securities through Qualified Institutions Placement in terms of Chapter VIII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

8. Disclosure of PAN with shareholding

Under the SEBI (Listing obligations and disclosure requirements) regulations, details of shareholding of promoter, promoter group, public and non-public non-promoter shareholder must be accompanied with PAN. Further the shareholding needs to be consolidated on the basis of the PAN and folio numbers to avoid multiple disclosures of same person.

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