



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**SUPPLEMENT PROFESSIONAL  
PROGRAMME  
(SYLLABUS 2022)**

***(Supplements covers amendments/developments from  
June, 2023- May, 2024)***

**Strategic Management and Corporate  
Finance**

**GROUP 2, PAPER 5**

*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 Examination shall note the following:***

*Students appearing in December, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31<sup>st</sup> May, 2024.*

*The students are advised to acquaint themselves with the monthly and Regulatory updates published by the Institute.*

*This supplement is to be read with the SMCF study material new Syllabus updated up to May, 2023.*

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**LESSON 8**  
**RAISING OF FUNDS FROM EQUITY AND PROCEDURAL ASPECTS- PUBLIC FUNDING**

**(1) Reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days (Circular No. SEBI/HO/CFD/ TPD1/CIR/P/2023/140 dated August 09, 2023)**

SEBI, consequent to extensive consultation with the market participants and considering the public comments received pursuant to consultation paper on the aforesaid subject matter, reduced the time taken for listing of specified securities after the closure of public issue to 3 working days (T+3 days) as against the present requirement of 6 working days (T+6 days). **‘T’ being issue closing date.**

The T+3 timeline for listing shall be appropriately disclosed in the Offer Documents of public issues. The timelines for submission of application, allotment of securities, unblocking of application monies and listing shall prominently be made a part of pre-issue, issue opening and issue closing advertisements issued by the Issuer for public issues in terms of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

For details: [https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days\\_75122.html](https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html)

**(2) SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/162 dated December 21, 2023)**

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2023 on 21st December, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification, the following amendments have been made in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018:

1. The words “Social Auditor” and “Social Audit Firm” is substituted with the words “Social Impact Assessor” and “Social Impact Assessment Firm” respectively. [Regulation 292A(f) and 292A(g)]
2. Social Stock Exchange shall be accessible to institutional investors, non-institutional investors and retail investors. [Regulation 292C]
3. A Not for Profit Organization may raise funds on a Social Stock Exchange through issuance of Zero Coupon Zero Principal Instruments **to eligible investors**. [Regulation 292G(a)(i)]
4. The procedure and other conditions in respect of public issuance of Zero Coupon Zero Principal Instruments by a Not for Profit Organization shall be as specified by SEBI. [Regulation 292K]
5. The contents of the fund raising document shall be as specified by SEBI. [Regulation 292M]
6. The regulation 292N has been omitted specifying the other conditions relating to issuance of Zero Coupon Zero Principal Instruments.

For details: [https://www.sebi.gov.in/legal/regulations/dec-2023/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2023\\_80419.html](https://www.sebi.gov.in/legal/regulations/dec-2023/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2023_80419.html)

**(3) Guidelines for returning of draft offer document and its resubmission (Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/009 dated February 06, 2024)**

Adequate disclosures by the issuer and timely processing of offer documents are important for the vibrancy of the primary market. It is imperative that the offer documents as filed by the issuers and lead manager(s) are compliant with Schedule VI of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”), which specifies information for disclosure in the draft offer document or the draft letter of offer and the offer document or the letter of offer, as applicable.

However, SEBI has observed that at times, draft offer documents / draft letter of offer filed for public issue / rights issue of securities are found lacking in compliance with respect to instructions provided under Schedule VI of ICDR Regulations. Such documents require revisions/changes and thus lead to a longer processing time.

In order to ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, **SEBI has issued ‘Guidelines for returning of draft offer document and its resubmission’**.

Accordingly, the draft offer document shall be scrutinized based on the broad guidelines and such documents which are not compliant with the instructions provided under Schedule VI of ICDR Regulations and guidelines provided, shall be returned to the issuer. The Broad guidelines for returning of draft offer document and its resubmission are provided below:

**Return of Draft Offer Document**

- Draft offer document must be drafted in simple language with visual representation of data, so as to ensure ease of understanding of its contents.
- The information in the draft offer document is presented in a clear, concise, and intelligible manner.
- The draft offer document avoids complex presentations, vague, ambiguous and imprecise explanations, complex information, repetition of disclosures and inconsistency.
- The risk factors are appropriately worded in simple, clear and unambiguous language to bring out clearly the risk to the investor, without undermining the same.

**Resubmission of Draft Offer Document**

- While there shall be no requirement for payment of any fees on account of resubmission of draft offer document, the requirement for paying applicable fees for the changes, if any, in terms of changes specified in Schedule XVI of the ICDR Regulations for the updated offer document shall continue to apply as is applicable to issuer for updation in offer document.
- There shall be no refund of the filing fees on account of non-submission of draft offer document by the issuer after return.

- The issuer, within two days of resubmission of draft offer document with the SEBI, shall make a public announcement in the mode and manner as prescribed under ICDR Regulations, as applicable, and the issuer shall also include a disclosure that it is a resubmitted document.
- Issuer shall make written intimation to its sectoral regulator, if any, informing about the return and resubmission of the draft offer document, as applicable.

For details: [https://www.sebi.gov.in/legal/circulars/feb-2024/guidelines-for-returning-of-draft-offer-document-and-its-resubmission\\_81146.html](https://www.sebi.gov.in/legal/circulars/feb-2024/guidelines-for-returning-of-draft-offer-document-and-its-resubmission_81146.html)

**(4) SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024 (Notification No. SEBI/LAD-NRO/GN/2024/178 dated May 17, 2024)**

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024 on 17<sup>th</sup> May, 2024 which shall come into force on the date of their publication in the Official Gazette. Vide this notification, the following amendments have been made in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018:

**Promoters' Contribution in case of Initial Public Offer**

- The promoters of the issuer shall hold at least twenty per cent. of the post-issue capital. Provided that in case the post-issue shareholding of the promoters is less than twenty per cent., alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with IRDAI or **any non-individual public shareholder holding at least five per cent. of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s)** may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten per cent. of the post-issue capital without being identified as promoter(s). **[Regulation 14(1)]**

**Lock-in Requirements in case of Initial Public Offer**

- Minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India or **any non-individual public shareholder holding at least five per cent. of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s)** referred to in proviso to sub-regulation (1) of regulation 14, shall be locked-in for a period of eighteen months from the date of allotment in the initial public offer. Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer. **[Regulation 16(1)(a)]**

**Period of Subscription**

- An IPO/FPO shall be kept open for at least 3 working days and not more than 10 working days. In case of force majeure, banking strike or similar **unforeseen** circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring

prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of **one working day**. [Regulation 46 and 142]

#### **Adjustments in Pricing in case of Preferential Issue - Frequently and Infrequently Traded Shares**

- The effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for determination of the price for a preferential issue in accordance with regulations 164, 164A, 164B or 165 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Insertion: Regulation166(2)]

#### **Pricing in case of Qualified Institutions Placement**

- The effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for calculation of the issue price under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. [Insertion: Regulation176(5)]

#### **Promoters' Contribution in case of Initial Public Offer by Small and Medium Enterprises**

- The promoters of the issuer shall hold at least twenty per cent. of the post-issue capital. Provided that in case the post-issue shareholding of the promoters is less than twenty per cent., alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India **or any non-individual public shareholder holding at least five per cent. of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s)** may contribute to meet the shortfall in minimum contribution as specified for the promoters, subject to a maximum of ten per cent. of the post-issue capital without being identified as promoter(s). [First proviso to Regulation 236(1)]

#### **Lock-in of specified securities held by the promoters in case of Initial Public Offer by Small and Medium Enterprises**

- Minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India **or any non-individual public shareholder holding at least five per cent. of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s)**, as applicable, shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the initial public offer, whichever is later. [Regulation 238(a)]

### **Period of subscription in case of Initial Public Offer by Small and Medium Enterprises**

- A public issue shall be kept open for at least 3 working days and not more than 10 working days. In case of force majeure, banking strike or similar **unforeseen** circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of **one working day**. [**Regulation 266**]
- The provisions mentioned in Regulation 38, Regulation 80, Regulation 135 and Regulation 197 and Regulation 259 pertaining to Security deposit have been omitted.

### **Brief Analysis:**

In order to facilitate ease of doing business for companies coming for IPOs / fund raising, SEBI has amended the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and notified SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024. The amendments, inter alia, have been made in respect of the following:

- Promoter group entities and non-individual shareholders holding more than five percent of the post-offer equity share capital to be permitted to contribute towards minimum promoters' contribution (MPC) without being identified as a promoter
- Doing away with the requirement of one percent security deposit in public/rights issue of equity shares.
- Flexibility in extending the bid/offer closing date on account of force majeure events by minimum one day instead of present requirement of minimum three days.

For details: [https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2024\\_83469.html](https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2024_83469.html)

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## LESSON 9 - REAL ESTATE INVESTMENT TRUST

### AND

## LESSON 10- INFRASTRUCTURE INVESTMENT TRUST

### (1) Offer for Sale framework for sale of units of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) (Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/134 dated August 03, 2023)

SEBI vide its circular dated January 10, 2023 specified the comprehensive framework on Offer for Sale (OFS) of shares including units of REITs and InvITs through stock exchange mechanism. Vide this circular, SEBI has modified the aforesaid framework and prescribed that OFS for sale of units of REITs and InvITs by sponsor(s) or sponsor group entities, and other unit holders are permitted only in units of listed REITs and listed InvITs.

However, in case of OFS for listed InvITs, the trading lot shall be same as the trading lot prescribed for such InvITs in the secondary market in terms of SEBI (Infrastructure Investment Trusts) Regulations, 2014.

For details: <https://www.sebi.gov.in/legal/circulars/aug-2023/offer-for-sale-framework-for-sale-of-units-of-real-estate-investment-trusts-reits-and-infrastructure-investment-trusts-invits-74938.html>

### (2) Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/144 dated August 16, 2023)

SEBI on 16th August, 2023 has published the Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023. Brief of the amendments are placed below:

#### **New Definitions/clauses introduced**

- In regulation 2, sub-regulation (1), after clause (q), the following clause shall be inserted, namely,-  
“(qa) “group entities of the Manager” means:  
(i) entities or person(s) which are controlled by the Manager;  
(ii) entities or person(s) who control the Manager;  
(iii) entities or person(s) which are controlled by entities or person(s) specified in sub-clause (ii).”
- After clause (zr), the following clause shall be inserted, namely,-  
“(zxa) “Self-Sponsored Manager” means the Manager of an REIT who has dual responsibilities of both the Manager as well as the sponsor;

#### **Minimum Unitholding Requirement:**

The revised regulations mandate that sponsor(s) and sponsor group(s) collectively hold not less than-

- 15% of units of the REIT, for three years from the date of listing of units in the initial offer: If it exceeds from 15 % by any sponsor or sponsor groups, it shall be held for a period of not less than one year from the date of listing.

- 5% of total units of REITs from beginning of 4<sup>th</sup> year till the end of 5<sup>th</sup> year
- 3% of total units of REITs from beginning of 6<sup>th</sup> year till the end of 10<sup>th</sup> year
- 2% of total units of REITs from beginning of 11<sup>th</sup> year till the end of 20<sup>th</sup> year
- 1% of total units of REITs after the end of 20<sup>th</sup> year from the date of listing of units issued in the initial offer

However, the maximum value of the units to be held by the sponsor(s) and sponsor group(s) for compliance shall not exceed five hundred crore rupees.

The units required to be held as mentioned above shall be locked in and shall not be encumbered.

After Regulation 22(8), the sub- regulation (9) has been added specifying the conditions for the existing sponsor(s) proposing to disassociate as sponsor(s) by seeking to convert the Manager to Self-Sponsored Manager

- (i) the REIT has been listed for a period of at least five years;
- (ii) the REIT has undertaken not less than twelve distributions on a continuous basis and has complied with the distribution norms as per these Regulations in the preceding five years;
- (iii) the REIT is rated AAA by a registered credit rating agency for a continuous period of five years immediately preceding exit of the sponsor;
- (iv) during the period of preceding five years, the REIT has not breached, at any time, the maximum leverage thresholds specified in these regulations;
- (v) the Manager is meeting the net worth criteria for the sponsor;
- (vi) the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) shall be complied with, on or after the date of conversion of the Manager to Self-Sponsored Manager, by the Manager, shareholders of the Manager and/or group entities of Manager:

Explanation: Manager, shareholders of the Manager and/or group entities of Manager may acquire units of the REIT for the purpose of compliance of the above condition.

- (vii) the sponsor(s) or its associate(s) do not own or control the Manager of the REIT on or after the date of conversion of the Manager to Self-Sponsored Manager;
- (viii) the Sponsor has not transferred / sold assets to the REIT in the last three years and no assets/ projects shall be acquired by the REIT from the outgoing sponsor(s) for a period of one year from the date of conversion to Self-Sponsored Manager;
- (ix) atleast one of the sponsor(s) proposing to disassociate should have been a sponsor of the REIT for a minimum period of five years;
- (x) the REIT shall not have any under-construction properties acquired from the sponsor that have not commenced commercial operations;
- (xi) unitholders approval in terms of sub-regulation (8) of this regulation and consent of the Trustee has been obtained for conversion to Self-Sponsored Manager;
- (xii) such other condition as may be specified by the SEBI.

## Stewardship Code

Schedule IX on Stewardship Code has been inserted which states that the following principles of stewardship code shall be complied with by any unitholder holding not less than 10% of the total outstanding units of the REIT:

1. They must act in the best interests of the REIT and its unitholders as a whole;
2. They should formulate a comprehensive policy on the discharge of their stewardship responsibilities and review and update the same periodically;
3. They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities;
4. They should periodically monitor the REIT and its investee entities viz. HoldCo(s) and SPV(s);
5. They should have a policy on intervention in the REIT and its HoldCo(s) and SPV(s);
6. They should have a policy on voting.

For details:

[https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-second-amendment-regulations-2023\\_75791.html](https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-second-amendment-regulations-2023_75791.html)

### **(3) Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023 (Notification No. No. SEBI/LAD-NRO/GN/2023/145 dated August 16, 2023)**

SEBI on 16th August, 2023 has published the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023. Brief of the amendments are placed below:

#### **New Definitions/clauses introduced**

- In regulation 2, sub-regulation (1), after clause (s), the following clause shall be inserted, namely,-  
“(sa) “group entities of the Investment Manager” means:  
(i) entities or person(s) which are controlled by the Investment Manager;  
(ii) entities or person(s) who control the Investment Manager;  
(iii) entities or person(s) which are controlled by entities or person(s) specified in sub-clause (ii).”
- After clause (zx), the following clause shall be inserted, namely,-  
“(zxa) “Self-Sponsored Investment Manager” means the Investment Manager of an InvIT who has dual responsibilities of both the Investment Manager as well as the sponsor;
- After clause (zxb), the following clause shall be inserted, namely,-  
“(zxc) “sponsor group” includes-  
(i) the sponsor(s);  
(ii) entities or person(s) which are controlled by such sponsor;  
(iii) entities or person(s) who control such body corporate;  
(iv) entities or person(s) which are controlled by entities or person(s) specified in clause (iii).”

**Minimum Unitholding Requirement:**

The revised regulations mandate that sponsor(s) and sponsor group(s) collectively maintain a minimum unitholding of 15% of total outstanding units for the first three years after unit listing subject to certain conditions as mentioned in the amended regulations. The amendment specifies conditions for conversion to a Self-Sponsored Investment Manager, such as continuous AAA rating, compliance with leverage thresholds, net worth criteria, and more.

**Lock-In Period and Encumbrance:**

Units held to fulfill the minimum unitholding requirements will be locked in and cannot be encumbered. Notwithstanding the above, any encumbrance created on units held to comply with the minimum unit holding requirement applicable before the date of coming into effect of the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023, may continue if the encumbrance exist on such date.

**Director Nomination and Exit Option:**

Unitholders possessing a minimum of 10% of outstanding units now have the authority to nominate a director on the board of the Investment Manager, subject to certain conditions. In cases where a conversion to a Self-Sponsored Investment Manager occurs, dissenting unitholders must be offered an exit option through the purchase of their units.

Schedule VIII on Stewardship Code has been inserted which states that the following principles of stewardship code shall be complied with by any unitholder holding not less than 10% of the total outstanding units of the InvIT

7. They must act in the best interests of the InvIT and its unitholders as a whole;
8. They should formulate a comprehensive policy on the discharge of their stewardship responsibilities and review and update the same periodically;
9. They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities;
10. They should periodically monitor the InvIT and its investee entities viz. HoldCo(s) and SPV(s);
11. They should have a policy on intervention in the InvIT and its HoldCo(s) and SPV(s);
12. They should have a policy on voting.

For details: [https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi\\_data/attachdocs/aug-2023/1692785987960.pdf#page=1&zoom=page-width,-15,842](https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/aug-2023/1692785987960.pdf#page=1&zoom=page-width,-15,842)

**(4) Board nomination rights to unitholders of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trust (InvITs) (Circulars no. SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 and SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 dated September 11, 2023)**

Unitholders of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) now have the framework to nominate directors on the boards of the investment manager of the trusts. The eligibility of the unitholders will be decided based on the unitholding pattern as on September 30, 2023. In two circulars issued on September 11, 2023 the SEBI detailed the framework for this and asked the investment managers to inform the unitholders of this within 10 days from September 30, 2023 and to request unitholders to send in their nominations if they wish to exercise this right. The eligibility of the nominee director will be confirmed by the investment

manager, based on the evaluation done by the Nomination and Remuneration Committee and/or the Board of Directors of the investment manager in line with the policy formulated for this and within 10 days of receipt of notice from eligible unitholders.

For details:

<https://www.sebi.gov.in/legal/circulars/sep-2023/board-nomination-rights-to-unitholders-of-real-estate-investment-trusts-reits-76709.html>

<https://www.sebi.gov.in/legal/circulars/sep-2023/board-nomination-rights-to-unitholders-of-infrastructure-investment-trusts-invits-76708.html>

- (5) Securities and Exchange Board of India (Real Estate Investment Trusts) (Third Amendment) Regulations, 2023 (Notification no. SEBI/LAD-NRO/GN/2023/160 October 20, 2023)**  
**Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2023 (Notification no. SEBI/LAD-NRO/GN/2023/159 dated October 20, 2023)**

SEBI has amended the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“**InvIT Regulations**”) and (Real Estate Investment Trusts) Regulations, 2014 (“**REITs Regulations**”) respectively vide gazette notification dated October 20, 2023. The Regulation 18(6) of the InvIT Regulations and Regulation 18(16) of the REITs Regulations have been amended.

Regulation 18(6)(e) of the InvIT Regulations and Regulation 18(16)(f) of the REITs Regulations provide that any amount which is unpaid or unclaimed out of the distributions declared by an InvIT/REIT as per Regulation 18, shall be transferred to the Investor Protection and Education Fund (“**Fund**”) constituted by the SEBI, in such manner as may be specified by the board.

The Notifications inserted a proviso to the above Regulation 18(6)(e) and Regulation 18(16)(f) stating that the amount transferred to such Fund shall not bear any interest. Further, Notification 1 inserted sub-clause (f) in Regulation 18(6) of the InvIT Regulations which provided that the unclaimed or unpaid amount of a person that has been transferred to the Fund in terms of sub-clause (e), may be claimed in such manner as may be specified. Notification 2 also inserted a similar sub-clause (g) in Regulation 18(16) of the REITs Regulations stating the above. This amendment has enabled the unit holders/InvIT/REIT to reclaim the unclaimed or unpaid distribution amount which was previously not provided for.

For details:

[https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-third-amendment-regulations-2023\\_78627.html](https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-third-amendment-regulations-2023_78627.html)

[https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-infrastructure-investment-trusts-third-amendment-regulations-2023\\_78625.html](https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-infrastructure-investment-trusts-third-amendment-regulations-2023_78625.html)

- (6) Revision in manner of achieving minimum public unitholding requirement- Infrastructure Investment Trusts (InvITs) (Circular No. SEBI/HO/DDHS-PoD-2/P/CIR/2023/174 October 31, 2023)**

SEBI vide circular dated October 31, 2023 has provided for revision in manner of achieving minimum public unitholding requirement by Infrastructure Investment Trusts (InvITs). There are

already nine different methods to achieve minimum public unitholding requirement for infrastructure investment trusts which were prescribed in a master circular dated July 6, 2023. In addition to the available methods, the following shall be an additional method for privately placed InvITs in order to achieve minimum public unitholding requirements:

1. Issuance of units through preferential allotment;
2. Sale of units held by Sponsor(s) / Investment Manager /Project Manager and their associates/related parties in the open market;
3. Sponsor(s) / Investment Manager / Project Manager and their associates/related parties can sell upto a maximum of 5% of the paid-up unit capital of the InvIT during a financial year.

For details: [https://www.sebi.gov.in/legal/circulars/oct-2023/revision-in-manner-of-achieving-minimum-public-unitholding-requirement-infrastructure-investment-trusts-invits-\\_78561.html](https://www.sebi.gov.in/legal/circulars/oct-2023/revision-in-manner-of-achieving-minimum-public-unitholding-requirement-infrastructure-investment-trusts-invits-_78561.html)

**(7) Revised framework for computation of Net Distributable Cash Flow (NDCF) by Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) (December 06, 2023)**

In order to promote Ease of Doing Business, SEBI has standardize the framework for calculation of available Net Distributable Cash Flows. The revised framework for computation of NDCF by InvITs / REITs and its Holdcos/SPVs shall be as per Annexure A to the circulars. The revised framework will be applicable with effect from April 1, 2024 and supersedes the Framework for calculation of Net Distributable Cash Flows provided in Paragraph F of Chapter 3 of the Master Circular for InvITs / REITs dated July 06, 2023.

For details: [https://www.sebi.gov.in/legal/circulars/dec-2023/revised-framework-forcomputation-of-net-distributable-cashflow-ndcf-by-infrastructure-investmenttrusts-invits-\\_79657.html](https://www.sebi.gov.in/legal/circulars/dec-2023/revised-framework-forcomputation-of-net-distributable-cashflow-ndcf-by-infrastructure-investmenttrusts-invits-_79657.html)

[https://www.sebi.gov.in/legal/circulars/dec-2023/revised-framework-forcomputation-of-net-distributable-cashflow-ndcf-by-real-estate-investmenttrusts-reits-\\_79656.html](https://www.sebi.gov.in/legal/circulars/dec-2023/revised-framework-forcomputation-of-net-distributable-cashflow-ndcf-by-real-estate-investmenttrusts-reits-_79656.html)

**(8) SECURITIES AND EXCHANGE BOARD OF INDIA (REAL ESTATE INVESTMENT TRUSTS) (AMENDMENT) REGULATIONS, 2024**

- i. SEBI vide this amendment regulations substituted the definition of REIT [Regulation 2(1) (zm)] as under:  
“**REIT**” or “**Real Estate Investment Trust**” means a person that pools rupees fifty crores or more for the purpose of issuing units to at least two hundred investors so as to acquire and manage real estate asset(s) or property(ies), that would entitle such investors to receive the income generated therefrom without giving them the day-to-day control over the management and operation of such real estate asset(s) or property(ies).  
A REIT or Real Estate Investment Trust shall include Small and Medium REIT (SM REIT).  
However, any company which acquires and manages real estate asset(s) or property(ies) and offers or issues securities to the investors, shall not be construed as a REIT or Real Estate Investment Trust;”
- ii. Also, a new Chapter VI B has also been added pertaining to Small and Medium REITs as under:

## **SMALL AND MEDIUM REITS (SM REITs) (Chapter VIB of the Regulations)**

### **Applicability**

The provisions of SEBI REITs Regulations, except chapters II, IV, V and regulation 22 under chapter VI, shall *mutatis mutandis* be applicable to unless otherwise provided. However, any reference to the “manager” or the “sponsor” of the REIT under the applicable provisions of these regulations shall be construed as a reference to an “investment manager” of the SM REIT.

### **Definitions**

- **“investment manager”** means a company incorporated in India, which sets up SM REIT and manages assets and investments of the SM REIT and undertakes operational activities of the SM REIT;
- **“liquid net worth”** means net worth deployed in liquid assets, which are unencumbered.  
Here, “liquid asset” means cash, units of overnight or liquid mutual fund schemes, fixed deposits, government securities, treasury bills and repo on government securities;
- **“Small and Medium REIT” or “SM REIT”** means a REIT that pools money from investors under one or more schemes in accordance with these regulations.
- **“scheme”** means a distinct and separate scheme of an SM REIT launched for owning of real estate assets or properties through special purpose vehicles;
- **“scheme offer document”** means any document described or issued as a scheme offer document including any notice, circular, advertisement or other document inviting offers for subscription or purchase of units of a scheme from the public;
- **“special purpose vehicle” or “SPV”** means any company which is a wholly owned subsidiary of the scheme of the SM REIT and the SPV shall not have any other capital or ownership interest in it;
- **“trustee”** means a trustee registered under Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, who holds the assets of SM REIT and its schemes in trust and for the benefit of the unit holders, in accordance with these regulations.

### **Registration of SM REIT and Grant of Certificate**

- An application for grant of certificate of registration as SM REIT shall be made, by the investment manager on behalf of the Trust as specified in the Schedule IA to these regulations along with a non-refundable application fee of Rupees One lakh. Further, a non-refundable registration fees of rupees ten lakhs shall be paid within 15 days from the date of receipt of intimation from the SEBI.
- In order to protect the interests of investors, the SEBI may appoint any person to take charge of records, documents of the SM REIT and also determine the terms and conditions of such an appointment.
- The SEBI shall take into account requirements as specified in these regulations for considering the grant of certificate of registration and the registration may be granted with such conditions as may be deemed appropriate by the SEBI.

### **Eligibility criteria**

The SEBI shall consider the following, namely,–

- (a) the applicant is the investment manager on behalf of the trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908;
- (b) the trust deed has its main objective as undertaking activity of SM REIT through one or more schemes and includes responsibilities of the trustee;
- (c) separate persons have been designated as investment manager of the SM REIT and trustee of the SM REIT;
- (d) with regard to the investment manager,–
  - the investment manager is clearly identified in the application for grant of certificate of registration to the SEBI and in the scheme offer document;
  - the investment manager has a net worth of not less than Rs. 20 crore (including Rupees 10 crores in the form of positive liquid net worth)
  - the investment manager has at least two years' experience in the real estate industry or real estate fund management: however, in case the investment manager is unable to meet the requirement, it shall employ at least two key managerial personnel, each of whom have not less than five years' experience in the real estate industry or real estate fund management;
  - not less than half of the directors of the investment manager are independent and are not directors of the manager or investment manager of another REIT or SM REIT, as the case may be; and
  - the investment manager has entered into an investment management agreement with the trustee, which provides for the responsibilities of the investment manager in accordance with these regulations;
- (e) the trustee is not an associate of the investment manager;
- (f) no unit holder of the scheme of the SM REIT enjoys superior voting or any other rights over another unit holder in the same scheme and there are no multiple classes of units of scheme of the SM REIT;
- (g) the rights of each unit holder in the scheme are pro-rata and *pari-passu*;
- (h) the applicant has clearly described at the time of application for registration, details pertaining to proposed activities of the SM REIT;
- (i) the SM REIT and the parties to the SM REIT are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;
- (j) whether any previous application for grant of certificate by the applicant or the parties to the SM REIT or their directors, for registration as a REIT or an SM REIT, has been rejected by the SEBI;
- (k) whether any disciplinary action has been taken by the Board or any other regulatory authority against the SM REIT or the parties to the SM REIT or their promoters or directors under any Act or the regulations or circulars issued thereunder.

#### **Migration of existing persons, entities or structures**

- 1) An applicant may apply for registration of existing persons, entities or structures owning real estate asset(s) or property(ies) in the nature of SM REIT within six months from the date of notification of this chapter i.e March 08, 2024 or within such period as may be specified by the SEBI.

- 2) For migration of such existing persons, entities or structures under these regulations:
  - a. The applicant shall submit details of existing persons, entities or structures proposed to be migrated and a migration plan along with the application for certificate of registration; and
  - b. The applicant shall complete the migration of existing persons, entities or structures within six months from the date of grant of registration or within such period as may be specified by the SEBI.
- 3) The applicant shall comply with the provisions of this chapter in relation to the scheme being migrated, unless otherwise provided.

#### **Eligible issuers**

- (1) An SM REIT shall not be eligible to make an initial offer of units of a scheme if:
  - (a) the SM REIT or the parties to the SM REIT are debarred from accessing the securities market or dealing in securities by the SEBI;
  - (b) any of the promoters, promoter group or directors of the parties to the SM REIT are debarred from accessing the securities market or dealing in securities by the SEBI;
  - (c) any of the promoters or directors of the parties to the SM REIT is a promoter or director of another company which is debarred from accessing the securities market by the SEBI; *(This is not applicable to a person who was appointed as a director only by virtue of nomination by a debenture trustee in other company.)*
  - (d) the SM REIT or the parties to the SM REIT or any of the promoters or directors of the parties to the SM REIT are wilful defaulters;
  - (e) any of the promoters or whole-time directors of the parties to the SM REIT is a promoter or whole-time director of another company which is a wilful defaulter;
  - (f) any of the promoters or directors of the parties to the SM REIT is a fugitive economic offender; or
  - (g) any fine or penalties levied by the SEBI or stock exchanges is pending to be paid by the SM REIT at the time of filing the scheme offer document:

However, the clauses (a), (b) and (c) shall not be applicable if the period of debarment is over as on the date of filing of the scheme offer document with the SEBI and the designated stock exchange.

- (2) No offer of units by a scheme of the SM REIT shall be made unless,—
  - (a) the size of the asset proposed to be acquired in a scheme of the SM REIT is at least rupees fifty crores and less than rupees five hundred crores; and
  - (b) the minimum number of unitholders of the scheme of the SM REIT other than the investment manager, its related parties and associates of the SM REIT are not less than two hundred investors:

This shall not be applicable to the migration of existing persons, entities or structures as on the date of this chapter coming into force which are included as part of the migration plan in case the applicant is applying for a certificate of registration under regulation 26N (1).

#### **Appointment of merchant banker**

The investment manager shall appoint one or more merchant bankers registered with the SEBI to carry out the obligations relating to the issue.

### **Conditions for initial offer**

1. The investment manager shall identify the real estate assets or properties it proposes to acquire or provide the features of the real estate assets or properties including location or such other details for the particular scheme in the draft scheme offer document.
2. The investment manager shall, through a merchant banker, file the draft scheme offer document with the Board, along with fees specified in Schedule IIA and with the designated stock exchange.
3. The minimum price of each unit of the scheme of the SM REIT shall be rupees ten lakhs or such other amount as may be specified by the SEBI from time to time.
4. Each scheme of the SM REIT shall be identified by a separate name, which shall not be misleading and shall not portray any guaranteed returns to the investors.
5. The value of real estate assets or properties in each scheme shall be at least fifty crore rupees.
6. The investment manager and the trustee shall ensure that the assets of each scheme, the bank accounts, investment or demat accounts and the books of accounts of each scheme are segregated and ring-fenced.
7. The investment manager and the trustee shall ensure that the property documents evidencing the title to the real estate assets or properties along with the related papers shall be duly maintained in safe-deposit boxes, at a scheduled commercial bank and be annually inspected by the trustee.
8. The draft scheme offer document filed with the SEBI shall be made public, for comments, if any, by hosting it on the websites of the SEBI, designated stock exchanges and merchant bankers associated with the issue, for a period of not less than twenty-one days.
9. The SEBI may issue observations, if any, to the merchant banker within thirty days from the later of:
  - (a) the date of receipt of the draft scheme offer document;
  - (b) the date of receipt of satisfactory reply from the merchant banker, where the SEBI has sought any clarification or additional information from the merchant banker;
  - (c) the date of receipt of clarification or information from any regulator or agency, where the SEBI has sought any clarification or information from such regulator or agency; or
  - (d) the date of receipt of a copy of in-principle approval letter issued by the designated stock exchange(s).
10. The merchant banker shall ensure that the observations issued by the SEBI are addressed in the scheme offer document prior to launch of the scheme.

### **Investment conditions**

1. The SPV shall directly and solely own all assets that are acquired or proposed to be acquired by the scheme of the SM REIT, of which SPV is the wholly owned subsidiary.
2. The scheme of the SM REIT shall invest at least 95% of the value of the schemes' assets for each of its schemes in completed and revenue generating properties and shall not invest in under-construction or non-revenue generating real estate assets:

However, up to 5% of the value of the schemes' assets may be invested in liquid assets, which are unencumbered.
3. The scheme of SM REIT shall not be permitted to lend to any entity other than lending to its own SPV.
4. The SPV shall not be permitted to lend to any entity.

### **Modes of fund raising**

1. The scheme of the SM REIT may raise funds from any investor whether Indian, or foreign by way of issuance of units. However, the investment by foreign investors shall be subject to the guidelines as may be specified by Reserve Bank of India and the Government of India from time to time.
2. The scheme of a SM REIT and the SPV(s) thereunder may undertake leverage if the option to undertake leverage is disclosed in the scheme offer document filed for initial offer.
3. With regard to modes of fund raising by a scheme of SM REIT, the following shall apply:
  - (a) The scheme of the SM REIT shall raise capital only by way of issuance of units pertaining to the particular scheme.
  - (b) For a scheme of SM REIT opting to utilize leverage in accordance with sub- regulation (2), the scheme may undertake leverage through borrowings or issuance of debt securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.
4. With regard to modes of fund raising by a SPV of a scheme of SM REIT, the following shall apply:
  - (a) The SPV shall raise capital only from equity investment from the scheme of SM REIT.
  - (b) The SPV may raise funds by way of borrowings from the scheme of SM REIT.
  - (c) For a scheme of SM REIT opting to utilize leverage in accordance with sub- regulation (2), the SPV(s) under such scheme may undertake leverage through external borrowings or issuance of debt securities under Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021.
5. For a scheme of SM REIT opting to utilize leverage in accordance with sub-regulation(2), the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, shall not exceed 49% of the value of the scheme assets: Provided that if the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, exceeds 25% of the value of the scheme assets, then for any further borrowings, -
  - (a) credit rating shall be obtained from a credit rating agency registered with the SEBI; and
  - (b) approval of unit holders shall be obtained in the manner as specified in regulation 26ZM.

### **Maintenance of website**

- The investment manager shall, at all times, maintain a functioning website of SM REIT. The investment manager shall specify on the website, the details of all the schemes of the SM REIT and details of the real estate assets and properties proposed to be acquired or acquired and held under each scheme.
- The investment manager shall provide the link to the scheme offer document for the investors on the website of the SM REIT. It shall be ensured that the trademark, brand name, website and other medium of communication of the SM REIT are used exclusively for the activities of SM REIT and no links or information about any other entity, structure or person shall be made available on its website or on any other medium of communication.

### **Issue period**

The issue period shall not be more than thirty days.

### **Dematerialization**

- (1) The SM REIT shall issue units of its scheme only in dematerialized form.
- (2) The investments of scheme of the SM REIT in SPV(s) shall be held in dematerialized form.

### **Lock-in requirements**

- 1) The minimum unitholding requirement applicable to the investment manager for the period of first three years commencing from the date of listing of units in the initial offer till the end of the third year from the date of listing of units in the initial offer, shall be as under:
  - a) in a scheme of the SM REIT which has opted not to undertake leverage as per disclosures in the scheme offer document filed for initial offer, the investment manager shall hold at least five per cent. of the total outstanding units at all times;
  - b) in a scheme of the SM REIT which has opted to undertake leverage as per disclosures in the scheme offer document filed for initial offer, the investment manager shall hold at least fifteen per cent. of the total outstanding units at all times:

Provided that any holding in excess of fifteen per cent or five per cent., as the case may be, shall be held by the investment manager for a period of at least one year from the date of listing of units issued in the initial offer.

- 2) The investment manager shall hold at least five per cent. of the total outstanding units in each scheme of the SM REIT, at all times, for a period of two years commencing from the fourth year of the date of listing of units in the initial offer till the end of fifth year from the date of listing of units issued in the initial offer.
- 3) The investment manager shall hold at least three per cent. of the total outstanding units in each scheme of the SM REIT, at all times, for a period of five years commencing from the sixth year of the date of listing of units in the initial offer till the end of tenth year from the date of listing of units issued in the initial offer.
- 4) The investment manager shall hold at least two per cent. of the total outstanding units in each scheme of the SM REIT, at all times, for a period of ten years commencing from the eleventh year of the date of listing of units in the initial offer till the end of twentieth year from the date of listing of units issued in the initial offer.
- 5) The investment manager shall hold at least one per cent. of the total outstanding units in each scheme of the SM REIT, at all times, after the completion of twentieth year from the date of listing of units issued in the initial offer.
- 6) The units in which holding is required to be maintained under this regulation shall be unencumbered and locked-in.

However, the units issued to investors against swap of securities allotted prior to the date of this chapter coming into force by an SM REIT that has received a certificate of registration pursuant to an application made under sub-regulation (1) of regulation 26N, shall not be considered for calculating the total outstanding units of the schemes of the SM REIT under this regulation.

### **Allotment and listing**

- 1) The units of the scheme of the SM REIT shall be mandatorily listed on the recognized stock exchange(s) having nationwide trading terminals.
- 2) The units of the SM REIT of the particular scheme shall be allotted and listed with such timelines as may be specified by the SEBI from time to time:

However, if the investment manager fails to allot or list units within the specified timelines, the investment manager shall pay interest to investors at the rate of 15% per annum and such interest shall not be recovered in the form of fees or any other form payable to the investment manager by the SM REIT.

- 3) The listing of the units of the scheme of the SM REIT shall be in accordance with the listing agreement entered into between the SM REIT and the designated stock exchange.
- 4) The units of the scheme of the SM REIT listed in designated 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 the SEBI.
- 5) No person, other than investment manager, its related parties and its associates, shall hold units of a scheme of the SM REIT which taken together with units held by him and by persons acting in concert with him in such scheme of the SM REIT, exceed 25% of the total outstanding units of such scheme of the SM REIT.

#### **Filing of post issue report**

The merchant banker shall submit post-issue report, along with due diligence certificate, within seven working days of the date of finalization of allotment or within seven working days of refund of money in case of failure of issue, as per the format and in such manner as may be specified by the SEBI.

#### **Minimum public unit holding**

- 1) The minimum offer and allotment to the public in each scheme of SM REIT shall be at least 25% of the total outstanding units of such scheme.
- 2) The minimum public holding for the units of each scheme of SM REIT shall be in accordance with point (1) above, failing which action may be taken as may be specified by the SEBI and by the designated stock exchange including delisting of units under regulation 26ZI.

#### **Distributions**

- 1) With respect to distributions made by the scheme of SM REIT and SPV, the investment manager shall ensure, –
  - (a) not less than 95% of net distributable cash flows of the SPV are distributed to the scheme of SM REIT subject to applicable provisions in the Companies Act, 2013:  
However, the amount retained by the SPV shall be utilized only in such manner as may be specified by the SEBI from time to time;
  - (b) 100% of the net distributable cash flows of the scheme of SM REIT shall be distributed to the unit holders;
  - (c) the distributions are declared at least once in every quarter of the financial year and not later than fifteen working days from the end of the quarter;
  - (d) the distributions are paid to the unitholders within seven working days of such declaration.
- 2) If the investment manager fails to make payment within the said timelines, then the investment manager shall pay interest at the rate of 15% per annum to the unitholders, for the delayed period and such excess interest shall not be recovered by the investment manager from the SM REIT in any form.

### **Related party transactions**

The SM REITs shall not enter into any transaction with related parties including transactions for facility management and property management:

This regulation shall not apply to payment of fees by the SM REIT to the investment manager and the trustee for carrying on the activities of the REIT.

### **Rights and meetings of unit holders**

- 1) The unitholders of the scheme shall have the right to receive distributions as provided for in the scheme offer document.
- 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 or criteria;
  - (b) the unitholders of the scheme shall have the right to vote in any unitholders' meeting of that particular scheme of SM REIT;
  - (c) in case the scheme of the SM REIT proposes to purchase a property or proposes to sell a property at a value which is greater than 105% or less than 95% of the value of property as assessed by the valuer respectively, approval from unitholders shall be required wherein votes cast in favour of the resolution shall be at least three times the number of votes cast, against the resolution;
  - (d) the investment manager shall also provide the option to the unitholders to vote either by way of post or through electronic mode;
  - (e) a notice of not less than twenty one clear days shall be provided to the unit holders:  
Provided that a meeting of the unit holders of each scheme may be called after giving shorter notice, if consent, in writing or by electronic mode, is accorded thereto, by not less than 95% of the unit holders of the scheme entitled to vote at such meeting;
  - (f) no person who is interested in any transaction as well as associates of such person(s) shall vote on any matter related to that transaction;
  - (g) investment manager shall be responsible for all the activities pertaining to the meeting of the unit holders of scheme, subject to oversight of the trustee:  
Provided that in issues pertaining to the investment manager including change in the investment manager, removal of the investment manager, change in control of the investment manager, the trustee shall convene and handle all activities pertaining to conduct of the meetings of unit holders:  
Provided 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) An annual meeting of unit holders of each scheme shall be held at least once every year, within one hundred and twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months.
- 4) The investment manager or the trustee, as applicable, of the SM REIT shall conduct the meetings in accordance with the procedure as may be specified by the Board.
- 5) The investment manager of a SM REIT may conduct meeting of unitholders of each scheme through video conferencing or through other audio-visual means.

- 6) In the annual meeting of unitholders of each scheme, the investment manager shall place following matters before the unit holders for consideration of:
  - (a) latest annual accounts and audit report of the SM REIT and its schemes, and areport on performance of the scheme of the SM REIT;
  - (b) the appointment of, and the fixing of the fees of the auditor and the valuer; and
  - (c) the latest valuation reports.
- 7) The matters mentioned in sub-regulation (6) of this regulation shall require approval of unitholders of the scheme, where votes cast in favour of the resolution shall be more than the votes cast against the resolution.
- 8) Any information that is required to be disclosed to the unitholders of each scheme may also be taken up in the annual meeting of the unitholders of such scheme.
- 9) Approval from unitholders of the concerned scheme shall be required, where votes cast in favour of the resolution shall be more than the votes cast against the resolution, in case of following items,–
  - (a) any transaction, value of which is equal to or greater than ten per cent. of the value of the assets of the particular scheme of SM REIT;
  - (b) any borrowing in excess of limit specified under proviso to sub-regulation (5) of regulation 26U;
  - (c) any issue for which the Board or the recognized stock exchanges require such approval under this sub-regulation;
  - (d) any issue, in the ordinary course of business, which in the opinion of the Investment Manager or Trustee, is material and requires approval of the unitholders.
- 10) Approval from the unitholders of the scheme of the SM REIT 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 in case of the following items, –
  - (a) any change in investment manager including removal of the investment manager or change in control of the investment manager;
  - (b) any material change in investment strategy or any change in the fees payable to the investment manager by the SM REIT;
  - (c) any issue of units after initial offer by a scheme of SM REIT, in whatever form;
  - (d) the trustee and investment manager proposing to seek voluntary delisting of units of the scheme of the SM REIT;
  - (e) any issue, not in the ordinary course of business, which in the opinion of the investment manager or trustee requires approval of the unitholders;
  - (f) any issue, which in the opinion of the Board or the recognized stock exchanges, requires approval under this sub-regulation;
  - (g) removal of the auditor or valuer and appointment of another auditor or valuer to the SM REIT;
  - (h) change in the trustee;
  - (i) delisting of the scheme of the SM REIT if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unitholders; and
  - (j) extension of time period as specified under clause (b) of sub-regulation (1) of regulation 26ZI.
- (3) The unitholders of the scheme of SM REIT may request any matter to be taken up in the unitholders' meeting of such scheme if ten per cent. of the unitholders of a particular scheme by

value, apply in writing, to the trustee and the trustee shall require the investment manager to place the matter for voting in accordance with these regulations:

Provided that the request of the unitholders of a scheme for change in the trustee shall be sent, in writing, to the investment manager, who shall, on receipt of such a request, place the matter for voting in the manner as specified in accordance with these regulations.

**(9) SECURITIES AND EXCHANGE BOARD OF INDIA (INFRASTRUCTURE INVESTMENT TRUSTS) (AMENDMENT) REGULATIONS, 2024**

**(i) The following definition has been added:**

**“Subordinate unit”** means an instrument issued by an InvIT which can be reclassified as an ordinary unit”;

(ii) Regulation 4(2) (h) shall be substituted with the following ( Refer other conditions of eligibility Criteria):

**There shall be only one class of units and all units shall carry equal voting rights and distribution rights associated with such units.**

(iii) Also after clause (h), the following clause shall be inserted :

- (i) The unitholder(s) holding not less than 10% of the total outstanding units of the InvIT, either individually or collectively, shall -
- a) be entitled to nominate one director on the board of directors of the Investment Manager, in such manner as specified by the SEBI. However, the director so nominated shall recuse from voting on any transaction where such nominee director or associate of such nominee director or the unitholder who nominated such nominee director or associate of such unitholder is a party;
  - b) comply with stewardship code specified in Schedule VIII of these regulations which states the following principles:

**(iv) The following new Regulations have been inserted:**

12(4) - Subordinate units shall not be considered in computing total outstanding units of the InvIT while calculating the minimum unitholding requirements.

12(5) - Subordinate units shall not be eligible for meeting the minimum unitholding requirement.

14(5B) [**Offers and Listing of Unit**] - No InvIT shall raise funds through public issue if any subordinate units have been issued and are outstanding.

22 (8) (xiia)- There are no outstanding subordinate units.

23 (10) - The investment manager shall disclose the unitholding pattern for ordinary units and subordinate units separately in such manner as may be specified by the Board.”

(v) Further, a new chapter IV A has been inserted which deals with the framework for issuance of subordinate units as under:

**FRAMEWORK FOR ISSUANCE OF SUBORDINATE UNITS**

**Applicability**

- Applicable to subordinate units issued.

- Disclosure requirements mentioned in this framework shall also apply to any subordinate units issued prior to notification of this Chapter.
- The provisions of these regulations applicable to ordinary units shall apply mutatis mutandis to issuance of subordinate units.

#### **Issuance of Subordinate Units**

- The subordinate units shall only be issued by a privately placed InvIT upon acquisition of an infrastructure project.
- The subordinate units shall be issued only to the sponsor, its associates and the sponsor group and shall be deemed to be a part of the consideration for acquisition of the infrastructure project from such sponsor, its associates and the sponsor group.
- The subordinate units shall not carry any voting rights or distribution rights.
- The subordinate units shall be issued in a dematerialized form with an International Securities Identification Number, distinct from that of the ordinary units.
- The subordinate units shall be listed on a recognised stock exchange after their reclassification into ordinary units.
- The subordinate units may be issued by way of an initial offer or any offer subsequent to the initial offer, either along with the issue of ordinary units or without the issue of ordinary units.
- The issue of subordinate units made after the initial offer by the InvIT shall require the approval of the unitholders 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, any unitholder who is party to the acquisition of the infrastructure project including the sponsor, its associates and sponsor group, shall not be entitled to vote.
- The price of subordinate units shall be determined according to the pricing guidelines applicable for issuance of ordinary units.
- Prior to issuance of subordinate units, the investment manager shall obtain in-principle approval from the recognised stock exchange for listing of such subordinate units after their reclassification into ordinary units.
- The enabling provisions authorising the issuance of subordinate units shall be specified in the Trust Deed.
- The investment manager shall disclose the terms and conditions governing subordinate units in the Term Sheet.
- The investment manager shall disclose the impact of potential reclassification of subordinate units into ordinary units in the Term Sheet in such manner as specified by the SEBI.
- The investment manager shall disclose the Term Sheet in the placement memorandum, the explanatory statement to the notice for unitholders meeting as well as any document which may be disclosed to investors including prospective investors.
- The InvIT shall also disclose the Term Sheet, the placement memorandum and the notice for unitholders meeting including the explanatory statement on its website and shall file the same with the recognised stock exchange.
- The amount of subordinate units issued at the time of acquisition of an infrastructure

project by the InvIT shall not exceed 10% of the acquisition price of the infrastructure project.

- The total number of outstanding subordinate units issued by an InvIT at any point of time shall not exceed 10% of the total number of outstanding ordinary units issued by such InvIT.
- The terms and conditions of the subordinate units shall not be varied after their issuance.

#### **Transfer of subordinate units**

- The subordinate units shall be locked in till its reclassification into ordinary units
- The subordinate units shall not be transferable to any person except the sponsor, its associates and the sponsor group entities.
- The subordinate units shall not be encumbered in favor of any person except the sponsor, its associates and the sponsor group entities.
- The depository shall not register the transfer or encumbrance of a subordinate unit in favour of any person unless such a person is a sponsor of the InvIT, associate of such sponsor or belongs to the sponsor group of the InvIT.
- The investment manager shall disclose any inter-se transfer or inter-se encumbrance of subordinate units to the recognised stock exchange within one working day of such transfer or encumbrance.
- In case of a change in the sponsor, the outgoing sponsor shall transfer the subordinate units held by it, if any, to another sponsor, its associates or sponsor group.

#### **Entitlement date, entitlement event and performance benchmark**

- The entitlement date, the entitlement event and the performance benchmark for reclassification of subordinate units to ordinary units shall be clearly defined and specified in the Term Sheet.
- The performance benchmark for reclassification of subordinate units shall be quantifiable, objective and based on the audited financial statements.
- The minimum time period between the issuance of subordinate units and entitlement date for reclassification of the subordinate units to ordinary units shall be three years.
- The entitlement date may be extended in the manner specified in the Term Sheet, subject to the following conditions:
  - (a) the entitlement date shall not be extended for more than one year at a time and shall not be extended more than two times in total;
  - (b) the extension of the entitlement date may be done only for cases where a possibility of such extension is clearly contemplated, duly approved and disclosed in the Term Sheet prior to the issuance of subordinate units;
  - (c) the extension of entitlement date shall be allowed only in case of any unforeseen circumstances as mentioned in the Term Sheet such as impossibility on account of a force majeure event or illegality on account of change in law or an order of any court or authority;
  - (d) the explanatory statement to the notice of unitholders meeting convened for seeking

approval for the extension in entitlement date shall disclose the reasons for proposing such extension and the potential impact on account of such extension on the ordinary unitholders, including any potential dilution of their beneficial interest in the InvIT; and

- (e) the extension of the entitlement date shall require the approval of the unitholders as per the regulations.

#### **Progress related to achievement of performance benchmark**

- (1) The investment manager shall monitor the progress related to the achievement of performance benchmark and shall report such progress annually or with such frequency as may be specified by the Board, after certification by the statutory auditor of the InvIT and approval of the trustee and the audit committee of the investment manager.
- (2) The investment manager shall disclose the progress related to achievement of performance benchmark in the Annual Report of the InvIT
- (3) The investment manager shall disclose the diluted NAV and the diluted distribution per unit to the stock exchange along with NAV and distribution per unit till the time subordinate units are outstanding.

**“Diluted NAV” or “Diluted Net Asset Value”** means the value of the InvIT assets reduced by the external debt divided by the total number of outstanding ordinary units and subordinate units; and **“Diluted Distribution per unit”** means the value of total distribution, divided by the total number of outstanding ordinary units and subordinate units.

#### **Process for reclassification of subordinate unit**

- (1) The status of achievement of performance benchmark shall be certified by the statutory auditor of the InvIT for reclassification of subordinate units to ordinary units and shall be reviewed by the trustee and the audit committee of the investment manager.
- (2) If the performance benchmark is achieved at the end of the entitlement date, including extended period, if any; the subordinate units shall be reclassified into equal number of ordinary units on a *pari passu basis* in accordance with the terms and conditions of subordinate units mentioned in the Term Sheet.  
*Explanation 1.* - The reclassification can happen for all subordinate units either together or on a piecemeal basis in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.  
*Explanation 2.* - The subordinate units may be reclassified into ordinary units, in part or in full in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.
- (3) If the performance benchmark is not achieved at the end of the entitlement date, including extended period, if any, the subordinate units shall be extinguished without any payment to the holder of subordinate units.
- (4) The board of directors of the investment manager shall consider reclassification of subordinate units into ordinary units or extinguishment of the subordinate units depending on the achievement of the performance benchmark and pass a resolution making the necessary recommendation to this effect to the trustee.
- (5) The recommendation for reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, shall be considered by the trustee and after ensuring compliance with the provisions of these regulations, the trustee may approve reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, and intimate the same to the investment

manager.

- (6) Pursuant to the approval of the trustee, the investment manager shall make the necessary intimation to the recognised stock exchange, depositories and the Registrar and Transfer Agent.
- (7) The investment manager shall ensure that the record date is disclosed as part of the intimation made under this regulation, at least two working days prior to the record date, excluding the date of intimation and the record date.  
Record date here means the date from when subordinate units shall be reclassified as ordinary units.
- (8) The subordinate units upon being reclassified as ordinary units shall be listed on the recognised stock exchange(s) upon receipt of final listing and trading approval from such stock exchange(s).”;

**(10) Revised Pricing Methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust (InvIT) (February 08, 2024)**

Regulation 14(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (‘InvIT Regulations’) provides that any subsequent issue of units after initial public offer may be by way of institutional placement, in addition to other mechanisms provided in the regulations. To promote Ease of Doing Business, the guidelines for pricing of institutional placements InvITs has been reviewed. It is provided that the floor price for institutional placement for privately placed InvITs shall be NAV per unit of such InvIT.

For details: <https://www.sebi.gov.in/legal/circulars/feb-2024/revised-pricingmethodology-for-institutionalplacements-of-privately-placedinfrastructure-investment-trust-invite-81268.html>

## LESSON 11 RAISING OF FUNDS – PRIVATE FUNDING

### 1. **Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023 (E-Gazette Notification No. SEBI/LAD-NRO/GN/2023/132 June 15, 2023)**

SEBI by way of its notification dated June 15, 2023 amended the SEBI Alternative Investment Fund ('AIF') Regulations, 2012 ('AIF Regulations'). Details of certain key amendments are summarized below:

#### 1. **Addition of a new category of AIF called Specified Alternative Investment Fund.**

The addition of the new category of AIF i.e., specified Alternative Investment Fund expands the existing three categories of AIFs, namely Category I AIF, Category II AIF, and Category III AIF, as outlined in Regulation 3(4) of the SEBI Regulation. The introduction of the Specified AIF category provides further diversification and opportunities for investment within the alternative investment landscape, subject to the criteria and guidelines set by SEBI.

#### 2. **Introduction of 'Corporate Debt Market Development Fund' (CDMDF)**

Corporate Debt Market Development Fund as a new category of AIF has been introduced in which investment shall be made in accordance with Chapter III-C of these regulations. Further, the concepts of liquidation scheme and liquidation period has also been inserted. The SEBI has prescribed the modalities for launching Liquidation Scheme and for distributing the investments of Alternative Investment Funds (AIFs) vide circular dated June 21, 2023. (Please refer the link: <https://www.sebi.gov.in/legal/circulars/jun-2023/modalities-for-launching-liquidation-scheme-and-for-distributing-the-investments-of-alternative-investment-funds-aifs-in-specie-72922.html> for details). The amendments with regards to CDMDF are as under:

- **Registration of CDMDF:** The CDMDF shall be structured as a trust, and its establishment requires the execution of a registered deed in accordance with the provisions of the Indian Registration Act of 1908. The CDMDF shall operate as a close-ended fund, meaning that it has a predetermined duration of 15 years from the date of its initial closing. The CDMDF are made available for investment to Asset Management Companies (AMCs) and specified debt-oriented schemes of mutual funds.

The SEBI vide circular dated July 27, 2023 prescribed the framework for Corporate Debt Market Development Fund (CDMDF) which states that CDMDF shall comply with the Guarantee Scheme for Corporate Debt (GSCD) as notified by Ministry of Finance vide notification no. G.S.R. 559(E) dated July 26, 2023, which includes the Framework for Corporate Debt Market Development Fund. In addition to the scheme, CDMDF shall comply with the conditions as mentioned in the circular. For details, please refer <https://www.sebi.gov.in/legal/circulars/jul-2023/framework-for-corporate-debt-market-development-fund-cdmf-74416.html>

- **Investment Conditions:** During periods of market dislocation, the Corporate Debt Market Development Funds shall purchase corporate debt securities from the specified debt-oriented schemes of mutual funds which meet the following eligibility criteria:
  - a) corporate debt securities shall be listed and have an investment grade rating;
  - b) the residual maturity of such securities shall not exceed five years on the date of purchase;
  - c) securities where there is no material possibility of default or adverse credit news or views.
- **Disclosure Norms:** The portfolio of the CDMDF will be made available to the unitholders on a fortnightly basis. Additionally, the net asset value (NAV) of the CDMDF will be disclosed to the unitholders on a daily basis. These regular disclosures ensure transparency and provide timely information to the unitholders regarding the fund's holdings and NAV.
- **Compliance with governance mechanism:** The CDMDF will select and appoint a trustee company. The appointment of both the board of directors of the trustee company and the manager of the CDMDF necessitates prior approval from SEBI.

The trustee company is authorized to engage solely in activities where it acts as the trustee of the CDMDF, unless prior written consent is obtained from SEBI. In terms of composition, two-thirds of the members on the board of the trustee company must be independent directors who do not have any affiliation with the sponsor or manager.

The appointment of any individual as a director of the trustee company is subject to the prior approval of SEBI. Furthermore, an audit committee must be established within the trustee company to oversee and assess compliance with the provisions outlined in the placement memorandum.

### 3. Issuance of units of AIFs in dematerialised form (June 21, 2024)

A new clause into Regulation 10 mandated every AIF to issue units in dematerialized form, subject to conditions specified by the SEBI.

All schemes of AIFs shall dematerialise their units in the following time frame:

Particulars	Schemes of AIFs with corpus $\geq$ Rs 500 Crore	Schemes of AIFs with corpus $<$ Rs 500 Crore
Dematerialization of all the units issued	Latest by October 31, 2023	Latest by April 30, 2024
Issuance of units only in dematerialized form	November 01, 2023 onwards	May 01, 2024 onwards

The above requirements is not applicable to the AIF Schemes whose original tenure ending on or before April 30, 2024. Dematerialization of units by AIFs shall help in Ease of monitoring for investors/managers/regulatory compliances; Ease of transfer and transmission of AIF units; Safer option to hold securities - reduces risk of loss/damage of certificate, forgery etc. and to facilitate transparency and adequate monitoring

For details: [https://www.sebi.gov.in/legal/circulars/jun-2023/issuance-of-units-of-aifs-in-dematerialised-form\\_72921.html](https://www.sebi.gov.in/legal/circulars/jun-2023/issuance-of-units-of-aifs-in-dematerialised-form_72921.html)

#### **4. Appointment of Compliance Officer**

Each AIF is mandated to appoint a compliance officer who holds the responsibility of overseeing adherence to the provisions of the act, rules, regulations, notifications, circulars, guidelines, and any other directives issued by SEBI. The compliance officer must fulfill the eligibility criteria specified by SEBI.

#### **5. Independent Valuation**

The manager of an AIF bears the responsibility of ensuring that the AIF appoints an independent valuer who meets the criteria specified by the SEBI on a periodic basis.

(SEBI has prescribed the standardised approach to valuation of investment portfolio of Alternative Investment Funds (AIFs) vide circular dated June 21, 2023. For details refer the circular- <https://www.sebi.gov.in/legal/circulars/jun-2023/standardised-approach-to-valuation-of-investment-portfolio-of-alternative-investment-funds-aifs-72924.html> )

For details: [https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2023\\_72778.html](https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2023_72778.html)

#### **2. Validity period of approval granted by SEBI to Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) for overseas investment (Circular No. SEBI/HO/AFD/PoD/CIR/P/2023/137 August 04, 2023)**

AIFs and VCFs have a time limit of six months from the date of prior approval from SEBI to making the allocated investments in offshore venture capital undertakings. SEBI reduced the validity period of approval given to alternative investment funds (AIFs) and venture capital funds (VCFs) for making overseas investments to four months from six months at present. In case the applicant AIFs and VCFs does not utilize the limits allocated to them within six months then SEBI can allocate such unutilized limit to another applicant.

For details: [https://www.sebi.gov.in/legal/circulars/aug-2023/validity-period-of-approval-granted-by-sebi-to-alternative-investment-funds-aifs-and-venture-capital-funds-vcfs-for-overseas-investment\\_74979.html](https://www.sebi.gov.in/legal/circulars/aug-2023/validity-period-of-approval-granted-by-sebi-to-alternative-investment-funds-aifs-and-venture-capital-funds-vcfs-for-overseas-investment_74979.html)

#### **3. Regulatory Reporting by Alternative Investment Funds (AIFs) (Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2023/0155 September 14, 2023)**

In order to enable the AIF industry to have uniform compliance standards, ease compliance reporting and for regulatory and developmental purposes, the existing quarterly reporting format has been reviewed and the revised format has been prepared by SEBI. It is prescribed that the said revised reporting format shall be hosted by the AIF associations on their website within 2 working days of issuance of this circular. The report shall be submitted within 15 calendar days from the end of each quarter. The association shall engage with all AIFs to ensure that to begin with and to carry out a trial run, quarterly report for the June 2023 quarter is submitted in the revised format by October 15, 2023 on the SEBI Intermediary Portal (SI Portal).

For details: [https://www.sebi.gov.in/legal/circulars/sep-2023/regulatoryreporting-by-aifs\\_76908.html](https://www.sebi.gov.in/legal/circulars/sep-2023/regulatoryreporting-by-aifs_76908.html)

#### **4. (Alternative Investment Funds) (Amendment) Regulations, 2024 (January 05, 2024)**

**The following new regulation have been inserted:**

##### **Regulation 15(1)(i)**

Alternative Investment Funds shall hold their investments in dematerialised form, subject to such conditions as may be specified by the SEBI from time to time. However, this shall not apply to:

- a) investments by Alternative Investment Funds in such type of instruments which are not eligible for dematerialisation,
- b) investments held by a liquidation scheme of the Alternative Investment Funds that are not available in the dematerialised form, and
- c) such other investments by Alternative Investment Funds and such other schemes of Alternative Investment Funds as may be specified by the Board from time to time.

##### **Regulation 20 (11A)**

A Custodian which is an associate of the Sponsor or Manager of an Alternative Investment Fund may act as a custodian for that Alternative Investment Fund only when all the following conditions are met:

- a) the Sponsor or Manager has a net worth of at least twenty thousand crore rupees at all points of time;
- b) fifty per cent or more of the directors of the Custodian do not represent the interest of the Sponsor or Manager or their associates;
- c) the Custodian and the Sponsor or Manager of the Alternative Investment Fund are not subsidiaries of each other;
- d) the custodian and the Sponsor or Manager of the Alternative Investment Fund do not have common directors; and
- e) the Custodian and the Manager of the Alternative Investment Fund sign an undertaking that they shall act independently of each other in their dealings of the schemes of the Alternative Investment Fund.”

##### **Regulation 20 (11) has been substituted with the following:**

The Sponsor or Manager of the Alternative Investment Fund shall appoint a Custodian registered with the Board for safekeeping of the securities of the Alternative Investment Fund, in the manner as may be specified by the Board from time to time:

Provided that the Custodian appointed by the Sponsor or Manager of a Category III Alternative Investment Fund shall keep the custody of the securities and goods received in delivery against the physical settlement of commodity derivative:

Provided further that the Custodian appointed by the Sponsor or Manager of an Alternative Investment Fund shall report or disclose such information regarding investments of the Alternative Investment Fund in such manner as may be specified by the Board from time to time.”

For details: [https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024\\_80608.html](https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024_80608.html)

**5. SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2024 (Notification No. SEBI/LAD-NRO/GN/2024/168 dated April 25, 2024)**

With an objective to provide ease of doing business for Alternative Investment Funds (AIFs) and to foster an ecosystem wherein private capital effectively complements the various modes available for infrastructure financing, the SEBI in its Board Meeting had approved the proposal to allow Category I and II AIFs to create an encumbrance on the equity of its investee companies in infrastructure sector to facilitate raising of debt/loan by such investee companies, subject to certain conditions, including compliance with RBI regulations. For this purpose, the companies in the infrastructure sector are such companies which are engaged in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure sub-sectors, as issued by the Government of India. In this regard, the SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”) have been amended and notified on April 25, 2024. The following amendments have been made under the SEBI (Alternative Investment Funds) Regulations, 2012:

1. The definitions on “Dissolution Period” and “Encumbrance” in regulation 2(1) have been added as:
  - a) Dissolution Period means the period following the expiry of the liquidation period of the scheme for the purpose of liquidating the unliquidated investments of the scheme of the Alternative Investment Fund.
  - b) Encumbrance shall have the same meaning as assigned to it under chapter V of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
2. Regulation 16(1)(c), pertaining to investment conditions for Category I Alternative Investment Funds, states that the Category I Alternative Investment Funds shall not borrow funds directly or indirectly or engage in any leverage except for meeting temporary funding requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds. In aforesaid regulation 16(1)(c) the following proviso is added:

“Provided that Category I Alternative Investment Funds may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions as may be specified by the Board from time to time.”
3. Regulation 17(c), pertaining to investment conditions for Category II Alternative Investment Funds, states that Category II Alternative Investment Funds may not borrow funds directly or indirectly and shall not engage in leverage except for meeting temporary funding requirements for not more than thirty days, not more than four occasions in a year and not more than ten percent of the investable funds. In aforesaid regulation 16(1)(c) the following proviso is added:

“Provided that Category II Alternative Investment Funds may create encumbrance on equity of investee company, which is in the business of development, operation or management of

projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions as may be specified by the Board from time to time.”

4. In regulation 20, pertaining to the General Obligations, the new sub-regulation 20(20) is inserted which provides that every Alternative Investment Fund, Manager of the Alternative Investment Fund and Key Management Personnel of the Manager and the Alternative Investment Fund shall exercise specific due diligence, with respect to their investors and investments, to prevent facilitation of circumvention of such laws, as may be specified by the Board from time to time.

5. In regulation 29, related to winding up of an Alternative Investment Fund set up as a trust, the following sub-regulations have been inserted:

“(9A) If the liquidation period for a scheme of an Alternative Investment Fund has expired or is expiring within three months from the date of notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2024, such schemes may be granted an additional liquidation period, subject to such conditions and in the manner as may be specified by the Board.

Provided that the additional liquidation period granted under sub-regulation (9A) shall be without prejudice to the issuance of any direction or measures in accordance with the provision of the Act and regulations framed thereunder.

(10) If the scheme of an Alternative Investment Fund enters into a dissolution period as provided under regulation 29B and the unliquidated investments of the scheme are not sold by the expiry of the dissolution period, such investments shall be mandatorily distributed in-specie to the investors, in the manner as may be specified by the Board.”

6. In regulation 29A, related to Liquidation Scheme, the following sub-regulation has been inserted:

“(8) No Alternative Investment Fund shall launch any new liquidation scheme under this regulation after the notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2024.

Provided that any liquidation scheme launched by an Alternative Investment Fund prior to the notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2024 shall continue to be governed by regulation 29A and the other provisions of these regulations till such schemes are wound up.”

7. The new regulation 29B on Dissolution Period has been inserted:

“(1) A scheme of an Alternative Investment Fund may enter into a dissolution period in the manner and subject to such conditions as may be specified by the Board.

(2) The scheme entering into a dissolution period shall file an information memorandum with the Board through a merchant banker in the manner as may be specified by the Board.

(3) The dissolution period of a scheme of an Alternative Investment Fund shall not be more than the original tenure of the scheme and shall not be extended in any manner upon expiry of the dissolution period.

(4) The scheme of the Alternative Investment Fund shall not accept any fresh commitment from any investor and shall not make any new investment during the dissolution period.”

For details: [https://egazette.gov.in/\(S\(514ebahev23ytpl3kfjllrlc\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(514ebahev23ytpl3kfjllrlc))/ViewPDF.aspx)

**6. Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies (Circular No SEBI/HO/AFD/PoDI/CIR/2024/027 dated April 26, 2024)**

In terms of provisos to Regulation 16(1)(c) and 17(c) of SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”), Category I and Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure subsectors listed in the Harmonised Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions as may be specified by the Board from time to time.

In this regard, SEBI vide this circular has specified the following conditions:

- Existing schemes of Category I or Category II AIFs who have not on-boarded any investors prior to April 25, 2024, may create encumbrance on equity of investee company subject to explicit disclosure with respect to creation of such encumbrance in this regard and disclosure of associated risks in their Private Placement Memorandums (PPMs).
- Any encumbrances already created by a scheme of Category I or Category II AIF prior to April 25, 2024, may continue if such encumbrances were created after making an explicit disclosure in the PPM of the scheme.
- In case such encumbrances were created by a scheme of Category I or Category II AIF without making an explicit disclosure in the PPM, consent of all investors in the scheme of the AIF is obtained to this effect latest by October 24, 2024. If consent of all investors is not obtained within the aforesaid time period, the encumbrances shall be removed latest by January 24, 2025.
- Category I or Category II AIFs shall ensure that the borrowings made by the investee company against the equity investments encumbered by the AIFs are utilised only for the purpose of development, operation or management of investee company, and not utilised otherwise including to invest in another company.
- In case of default by the borrower investee company, Category I or Category II AIF shall ensure that the fund or its investors are not subject to any liability over and above the equity of the borrower investee company encumbered by the AIF.
- The pilot Standard Setting Forum for AIFs (SFA) in consultation with SEBI shall formulate implementation standards to ensure that the encumbrance created on equity of investee company by Category I or Category II AIFs, is only utilized for facilitation of debt raising at the infrastructure sector investee company. Managers of such AIFs shall adopt and adhere to such implementation standards.

For details: [https://www.sebi.gov.in/legal/circulars/apr-2024/framework-for-category-i-and-ii-alternative-investment-funds-aifs-to-create-encumbrance-on-their-holding-of-equity-of-investee-companies\\_83067.html](https://www.sebi.gov.in/legal/circulars/apr-2024/framework-for-category-i-and-ii-alternative-investment-funds-aifs-to-create-encumbrance-on-their-holding-of-equity-of-investee-companies_83067.html)

7. **Flexibility to Alternative Investment Funds (AIFs) and their investors to deal with unliquidated investments of their schemes (Circular No. SEBI/HO/ AFD / PoD-I/P/CIR/2024/026 dated April 26, 2024)**

SEBI in its meeting approved a proposal to allow AIFs to deal with unliquidated investments which are not sold due to lack of liquidity during the winding up process, by continuing to hold such investments in the same scheme of the AIF and entering into a Dissolution Period. The value of such investments carried forward into the Dissolution Period shall be recognised as per norms specified by SEBI for capturing in the track record of the manager and for reporting to Performance Benchmarking Agencies. The said facility of entering into Dissolution Period has been introduced in place of the existing option of launching a new scheme (viz. Liquidation Scheme). The Board also approved the proposal to provide a one-year additional Liquidation Period to schemes of AIFs to deal with unliquidated investments whose Liquidation Period had expired in the past or shall expire within three months from the date of notification of amendment to AIF Regulations, subject to certain conditions.

In this regard, SEBI (Alternative Investment Funds) (Second Amendment) Regulations 2024 (“AIF Regulations Amendment”), have been notified on April 25, 2024, inter alia, to provide additional flexibility to AIFs and their investors to deal with unliquidated investments of their schemes. (Same is covered under point 8 above)

Further, SEBI vide this circular has specified the following conditions:

- If an alternative investment fund (AIF) or its manager wants to enter unliquidated assets of a scheme into dissolution period, then they have to arrange bid for a minimum of 25% of the value of the unliquidated assets.
- The performance of the manager during the Dissolution Period will be captured separately and reported to Performance Benchmarking Agencies, distinct from the performance of the scheme before entering into Dissolution Period.
- The manager will also not be allowed to charge a fee during the dissolution period.
- Before seeking the consent of the investors to enter the assets into dissolution period, the fund or the manager must disclose the following to the investors.
  - The proposed tenure of the Dissolution Period, details of unliquidated investments, value recognition of the unliquidated investments for reporting to Performance Benchmarking Agencies, etc.
  - An indicative range of bid value, along with the valuation of the unliquidated investments carried out by two independent valuers.
- Before the expiry of the liquidation period, the AIF / manager shall intimate SEBI about obtaining the investor consent and the investors’ decision to enter into Dissolution Period.
- If the scheme of the AIF fails to sell the unliquidated investments during the Dissolution Period, such investments shall be mandatorily distributed in-specie to the investors. It is

clarified that no further extension or Liquidation Period shall be available to these schemes after the expiry of Dissolution Period.

For details: [https://www.sebi.gov.in/legal/circulars/apr-2024/flexibility-to-alternative-investmentfunds-aifs-and-their-investors-to-deal-with-unliquidated-investments-of-theirschemes\\_83065.html](https://www.sebi.gov.in/legal/circulars/apr-2024/flexibility-to-alternative-investmentfunds-aifs-and-their-investors-to-deal-with-unliquidated-investments-of-theirschemes_83065.html)

## LESSON 14

### RAISING OF FUNDS FROM DEBTS AND PROCEDURAL ASPECTS

#### **1. Transactions in Corporate Bonds through Request for Quote (RFQ) platform by Stock Brokers (SBs). (Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 June 02, 2023)**

In a bid to increase the liquidity on Request for Quote (RFQ) platform of stock exchanges and to enhance the transparency and disclosure pertaining to trading in secondary market in corporate bonds, SEBI has asked stock brokers (SBs) to undertake at least 10% of their total secondary market trades by value in Corporate Bonds in that month by placing/seeking quotes through one-to-one (OTO) or one-to-many (OTM) mode on the RFQ platform of stock exchanges, w.e.f July 01, 2023 for all the trades in proprietary basis.

Further, Stock Brokers have to undertake 25% of their total secondary market trades by value on the RFQ platform of stock exchanges, w.e.f April 01, 2024 for all the trades in proprietary basis. SBs shall consider the trades executed by value through OTO or OTM mode of RFQ with respect to the total secondary market trades in CBs, during the current month and immediate preceding two months on a rolling basis.

For details: [https://www.sebi.gov.in/legal/circulars/jun-2023/transactions-in-corporate-bonds-through-request-for-quote-platform-by-stock-brokers-sbs-\\_72231.html](https://www.sebi.gov.in/legal/circulars/jun-2023/transactions-in-corporate-bonds-through-request-for-quote-platform-by-stock-brokers-sbs-_72231.html)

#### **2. Adherence to provisions of regulation 51A of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 by Online Bond Platform Providers on product offerings on Online Bond Platforms (Circular No.: SEBI/HO/DDHS/POD1/P/CIR/2023/092 dated June 16, 2023)**

SEBI vide its circular dated June 16, 2023 issued a circular regarding adherence to provisions of regulation 51A of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 by Online Bond Platform Providers on product offerings on Online Bond Platforms.

Regulation 51A of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations), *inter-alia*, defines “online bond platform provider” as ‘any person operating or providing an online bond platform’ and “online bond platform” as ‘any electronic system, other than a recognised stock exchange or an electronic book provider platform, on which the debt securities which are listed or proposed to be listed, are offered and transacted.’

SEBI Circular dated November 14, 2022 (‘OBP Circular’) provides for the registration and regulatory framework for Online Bond Platform Providers. Clause 5.2 of the OBP circular reads as follows:

“An entity acting as an OBPP on or prior to this circular coming into force, shall cease to offer products or services or securities on its OBP other than the following:

5.2.1. Listed debt securities and

5.2.2. Debt securities proposed to be listed through a public offering.

Such OBPP shall divest itself of offerings of other products or services or securities.”

While a few Online Bond Platform Providers have commenced operations, the following are observed, which are not as per the mandate provided in the NCS Regulations and the OBP circular:

- a) Certain Online Bond Platform Providers continue to offer products other than listed debt securities and debt securities proposed to be listed through a public offering on their Online Bond platform;
- b) Certain Online Bond Platform Providers are offering unlisted bonds/other products on a separate platform/website and have not divested of such offerings in terms of clause 5.2 of the OBP circular; and
- c) Certain Online Bond Platform Providers have a link on the online bond platform/website to another platform/website for transacting in unlisted bonds/ other products.

Taking into account representations from Online Bond Platform Providers, SEBI has revised the provisions of Clause 5.2 of the OBP circular to permit them to offer certain other securities on their Online Bond Platforms, as under:

*“5.2 An entity acting as an Online Bond Platform Provider on or prior to November 14, 2022, shall divest itself of offerings of products or services or securities on its Online Bond Platform or any other website/ platform other than the following:*

- 5.2.1 Listed debt securities, listed municipal debt securities and listed securitised debt instruments;*
- 5.2.2 Debt securities, municipal debt securities and securitized debt instruments proposed to be listed through a public offering;*
- 5.2.3 Listed Government Securities, State Development Loans and Treasury Bills; and*
- 5.2.4 Listed Sovereign Gold Bonds.”*

For details: [https://www.sebi.gov.in/legal/circulars/jun-2023/adherence-to-provisions-of-regulation-51a-of-sebi-issue-and-listing-of-non-convertible-securities-regulations-2021-by-online-bond-platform-providers-on-product-offerings-on-online-bond-platforms\\_72762.html](https://www.sebi.gov.in/legal/circulars/jun-2023/adherence-to-provisions-of-regulation-51a-of-sebi-issue-and-listing-of-non-convertible-securities-regulations-2021-by-online-bond-platform-providers-on-product-offerings-on-online-bond-platforms_72762.html)

### **3. SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/135 dated July 03, 2023)**

SEBI has notified the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette.

The amendment introduces new clauses, modifies existing definitions, and establishes additional requirements for issuers. Key changes include the insertion of a clause defining “key managerial personnel” and the inclusion of the term “senior management” in the regulations.

- “Key managerial personnel” means key managerial personnel as defined in sub-section (51) of section 2 of the Companies Act, 2013.”
- “Senior management” shall mean the officers and personnel of the issuer who are members of its core management team, excluding the Board of Directors, and shall also comprise all the members of the management one level below the Chief Executive Officer or Managing Director or Whole Time Director or Manager (including Chief Executive Officer and Manager, in case they are not part of the Board of Directors) and shall specifically include the functional heads, by whatever name called and the **Company Secretary** and the Chief Financial Officer.”

The amendment also introduces Chapter VA, which focuses on the issuance and listing of non-convertible securities on a private placement basis.

In order to avoid the repetitive nature of the disclosures and to reduce the number of redundant placement memoranda filed for listed NCS by entities for multiple issuances in the same year, SEBI has introduced the concept of a general information document (GID) and a key information document (KID)

The issuers proposing to list NCS on a private placement basis to file a GID with the stock exchange(s), containing the specific disclosures set out in Schedule I of the Second Amendment Regulations. The GID would be valid for a period of one year from the date of opening of the first offer of non-convertible securities. If the issuer wants to issue securities for a second or subsequent time, during the validity of the GID, it would only be required to file a KID for each such second or subsequent offer of non-convertible securities, with the stock exchange instead of filing the GID.

The key information document shall contain the following information:

- a) details of the offer of non-convertible securities in respect of which the key information document is being issued;
- b) financial information, if such information provided in the general information document is more than six months old;
- c) material changes, if any, in the information provided in the general information document;
- d) any material developments not disclosed in the general information document, since the issue of the general information document relevant to the offer of non-convertible securities in respect of which the key information document is being issued; and
- e) disclosures applicable in case of private placement of non-convertible securities as specified in schedule I, in case the second or subsequent offer is made during the validity of the shelf prospectus for which no general information document has been filed.

The provisions introduced by Chapter VA are applicable on a '*comply or explain*' basis till March 31, 2024 and on a mandatory basis thereafter.

Under Chapter VA, '*comply or explain*' means that the issuer shall endeavor to comply and achieve full compliance, by filing a GIC instead of a placement memorandum for private placement of non-convertible securities sought to be listed, until March 31, 2024. In case the entity is not able to achieve full compliance with the provisions, till such time, it shall explain the reasons for such non-compliance or partial compliance, and the steps initiated to achieve full compliance. The amendment also introduces requirements for "Large Corporates" under Chapter VB.

Schedule I (Disclosures for Public Issue of Debt Securities and Non-Convertible Redeemable Preference Shares) and Schedule II (Disclosures for Private Placement of Non-Convertible Securities) of the NCS Regulations have been replaced by a common and new Schedule I (Disclosures for Issue of Securities) under the Second Amendment Regulations. Schedule I also consolidates certain disclosures specified under the Companies (Prospectus and Allotment of Securities) Rules, 2014, issued under the Companies Act, 2013, which were applicable for private

placements and certain identified disclosures from Form PAS-4 have now been applied for public issues as well.

For details: [https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-second-amendment-regulations-2023\\_73592.html](https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-second-amendment-regulations-2023_73592.html)

**4. New format of Abridged Prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares (Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/150 September 04, 2023)**

SEBI vide circular dated September 04, 2023 has published a new format of abridged prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares to further simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged Prospectus. As per the revised process following shall be complied:

1. A copy of the Abridged Prospectus shall be made available on the website of issuer, merchant bankers, registrar to an issuer and a link for downloading Abridged Prospectus shall be provided in issue advertisement for the public issue.
2. Further, the issuer/ Merchant Bankers shall insert a Quick Response (QR) code on the last on the last page of the Abridged Prospectus. The scan of such QR code on the abridged prospectus would lead to the Prospectus. Further, the issuer entity/ Merchant Bankers shall insert a QR code on the front page of the documents such as front outside cover page, advertisement, etc. as deemed fit by them. The scan of the QR code would lead to the prospectus or abridged prospectus as applicable. The Issuer /Merchant Bankers shall ensure that the disclosures in the Abridged Prospectus are adequate, accurate and do not contain any misleading or misstatement.
3. Furthermore, the Issuer/ Merchant Bankers shall ensure that the qualitative statements in the Abridged Prospectus shall be substantiated with quantitative factors. Also, no qualitative statement shall be made which cannot be substantiated with quantitative factors.

For details: [https://www.sebi.gov.in/legal/circulars/sep-2023/new-format-of-abridged-prospectus-for-public-issues-of-non-convertible-debt-securities-and-or-non-convertible-redeemable-preference-shares\\_76430.html](https://www.sebi.gov.in/legal/circulars/sep-2023/new-format-of-abridged-prospectus-for-public-issues-of-non-convertible-debt-securities-and-or-non-convertible-redeemable-preference-shares_76430.html)

**5. Ease of doing business and development of corporate bond markets –revision in the framework for fund raising by issuance of debt securities by large corporates(LCs) (Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/172 dated October 19, 2023)**

SEBI on October 19, 2023 has issued a revised framework for fund raising by issuance of debt securities by large corporates (LCs). The framework applies to all listed entities except for Scheduled Commercial Banks. To be subject to these regulations, a listed entity must meet specific criteria:

1. Have their specified securities, debt securities, or non-convertible redeemable preference shares listed on recognized stock exchanges under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
2. Maintain outstanding long-term borrowings of Rs. 1,000 crore or more. Outstanding long-term borrowings exclude external commercial borrowings, inter-corporate borrowings involving holding company and subsidiaries, government grants, interest capitalization, and borrowings related to mergers, acquisitions, and takeovers.
3. Have a credit rating of “AA,” “AA+,” or “AAA,” specifically for unsupported bank borrowings or plain vanilla bonds, without any structural support.

### **Identifying Large Corporates (LCs)**

Once an entity fulfills the criteria, it is categorized as a “Large Corporate” (LC). LCs must adhere to the following key provisions:

**Raising Debt Securities:** LCs must raise a minimum of 25% of their “qualified borrowings” through the issuance of debt securities in subsequent financial years.

**Contiguous Three-Year Block:** Starting from FY 2025, LCs must meet the mandatory qualified borrowing requirement over a contiguous block of three years. For LCs following April-March financial years, this block starts from March 31, FY “T-1,” and for LCs with January-December financial years, it starts from December 31, FY “T-1.”

### **Incentives and Disincentives**

Incentives and dis-incentives are applied based on an LC’s borrowing performance:

**Surplus in Required Borrowings:** If an LC exceeds the 25% borrowing requirement in the three-year block, it is entitled to incentives such as reduced annual listing fees and a credit in the form of a reduction in the contribution to the Core Settlement Guarantee Fund (SGF) of LPCC.

**Shortfall in Required Borrowings:** If an LC fails to meet the 25% borrowing requirement, it faces a dis-incentive in the form of an additional contribution to the core SGF.

### **Responsibilities of Stock Exchanges and LPCC**

Stock Exchanges will play a crucial role in identifying LCs and calculating incentives or disincentives. They will notify LCs and facilitate the implementation of these provisions. LPCC will need to make necessary changes and ensure LCs comply with the requirements related to contribution to the core SGF.

### **Requirements for LCs Identified Based on Erstwhile Criteria**

LCs that were identified based on previous criteria and meet the new criteria have the flexibility to comply with the 25% borrowing requirement over three years, starting from FY 2022.

For details: [https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi\\_data/attachdocs/oct-](https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/oct-)

[2023/1697798741187.pdf#page=1&zoom=page-width,-15,288](https://www.sebi.gov.in/legal/circulars/dec-2023/modifications-to-provisions-ofchapter-xxi-of-ncs-master-circular-dealing-with-registration-and-regulatory-framework-for-online-bond-platform-providers-obpps-80235.html)

**6. Modifications to provisions of Chapter XXI of NCS Master Circular dealing with registration and regulatory framework for Online Bond Platform Providers (OBPPs) (Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/194 dated December 28, 2023)**

SEBI vide this circular has modified the provisions of Chapter XXI of the NCS Master Circular, specifically focusing on the registration and regulatory framework for Online Bond Platform Providers (OBPPs). The provisions pertaining to the products or securities or services offered by Online Bond Platform Provider on its Online Bond Platform, divestment requirements, disclaimer for links/tab, agreement with third party seller or advertisement code, have been modified. The modifications will come into force with immediate effect.

For details:

<https://www.sebi.gov.in/legal/circulars/dec-2023/modifications-to-provisions-ofchapter-xxi-of-ncs-master-circular-dealing-with-registration-and-regulatoryframework-for-online-bond-platform-providers-obpps-80235.html>