



# SEBI eases fund raising for listed REITs/InvITs | Amends norms for investment advisors in IFSCs | Directs Stock Exchanges to liquidate assets of defaulting members

INSIGHTS

September 29, 2020

SEBI has introduced series of changes in relation to:

- A. Relaxation in guidelines issued for preferential issue and institutional placement of units by listed Real Estate Investment Trusts (**REITs**) and Infrastructure Investment Trusts (**InvITs**), to ease raising of capital in furtherance of changes introduced for listed companies;
- B. Amendment to Operating Guidelines for investment advisors in International Financial Services Centre (**IFSC**) to amend eligibility criteria and compliance requirements;
- C. Direction by SEBI to stock exchanges (**SE**) and clearing corporations (**CC**) for initiation of liquidation proceedings for recovery of assets of the defaulter member not in possession of SE/CC.

Following is the summary of some of the changes proposed:

## A. Relaxation in guidelines issued for preferential issue and institutional placement of units by listed Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

In view of COVID-19, and with a view to ease conditions for raising of capital, SEBI has carried out certain changes to : (a) Guidelines issued for preferential issue and institutional placement of units by listed Real Estate Investment Trusts (**REITs**) (SEBI Circular dated November 27, 2019 providing for the said Guidelines is [available here](#)), and (b) Guidelines issued for preferential issue and institutional placement of units by listed Infrastructure Investment Trusts (**InvIT**) (SEBI Circular dated November 27, 2019 providing for the said Guidelines is [available here](#)).

Preferential issue means an issue of units to a select persons on a private placement basis. Institutional Placement means a preferential issue of units by a listed REIT/InvIT only to institutional investors.

Key changes introduced are summarized below:

- **Cooling-off for subsequent institutional placement reduced from 6 months to 2 weeks:** Subsequent institutional placement cannot be made by REIT/InvIT until the expiry of 2 weeks from the date of the prior institutional placement made pursuant to one or more special resolutions. Earlier, this was 6 months.
- **Optional pricing introduced:** Optional pricing method provided for any preferential issue made between September 28, 2020 and December 31, 2020. The price shall not be less than the higher of the following:
  - the average of the weekly high and low of the volume weighted average price of the related units quoted on the recognized stock exchange during the 12 weeks preceding the relevant date; or
  - the average of the weekly high and low of the volume weighted average prices of the related units quoted on a recognized stock exchange during the 2 weeks preceding the relevant date.

Further, the units allotted on a preferential basis using the aforesaid pricing method shall be locked-in for a period of 3 years. Also, all allotments arising out of the same unitholders approval shall follow the same pricing method.

- **Lock-in requirement:** For computation of the lock-in requirement, the units held by the sponsor(s) and locked-in for 3 years, in the past in terms of Regulation 11 (3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 (**REIT Regulations**)/Regulation 12(3) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (**InvIT Regulations**), shall be taken into account. The units locked-in pursuant to Regulation 11(3) of the REIT Regulations/Regulation 12(3) of the InvIT Regulations shall not be put under fresh lock-in again, even though they are considered for computing the lock-in requirement, in case the said units are free of lock-in at the time of the preferential issue.

Aforementioned changes have been introduced vide SEBI Circulars dated September 28, 2020 (**REIT** - [available here](#)) and (**InvIT** - [available here](#)).

## B. Amendment to Operating Guidelines for investment advisors (IAs) in International Financial Services Centre (IFSCs)

SEBI has carried out certain changes in the Operating Guidelines issued for IAs in IFSCs (SEBI Circular dated January 9, 2020 providing for the said Operating Guidelines for IAs in IFSC and the clarification to the Operating Guidelines dated February 28, 2020 is available [here](#) and [here](#)).

Key changes made to the Operating Guidelines are summarized below:

- **Eligibility to apply for an IA registration in IFSC:** Following persons shall be eligible to apply for an IA registration in IFSC:
  - Any entity, being a company or a limited liability partnership (LLP) or any other similar structure recognized under the laws of its parent jurisdiction, desirous of operating in IFSC as an IA, may form a company or LLP to provide investment advisory services;
  - The formation of a separate company or LLP shall not be applicable in case the applicant is already a company or LLP in IFSC.
- **IAs to ensure compliance with overseas guidelines:** The IAs shall ensure to comply with the applicable guidelines issued by the relevant overseas regulator/authority, while dealing with persons resident outside India and non-resident Indians seeking investment advisory services from them.
- **IA or the parent entity can fulfil net worth requirement:** The IA/parent entity shall fulfil the net worth requirement, separately and independently for each activity undertaken by it under the relevant regulations.
- **Annual audit from a company secretary or chartered accountant:** An IA shall ensure to conduct annual audit in respect of compliance with the SEBI (Investment Advisers) Regulations, 2013 and the operating guidelines from a chartered accountant or a company secretary.

The aforementioned changes have been made vide SEBI Circular dated September 28, 2020 ([available here](#)).

## C. Recovery of assets of the defaulter member not in possession of stock exchange (SE) and clearing corporations (CC)

In cases of default by trading member/clearing members (**Defaulter Member**), SEBI has directed SE and CC to make required amendments to initiate suitable actions for liquidating the assets (movable and immovable) of Defaulter Member including that of debit balance clients (to the extent of debit balance), within six (6) months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law. SEBI has also directed them to amend their bye-laws, rules and regulations accordingly. Aforementioned direction has been given vide SEBI Circular dated September 28, 2020 ([available here](#)).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com)

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