



Non-compliance of disclosure requirements by issuers of NCDs/NCRPS/CPs | Monitoring by debenture trustees of 'security created' | Sponsor's ineligibility for preferential issue of listed InvITs

INSIGHTS

November 20, 2020

SEBI has introduced series of changes in relation to:

- Introduction of uniform structure for enforcement of continuous disclosure obligations imposed upon the issuers of listed Non-Convertible Debt Securities (**NCDs**) or Non-Convertible Redeemable Preference Shares (**NCRPS**) or Commercial Papers (**CPs**);
- Debenture trustee(s) to undertake independent periodical assessment of the compliance with covenants or terms of the issue of listed debt securities including for 'security created';
- Modification to the guidelines for preferential issue and institutional placement of units by a listed Infrastructure Investment Trusts (**InvITs**), clarifying ineligibility of sponsors to participate in the preferential issue.

Summary of key changes is provided below:

A. Non-compliance of continuous disclosure obligations by issuers of NCDs/NCRPS/Commercial Papers

In a move towards protecting interest of investors and the securities market, SEBI has introduced a uniform structure for enforcement of continuous disclosure obligations imposed upon the issuers of listed NCDs/NCRPS/Commercial Papers. In case of non-compliance with continuous disclosure requirements by issuers of listed NCDs/ NCRPS/ Commercial Papers, the Stock Exchanges are empowered to levy a fine and take action as provided under Annexure I and Annexure II of the circular. The Stock Exchanges may deviate from the same, if found necessary, only after recording reasons in writing. In case a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under the circular in consultation with each other. The details of fine payable in case of non-compliance and actions to be taken by stock exchanges are provided in SEBI Circular dated November 13, 2020 ([available here](#)). The said circular will come into force for compliance period ending on or after December 31, 2020.

B. Monitoring and assessment by debenture trustee(s)

In order to enable debenture trustee(s) to discharge its obligations in respect of listed debt securities, the debenture trustee(s) are required to undertake independent periodical assessment of the compliance with covenants or terms of the issue of listed debt securities including for 'security created'.

- **Monitoring of 'security created' / 'assets on which charge is created'**: Debenture trustee shall carry out periodical monitoring in the following manner:
 - **Periodical monitoring**: Debenture trustee to incorporate the terms and conditions of periodical monitoring in the debenture trust deed and the listed entity shall be liable to provide relevant documents/information, as applicable, to enable the debenture trustee(s) to submit the prescribed reports/certification to Stock Exchange(s) within the specified timelines.
 - **Existing DTDs to be amended within 120 days**: For existing debt securities, listed entities and debenture trustee(s) to enter into supplemental/amended debenture trust deed within 120 days from the date of the circular incorporating the changes in the debenture trust deed.
 - **Common agency for asset cover certificate**: In case, a listed entity has more than one debenture trustee for its listed debt securities, then debenture trustees may choose a common agency for preparation of asset cover certificate.
- **Action to be taken in case of breach of covenants or terms of issue**: In case of breach of covenants or terms of the issue by listed entity, the debenture trustee to take steps as outlined in para 6.1 and 6.3 of SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dated October 13, 2020 ([available here](#)) and thereafter take necessary action as decided in the meeting of holders of debt securities in this regard.
- **Disclosure on website by debenture trustee**: Specified disclosures to be disclosed by the debenture trustee(s) on their website.
- **Reporting of regulatory compliance**: SEBI has prescribed revised formats for periodical reporting to be made to SEBI.

Detailed process and compliances relating to monitoring and assessment by debenture trustees is provided under SEBI Circular dated November 12, 2020 ([available here](#)), which shall come into force with effect from quarter ending December 31, 2020 for listed debt securities.

C. Sponsor's ineligibility to participate in preferential issue of units by listed InvITs

As you are aware, SEBI has issued guidelines for preferential issue and institutional placement of units by listed InvITs, which *inter alia* provides that preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the six (6) months preceding the relevant date. SEBI has now clarified that where any person belonging to sponsor(s) has sold/transferred their units of the issuer during the six months preceding the relevant date, the sponsor(s) will be ineligible for allotment of units on preferential basis.

The aforesaid clarification has been issued by SEBI Circular dated November 17, 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

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