

SEBI revises regulatory framework for Independent Directors | Introduces concept of well informed investors - accredited investors | Introduces various other key changes

SEBI has taken following major decisions in its board meeting held on June 29, 2021:

- A. Appointment/Re-appointment/Removal of Independent Directors (IDs) to require special resolution; related party transactions to be approved by only IDs on the Audit Committee; cooling off period of 3 years for KMPs or employees of promoter group companies to be appointed as IDs and certain other major changes;
- B. Introduction of framework for Accredited Investors (AIs) (well informed and well advised investors) in securities market;
- C. Introduction of consolidated regulatory framework dealing with issuance and listing of debt securities and non-convertible preference shares;
- D. Eligible Resident Indian Fund Managers (other than individuals) to be constituents of Foreign Portfolio Investors (FPIs);
- E. Revised minimum subscription and trading lot, introduction of minimum unit holders requirement for unlisted Infrastructure Investment Trusts (InvITs);
- F. Revised minimum subscription and trading lot for Real Estate Investment Trust (REITs);
- G. Investment of a minimum amount in the Mutual Fund schemes by Asset Management Companies (AMCs) to be on the basis of the risk associated with the scheme to provide skin in the game;
- H. Rating by Credit Rating Agency under the respective guidelines of a financial sector regulator or authority to be under the purview of the concerned financial sector regulator or authority;
- I. Banks, other than scheduled banks, permitted to register as a Banker to an Issue;
- J. Increase in the reward payable to informant under SEBI (Prohibition of Insider Trading) Regulations, 2015.

Aforementioned changes are analysed below:

A. CHANGES IN REGULATORY FRAMEWORK RELATED TO INDEPENDENT DIRECTORS (ID)

Following amendments to be introduced in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 :

TOPIC	AMENDMENT
Special resolution required for appointment, re-appointment and removal of IDs	Recently, in the consultation paper issued by SEBI on March 1, 2021, a proposal was made to introduce “dual approval” for appointment, re-appointment and removal of IDs, wherein majority of minority of public shareholders was also envisaged. However, in the board meeting, SEBI has approved that the appointment/re-appointment and removal of IDs will be through a special resolution of shareholders for all listed entities. The language of the amendment will need to be analysed to see if it has glimpses of “dual approval” mechanism as proposed in the consultation paper.
Audit Committee Composition and approval of related party transactions (RPTs)	<ul style="list-style-type: none"> ▪ At least 2/3rd of the members of the audit committee to be IDs. ▪ All RPTs to be approved by only IDs on the Audit Committee.
Shareholders’ approval to be earliest for appointment of all directors	Shareholder approval for appointment of all directors including IDs shall be taken at the next general meeting, or within three months of the appointment on the Board, whichever is earlier.

TOPIC	AMENDMENT
Nomination and Remuneration Committee (NRC) Composition and process for selection of IDs	<ul style="list-style-type: none"> The process to be followed by NRC, while selecting candidates for appointment as IDs, has been elaborated and made more transparent including enhanced disclosures regarding the skills required for appointment as an ID and how the proposed candidate fits into that skillset. The composition of NRC has been modified to include 2/3rd IDs instead of existing requirement of majority of IDs.
Cooling-off periods prescribed and exemptions for various appointments	<ul style="list-style-type: none"> A cooling off period of 3 years for Key Managerial Personnel (and their relatives) or employees of the promoter group companies, for appointment as an ID. No cooling off period required for relatives of employees of the company, its holding, subsidiary or associate company, for appointment as an ID Cooling-off period of 1 year for an ID transitioning to a whole-time director in the same company/holding/subsidiary/associate company or any company belonging to the promoter group.
Disclosure of resignation letter of IDs	Resignation letter of an ID to be disclosed along with a list of her/his present directorships and membership in board committees
Directors and Officers insurance	The requirement of undertaking Directors and Officers insurance to be extended to the top 1000 companies (by market capitalization).

The aforesaid amendments are slated to be made applicable with effect from **January 1, 2022**.

SEBI has also decided to make a reference to MCA for giving greater flexibility to companies while deciding the remuneration for all directors (including IDs), which may include profit linked commissions, sitting fees, ESOPs, etc., within the overall prescribed limit specified under Companies Act, 2013.

B. FRAMEWORK FOR ACCREDITED INVESTORS (AIs) IN SECURITIES MARKET

TOPIC	AMENDMENT
Accredited Investors Meaning and eligibility criteria	<ul style="list-style-type: none"> A class of investors who may be considered to be well informed or well advised about investment products. Such investors may be Individuals, Hindu undivided families (HUFs), Family Trusts, Sole Proprietorships, Partnership Firms, Trusts and Body Corporates based on financial parameters and information as may be specified by SEBI.
Recognition of Accreditation Agencies	<ul style="list-style-type: none"> Eligible subsidiaries of depositories and specified stock exchanges, and any other specified institutions to be recognized as Accreditation Agencies. Accreditation Agencies to grant accreditation status and issue Accreditation Certificate to Accredited Investor.
Benefits linked to accreditation	<ul style="list-style-type: none"> Flexibility to participate in investment products with an investment amount lesser than the minimum amount mandated in the SEBI (Alternative Investment Funds), Regulations, 2012 (AIF Regulations) and SEBI (Portfolio Managers) Regulations, 2020 (PMS Regulations); Alternative Investment Funds (AIF) for AIs may avail relaxation from regulatory requirements such as portfolio diversification norms, conditions for launch of schemes and extension of tenure of the AIF, where each investor invests minimum investment amount of INR 70 crores. AIs with minimum investment of INR 10 crores with registered portfolio management service (PMS) provider, may avail relaxation from regulatory requirement with respect to investment in unlisted securities and can enter into bilaterally negotiated agreements with the PMS provider. AIs who are clients of Investment Advisers will have the flexibility to determine the limits and modes of fees payable to the Investment Adviser through bilaterally negotiated contractual terms.

C. CONSOLIDATED REGULATORY FRAMEWORK DEALING WITH ISSUANCE AND LISTING OF DEBT SECURITIES AND NON-CONVERTIBLE PREFERENCE SHARES

SEBI had earlier on May 19, 2021 issued a consultation paper on review and merger of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (**ILDS Regulations**) and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (**NCRPS Regulations**) into a single regulation. In furtherance of the same, SEBI has now approved the merger of the ILDS Regulations and NCRPS Regulations into a single regulation to be called as SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. Key changes are mentioned below:

- Issuers other than unlisted REITs and InvITs who are in existence for less than 3 years, have been facilitated to tap the bond market, provided: (a) Issuance of their debt securities is made only on a private placement basis; (b) The issue is made on the electronic book provider (**EBP**) platform irrespective of the issue size; and (c) The issue is open for subscription only to QIB;
- Parameters for identification of risk factors introduced;
- No minimum rating requirement of AA- for public issuance of NCRPS;
- No minimum tenure of 3 years for public issuance of NCRPS;
- Restriction of not more than four issuances of debt securities in a year through a single shelf prospectus removed;
- The option for call and put has been introduced in case of debt securities issued on private placement basis;
- The period for exercise of call and put option has been brought down to 12 months from 24 months;
- Issuers can file shelf prospectus after cure of the default in payment of interest/dividend/redemption amount to raise funds through non-convertible securities;
- No minimum size of INR 100 crores for public issuance of debt securities;
- EBP platform made mandatory for issuance of eligible securities on private placement basis proposed to be listed amounting to INR 100 crores or above in a financial year;
- Creation of charge harmonized with the Companies Act, 2013;
- The requirement of abridged prospectus has been streamlined to around 10 pages from over 50 pages;
- E-voting can also be resorted for passing resolutions for rollover of the debt securities.

D. RESIDENT INDIAN FUND MANAGERS TO BE CONSTITUENTS OF FPI

In order to bring the SEBI (Foreign Portfolio Investors) Regulations, 2019 (**FPI Regulations**) in line with the recent amendments in Section 9A of the Income-tax Act, 1961 (**IT Act**), FPI Regulations to be amended to permit eligible Resident Indian Fund Managers (other than individuals) to be constituents of FPI. Such FPIs will be investment funds approved by Central Board of Direct Taxes (**CBDT**) under Section 9A of the IT Act read with the Income Tax Rules, 1962. The change has been made to facilitate Indian fund managers in managing investment funds incorporated/established/RE registered outside India.

E. INVITS | MINIMUM UNIT HOLDERS REQUIREMENT AND MINIMUM SUBSCRIPTION AND TRADING LOT

- **Minimum unit holders requirement:** SEBI has introduced minimum unit holders requirement for unlisted InvITs and now the minimum number of unit holders, other than sponsor, its related parties and its associates is required to be 5 (five) together holding not less than 25% of the total unit capital of the InvIT.
- **Minimum subscription and trading lot:** The revised minimum application value for publicly issued InvITs to be within the range of INR 10,000-15,000 and the revised trading lot to be of one unit.

F. REITS | MINIMUM SUBSCRIPTION AND TRADING LOT

SEBI has revised minimum application value for publicly issued REITs to be within the range of INR 10,000-15,000 and the revised trading lot to be of one unit.

G. SKIN IN THE GAME | INVESTMENT BY AMC IN MUTUAL FUND SCHEMES

The investment of a minimum amount in the Mutual Fund (MF) schemes by AMCs to be now on the basis of the risk associated with the scheme. Presently, the requirement is of 1% of the amount raised in New Fund Offer or an amount of INR 50 lakhs, whichever is less.

H. RATING BY CREDIT RATING AGENCY (CRA)

SEBI has amended the SEBI (Credit Rating Agencies) Regulations, 1999 to define a Credit Rating Agency in terms of rating of securities that are listed or proposed to be listed on a recognized stock exchange. Further, an explanation has been added in Regulation 9 (f) specifying that ratings undertaken by a CRA under the respective guidelines of a financial sector regulator or authority shall be under the purview of the concerned financial sector regulator or authority.

I. REGISTRATION AS BANKERS TO AN ISSUE

With a view to provide easy access to investors to participate in public/rights issues by using various payment avenues, SEBI (Bankers to an Issue) Regulations, 1994 has been amended to permit such other banks, other than scheduled banks, as may be specified by SEBI from time to time, to register as a Banker to an Issue.

J. REWARD TO INFORMANT UNDER INSIDER TRADING REGULATIONS

With a view to streamline the process of reward payment and to enhance the quantum of reward under the informant mechanism provided under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (**Insider Trading Regulations**), following has been decided:

- Increase in the maximum amount of reward from INR 1 crore to INR 10 crore;
- Where the total reward payable to the informant is less than or equal to INR 1 crore, the reward may be granted by SEBI, after the final order is issued;
- Where the total reward payable to the informant is more than INR 1 crore, an interim reward not exceeding INR 1 Crore, may be granted by SEBI, after the final order is issued. The remaining reward amount to be granted only upon receipt of the monetary sanctions amounting to at least twice the balance of the reward amount payable by SEBI.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

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