

**SEBI: Guidelines for 1
public issue of units of
REITs**

**Reserve Bank of India: 5
Amendments relating
to Foreign Exchange
Management
Regulations 2019**

**Ministry of 9
Corporate
Affairs : Com-
panies
(Amendment)
Ordinance,
2019**

SECURITIES AND EXCHANGE BOARD OF INDIA

Securities and Exchange Board (“SEBI”) vide its Circular dated January 15,2019 provides guidelines for public issue of units of Real estate investment trust (REITs.) which are as follows:

A. In clause 3 of Schedule A,

i. Explanation to sub-clause (1) shall be substituted with following:

“Explanation: Institutional investors is as defined under Regulation 2(1)(y) of SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2018.”

ii. In sub-clause 2(b),following proviso to be inserted

“Provided that in case of strategic investor, the aforesaid application value shall be subject to Regulations 2(1)(ztb) of the REIT Regulations.”

iii. Sub- clause 2(g) shall be substituted with the following:

“(g) Neither the merchant banker (s) nor any associate of the merchant bankers other than mutual funds sponsored by entities which are associate of the merchant bankers or insurance companies promoted by entities which are associate of the merchant bankers or pension funds of entities which are associate of the merchant bankers or Alternate Investment funds (AIFs) sponsored by the entities which are

associate of the merchant bankers or FPIs other than Category III sponsored by the entities which are associate of the merchant bankers shall apply under the Anchor Investors category.”

B. In clause 6 of Schedule A

i. Following proviso shall be inserted after the proviso to sub-clause (3)

“Provided further that in case of force majeure, banking strike or similar circumstances the REIT, for reasons to be recorded in writing may extend the bidding (issue) period disclosed in the offer document, for a minimum period of three (3) working days , subject to total bidding period not exceeding thirty (30) days .”

C. In clause 8 of Schedule A,

i. In sub-clause (3), the word “five” shall be substituted with the word “two”.

D. In clause 9 of Schedule A,

i. Sub-clause (1) to (5) shall be substituted with following

(1)The REIT shall accept bids using only the Application Supported by Blocked Amount (ASBA) facility for making payment i.e. writing their bank account number and authorizing the banks to make payment in case of allotment, by signing the application forms. Further, the bidding process shall be done only through an electronic bidding platform provided by recognized stock

exchanges.

(2) An investor intending to subscribe to a public issue shall submit a completed bid-cum-application form to Self-Certified Syndicate Banks (SCSBs) with whom the bank account to be blocked is maintained of the following intermediaries

- A syndicate member (or sub-syndicate member)
- A stock broker registered with a recognized stock exchange
- A depository participant (DP)
- A registrar to an issue and share transfer agent ('RTA')

(3) Role of intermediaries:

a. Intermediaries accepting the application form shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchanges (s) and submitting the form to SCSBs for blocking of future of funds (except in case of SCSBs where blocking of funds will be done by respective (SCSBs only).

b. All applications shall be stamped and thereby acknowledged by the intermediary at the time of receipt.

(4) Role of Stock Exchanges

- Stock Exchanges to provide transparent electronic bidding facility.
- Stock Exchange (s) shall validate the electronic bid details with depository's records for DP ID, client ID and PAN, by the end of each bidding day and bring the inconsistencies concerned for rectification and resubmission within the time specified by stock exchange (s).
- The stock exchanges shall develop the systems to facilitate the investors to view the status of their public issue applications on their websites and

sending the details of applications and allotments through SMS and E-mail alerts to the investors.

- Stock exchange (s) shall allow modification of selected fields viz. DPID/ Client ID or Pan ID (Either DP ID/Client ID or PAN ID can be modified but not BOTH), Bank code and Location Code in the bid details already uploaded on a daily basis up to timeline as has been specified.

(5) The blocking of funds accompanied with any revision of Bid shall be adjusted against the amount blocked at the time of the original bid or the previously revised bid.

E. In clause 13 of Schedule A

i. Sub-clause (7), shall be substituted with following,

“The merchant bankers shall submit a compliance certificate in respect of news reports appearing for the period between the date of filing the draft offer document with the Board and the date of closure of the issue in accordance with Clause(11) of Schedule IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018.”

RESERVE BANK OF INDIA

I. Reserve Bank of India (“**RBI**”) vide its Circular dated January 31st, 2019 had provided for amendments relating to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2019 which are as follows:

(i) In the existing SL.No.15.2.3(b) the words ‘E-commerce entity’ means a company incorporated under Companies Act, 2013 shall be substituted by ‘E-commerce entity’ means a company incorporated under the Companies Act 1956 or the Companies Act, 2013.

(ii) The existing SL. No 15.2.3(h) shall be substituted by the following, namely:
E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold.

Explanation: Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies which will render the business into inventory based model.

(iii) The existing SL.No 15.2.3(i) shall be substituted by the following, namely:
‘An entity having equity participation by e-commerce marketplace entity or its group companies or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.’

(iv) The existing SL. No 15.2.3(m) shall be substituted by the following, namely:

E commerce entities providing marketplace will not, directly or indirectly, influence the sale price of any goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non discriminatory manner.

Explanation: Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.

v) In existing SL.No 15.2.3, after the existing clause (n), a new clause (o) shall be inserted, namely:

No e-commerce marketplace entity shall mandate any seller to sell any of their product exclusively on its platform.

(vi) In existing SL.No 15.2.3, after the clause (o), a new clause (p) shall be inserted, namely:

All existing investments shall have to be in compliance with the above conditions from the date of issue of this Notification.

II. Reserve Bank Of India ("**RBI**") vide its Circular dated January 21st,2019 had provided for amendments relating to Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2019 which are follows:

In Regulation 5, in clause (c) for the existing proviso, the following shall be substituted namely:

“Provided that approval of the Reserve Bank of India is not required in case where Government approval or license/permission by the concerned Ministry/ Regulator has already been granted. Further, in the case of proposal for opening a project office relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings.”

III. Gold Monetization Scheme, 2015

In exercise of the powers conferred on the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949, the RBI makes the following amendments in the **Reserve Bank of India (Gold Monetization Scheme, 2015)** with immediate effect.

The existing sub-paragraph 2.1.1 (iv) shall be amended to read as follows:

“Persons eligible to make a deposit - Resident Indians [Individuals, HUFs, Proprietorship & Partnership firms, Trusts including Mutual Funds/Exchange Traded Funds registered under SEBI (Mutual Fund) Regulations, Companies, charitable institutions, Central Government, State Government or any other entity owned by Central Government or State Government] can make deposits under the scheme. Joint deposits of two or more eligible depositors are also allowed under the scheme and the deposit in such case shall be credited to the joint deposit account opened in the name of such depositors.

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MINIISTRY OF CORPORATE AFFAIRS

1. The Companies (Amendment) Ordinance, 2019 was promulgated on January 12, 2019. It repeals and replaces the Companies (Amendment) Ordinance, 2018 promulgated on November 2, 2018. The 2019 Ordinance amends several provisions in the Companies Act, 2013 relating to penalties, among others. The Companies (Amendment) Bill, 2018 (to replace the 2018 Ordinance) was passed by Lok Sabha on January 4, 2019, and is currently pending in Rajya Sabha.

2. In Section 2 of the Companies Act 2013

(a) for the first proviso, the following provisos shall be substituted namely :-

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed allow any period as its financial year, whether or not that period is a year.

Provided further that any application pending before the Tribunal as on the date of commencement of the companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”

(b) in the second proviso for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. After Section 10 of the Principal Act, the following section shall be inserted, namely:

“10A. (1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless-

- A. Declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed , with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- B. The company has filed with the Registrar a verification of its registered office as provided in sub-section(2) of section 12.

(2) If any default is made in complying with the requirements of this section , the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section(1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on business or operation, he may, without prejudice

to provisions of sub-section(2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. In section 12 of the principal Act, after sub-section(8), the following sub-section shall be inserted namely:

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”

5. In section 14 of the principal Act, -

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted namely :-

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”

(ii) In sub-section (2), for the word "Tribunal", the words "Central Government" shall be substituted, namely :-

"(3) Where any company fails to comply with the provisions of this section , such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less , and the company shall also be liable to refund all money received with interest at the rate of twelve per cent(12%) from the date of issue of such shares to the persons to whom such shares have been issued."

7. In section 64 of the Principal Act, for sub-section (2), the following sub-section shall be substituted, namely:---

"(2) Where any company fails to comply with the provisions of sub-section(1) , such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less."

8. In section 77 of the principal Act, in sub-section(1), for the first and second provisions , the following provisos shall be substituted, namely:---

"Provided that the Registrar may, on an application by the company, allow such registration to be made---

- A. In case of charges created before the commencement of the Companies (Amendment) Ordinance 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- B. In case of charges created on or after the commencement of the Companies (Amendment) Ordinance 2019, within period of sixty days of such creation, on payment of such additional fees as may be prescribed."

9. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:----

“(2) If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under Section 447.”

10. For section 87 of the principal Act, the following section shall be substituted, namely :-

“87. The Central Government on being satisfied that---

(a) The omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under the Chapter; or

(b) The omission or misstatement of any particulars in any filing previously made to the Registrar with respect to any change or modifications thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditor or shareholders of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require that the omission or misstatement shall be rectified.”

11. In section 90 of the principal Act,---

(i) For sub-section (9), the following sub-section shall be substituted namely:--

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section(8), such shares shall be transferred without any restrictions, to the authority constituted under sub-section(5) of section 125, in such manner as may be prescribed:

(ii) In sub-section (10),---

(a) After the word “punishable”, the words “with imprisonment for a term which may extend to one year or “shall be inserted;

12. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:---

“(5) If any company fails to file its annual return under sub-section(4), the sub-section(4) , before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues subject to a maximum of five lakh rupees.”

13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted , namely:---

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher”.

14. In section 105 of the Principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

15. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:---

“(2) In any company fails to file the resolutions or the agreement under sub-section(1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”

16. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted namely:---

“(3) If the company fails to file the report under sub-section(2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further

penalty of a five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”

17. In section 137 of the principal Act, in sub-section (3), --

- (a) for the words “punishable with fine.”, the words “the liable to a penalty” shall be substituted;
- (b) for the portion beginning with “punishable with imprisonment’, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred for each day after the first during which failure continues, subject to a maximum of five lakh rupees” shall be substituted.

18. In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :---

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”

19. In section 157 of the principal act, for sub-section (2), the following sub-section shall be substituted, namely :----

“(2) If any company fails to furnish the Director Identification Number under sub-section(1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure with a further penalty of one

(b) for subsection (15), the following sub-section shall be substituted, namely:-

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”

25. In section 248 of the principal Act, in sub-section (1), ---

(a) In clause (c) for the word and figures “section 455,” the words and figures “section 455” or shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely;

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verifications carried out under sub-section (9) of Section 12.”

26. In section 441 of the principal Act, ---

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees “, the words “does not exceed twenty five rupees’, the words “the liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted;

hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”

20. For section 159 of the Principal Act, the following section shall be substituted, namely :-----

“159. If any individual or director of a company makes a company makes any default in complying with any provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”

21. In section 164 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

22. In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:----

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”

23. In section 197 of the principal Act, ---

(a) sub-section (7) shall be omitted;

(b) for sub-section (6), the following sub-section shall be substituted namely :-

“(6) Notwithstanding anything contained in the Code of Criminal Procedure 1973 any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”

27. In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

28. In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

29. In section 454 of the Principal Act, ----

(i) for sub-section (3), the following sub-section shall be substituted, namely :-

“(3) The adjudicating officer may, by an order—

(a) Impose the penalty on the company, the officer who is in default or any other person as the case may be stating therein any non-compliance or default under the relevant provisions of this Act and

(b) Direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, whenever he considers fit.”

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;

30. After section 454 of the principal Act, the following section shall be inserted namely :---

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount of penalty provided for such default under the relevant provisions of this Act”.

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Warm Regards,

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