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Reserve Bank of India

Issuance of Rupee denominated bonds overseas by Indian banks

The Reserve Bank of India ("RBI") vide its Circular dated November 3, 2016 has provided guidelines for issuance of Rupee denominated bonds overseas by Indian banks.

RBI had earlier via its circulars allowed commercial banks to issue Rupee Denominated Bonds overseas for their capital requirements and for financing infrastructure and affordable housing with a borrowing limit set at Rs. 2,44,323 crores (Rupees Two Lakhs Forty-Four Thousand Three Hundred and Twenty-Three Crores Only) at present. RBI had earlier allowed External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers, which allowed Indian banks to participate in the space of Rupee Denominated Bonds Overseas only as arrangers and underwriters but not as issuers.

Through this circular, RBI has now allowed the Indian banks to act as eligible borrowers under this route. The Indian banks can now issue Rupee denominated bonds in the following manner-

1. Perpetual Debt Instruments ("PDI") qualifying for inclusion as Additional Tier 1 capital and debt capital instruments qualifying for inclusion as Tier 2 capital, by way of Rupee Denominated Bonds overseas; and
2. Long term Rupee Denominated Bonds overseas for financing infrastructure and affordable housing.

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment) Regulations, 2016

RBI vide its Circular dated November 04, 2016 has provided for amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (“**FEMA Transfer Of Security Regulations 2000**”). FEMA Transfer Of Security Regulations 2000 had in Schedule 1 provided for issuance of shares or convertible debentures to a person resident outside India not engaged in any activity, or in manufacturing of item included in to the Schedule A of FEMA Transfer Of Security Regulations 2000 up to certain extent subject to compliance with the provisions of the Industrial Policy and Procedures as notified by Secretariat for Industrial Assistance (“**SIA**”) in the Ministry of Commerce and Industry, Govt. of India, from time to time.

RBI has now amended and provided for Foreign investment in the Pension Funds by way of ‘Automatic Route’ to the extent of 49%. The conditions for such investment are as below-

1. Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority Act, 2013 (“**PFRDA Act**”)
2. Foreign investment in Pension Funds will be subject to the condition that entities bringing in foreign investments as equity shares or preference shares or convertible debentures or warrants as per Section 24 of the PFRDA Act shall obtain necessary registration from the Pension Fund Regulatory and Development Authority and comply with other requirements as per the PFRDA Act and Rules and Regulations framed under it for so participating in Pension Fund Management activities in India.
3. An Indian pension fund shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by the Government of India / PFRDA as per the rules/regulation issued by them from time to time.



SECURITIES AND EXCHANGE BOARD OF INDIA

Investment/trading in securities by employees of AMC(s) and Trustees of Mutual Funds

Securities and Exchange Board of India (“SEBI”) vide its Circular dated November 17, 2016 have provided directions to employees of Asset Management Companies (“AMCs”) and trustees of Mutual Funds (“Mutual Funds”) for investment or trading in securities. Through this Circular, certain clause of earlier Circulars dated May 08, 2001, June 20, 2002, July 11, 2003, December 15, 2009 and May 22, 2014 dealing with investments and securities made by employees of AMCs and trustees of mutual funds have been amended.

The following amendments have been made-

A. Clause 1.1 of the SEBI Circular dated May 08, 2001 (“Circular of 2001”) shall now be read as-

These Guidelines cover transactions for purchase or sale of any securities such as shares, debentures, bonds, warrants, derivatives and units of schemes floated by Mutual Funds / AMCs where the concerned persons are employed. These Guidelines do not apply to the following investments by the employees:

- i. Investments in fixed deposits with banks/financial institutions/companies, life insurance policies, provident funds (including public provident fund) or Investment in savings schemes such as National Savings Certificates, National Savings Schemes, Kisan Vikas Patra, or any other similar investment.
- ii. Investments of a non-financial nature such as gold etc., where there is no likely conflict between the Mutual Fund’s interest and the employees’ interest.
- iii. Investments in government securities, money market instruments, money market mutual fund schemes, liquid schemes and schemes floated by other Mutual Funds/ AMCs.

B. Clause 1.2 of Circular of 2001 shall read as follows:

These Guidelines shall cover transactions for sale or purchase of securities made:

- i. In the name of employees, either individually or jointly,
- ii. In the name of the employees’ spouse,



iii. As a member of Hindu Undivided Family (“**HUF**”),

iv. In the name of employee’s parent, sibling and child of such employee or of the spouse, any of whom is either dependent financially on such employee, or consults such employee in taking decisions relating to trading in securities.

C. Clause 2.2.2 (ii) of the Circular of 2001 shall read as follows:

If the shares/debentures/bonds/warrants of the company or derivatives specified by the employee are held by any Scheme of the Mutual Fund of which the AMC is the investment manager, there should be a ‘cooling off’ period of 15 (fifteen) calendar days. The Compliance Officer shall ensure that the last transaction in that particular security was done by the Mutual Fund at least 15 (fifteen) calendar days prior to the date of the written application by any "**Access Person**" which would mean any official of AMC or Mutual fund appointed as Chief Executive or by any other designation (such as CEO/MD/President or by whatever name called who are performing functions similar to those of the Chief Executive), the employees of doing the function of analyst, or compliance, or heads of the departments or divisions or any other employee as decided by AMC or Mutual fund and the members of the Committee of the AMC or Mutual fund. In other words, an application for a purchase /sale transaction on a personal basis would be cleared only if the Mutual Fund has not transacted in that particular security for at least 15 (fifteen) calendar days. However, trades executed pursuant to a trading plan submitted by the employees in terms of SEBI (PIT) Regulations, 2015, shall be exempt from the requirement of a ‘cooling off’ period, provided that such trading plan:

- i. Is in compliance with the norms prescribed in SEBI (PIT) Regulations, 2015.
- ii. Is publicly disclosed on the website of the concerned Mutual Fund.

The Compliance Officer shall also properly monitor trades of the Mutual Fund scheme and that of the Access Person, as per the trading plan, in order to ensure that such trading plan does not entail trading in securities for market abuse.



D. Clause 1.4 of the Circular of 2001 read with July 11, 2003 ("**Circular of 2003**") and December 15, 2009 ("**Circular of 2009**") shall read as follows:

The approval of Compliance Officer for carrying out a transaction of sale or purchase of a security by the Access Person shall not be valid for more than 7 (seven) trading days from the date of approval. If a transaction approved by the Compliance Officer has not been effected within 7 (seven) trading days from the date of its approval, the Access Person shall be required to obtain approval once again from Compliance Officer prior to effecting the transaction.

E. Clause 3 of Circular dated June 20, 2002 ("**Circular of 2002**") shall read as follows:

SEBI (Prohibition of Insider Trading) Regulations, 2015 shall be followed strictly by the Trustees, AMCs and their employees and directors.

F. All employees shall refrain from profiting from the purchase and sale or sale and purchase of any security within a period of 30 (thirty) calendar days from the date of their personal transaction. However, in cases where it is done, the employee shall provide a suitable explanation to the Compliance Officer, which shall be reported to the Board of the AMC and the Trustees at the time of review.

G. Investments in securities shall broadly be classified into investments through- (a) primary markets and (b) secondary markets.

i. Investments through the primary markets:

a. An employee including Access Person is permitted to apply to a public issue of shares and/or debentures and/or bonds and/or warrants of any company, as long as the application is made in the normal course of the public issue. Such an application may be made without seeking the clearance from the Compliance Officer. Employees of AMCs and Trustees are prohibited from applying in any reserved quota such as promoters' quota, employees' quota etc. Employees shall not participate in any private placement of equity by any company.

b. Notwithstanding anything stated in (a) above, an employee of an AMC and/or Trustees may apply for shares and/or debentures and/or bonds and/or warrants in a preferential offer, in cases where such a preferential offer is being made by a company that belongs to the same industrial group as the company in which the employee already has an investment.



Details of such applications made shall be intimated to the Compliance Officer.

- c. The employees of the AMCs and/or Trustees including Access Person may apply for any rights offer of any company in which they are already shareholders. Applications for additional rights (over and above the normal rights entitlement) shares may be made by the employees including Access Person without getting the clearance from the Compliance Officer. An employee including Access Person may also sell and/or renounce his rights entitlement without getting the clearance from the Compliance Officer. However, if an Access Person wishes to purchase the 'Rights renunciations' he shall get the clearance of the Compliance Officer for the same. Such purchases shall be done only at market prices. Details of any applications made in any rights issue, whether in the normal course, or through purchase of rights renunciations, shall be intimated to the Compliance Officer.
- ii. Investments through the secondary markets:
 - a. An Access Person who wishes to make a secondary market transaction shall submit a written application to that effect to the Compliance Officer. Such an application shall specify the name of the company whose securities the employee wishes to buy and/or sell, type of security, and the number of shares and/or debentures and/or bonds and/or warrants and/or derivatives that the Access Person wishes to buy/sell.
 - b. The Compliance Officer shall clear these requests if the following conditions are met:
 - a) If the shares and/or debentures and/or bonds and/or warrants of the company or derivatives specified by the Access Person are not held by any scheme of the Mutual Fund of which the AMC is the investment manager;
 - b) Conditions specified in the C above.
- H. The Compliance Officer shall keep a track of the transactions of the employees and transactions of the Mutual Fund to ensure that there is no conflict of interest between them i.e. the Compliance Officer should track whether the Mutual Fund has transacted in the same securities either before or after the employee's transaction (s).



- I. The Compliance Officer shall maintain a record of all requests for pre-clearance regarding the purchase or sale of a security, including the date of the request, the name of the Access Person, the details of the proposed transaction and whether the request was approved or denied and waivers given, if any, and its reasons.

- J. No employee shall purchase any security (including derivatives) on a "Carry Forward" basis or indulge in "Short Sale" of any security (including derivatives) i.e. employees who effect any purchase transaction(s) shall ensure that they take delivery of the securities purchased, before selling them.

- K. Any transaction of Front Running by any employee directly or indirectly is strictly prohibited. For this purpose, 'front running' means any transaction of purchase and/or sale of a security carried by any employee whether for self or for any other person, knowing fully well that the AMC also intends to purchase and/or sell the same security for its Mutual Fund operations. To ascertain that the employee had no prior knowledge of the Mutual Fund's intended transactions, the Compliance Officer may take a declaration in this regard from the employee. Such declaration may be included in the application form itself.

- L. Any transaction of self-dealing by any employee either directly or indirectly, whether alone or in concert with another person is prohibited. For this purpose, 'self dealing' means trading in the securities based on price sensitive information to which the employee has access by virtue of his office. Declaration to this effect may be taken from the employee while clearing the proposals for investment.

- M. The employees shall not insist or suggest to the concerned brokers to charge reduced brokerage, or accept any contract with a clause on reduced brokerage charge.

Continuous disclosures and compliances by Infrastructure Investment Trusts

SEBI vide its [Circular dated November 29, 2016](#) has provided the guidelines for continuous disclosures and compliances by Infrastructure Investment Trusts (“InvITs”). These guidelines are in reference to the Regulation 23 of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which prescribe for disclosures to be made by an InvIT to the Stock Exchange(s) where its units are listed.

A. The disclosures to be made in regards with the financial information of InvITs are as follows-

- i. Frequency and Time period for disclosures:
 - a. An InvIT shall submit its half yearly and annual financial information to the Stock Exchanges.
 - b. The financial information shall be submitted to the Stock Exchanges within the following time period:
 1. The financial information of the first half year period of the financial year, shall be submitted within 45 (forty-five) days from the end of the half year.
 2. The annual financial information shall be submitted within 60 (sixty) days from the end of the financial year.
 3. The financial information of the second half year period of the financial year, shall be submitted along with the annual financial information.

The said information shall be submitted with a note stating that the figures of the second half year period are the balancing figures of the figures of the full financial year reduced by the figures of the first half year period.

B. Nature of financial information

The financial information shall be disclosed on both standalone as well as consolidated basis.

C. Comparative information

- i. The annual financial information shall contain comparative information for the immediately preceding financial year.
- ii. The half yearly financial information shall contain comparative information for the immediately preceding half year as well as for the corresponding half year in the immediately preceding financial year.

- iii. The comparative information would consist of corresponding amounts (comparative figures) for all the items shown in the key financial statements, including notes, and for the additional disclosures, to the extent applicable.
- iv. In cases where the InvIT was not in existence in the previous corresponding reporting period(s) as mentioned above, then the comparative information may not be provided and the said fact shall be clearly disclosed.

D. Basis of preparation of financial information

- i. The financial information shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.
- ii. The financial information shall be prepared in accordance with Indian Accounting Standards (“**Ind AS**”) and/or any addendum thereto as defined in Rule 2 (1) (a) of the Companies (Indian Accounting Standards) Rules, 2015.
- iii. Additionally, InvITs shall also follow relevant accounting laws, as prescribed by their sectoral regulators, with respect to the projects being executed by them.
- iv. For Holding Corporations / Special Purpose Vehicles (“**SPVs**”) owned by InvIT, these entities may prepare financial statements in accordance with accounting standards and laws applicable to them. However, for consolidation purposes, consolidated financial information of InvIT in accordance with Ind AS should be disclosed.
- v. In addition to the financial information in accordance with Ind AS as mentioned at Paragraph above, the InvIT may, if it so desires, also submit the financial information as per the International Financial Reporting Standards.

E. Key Financial Statements:

The financial information presented by the InvIT can be in the form of condensed financial statements. Such financial information shall comply with the minimum requirements for condensed financial statements as described in Ind AS 34 on ‘Interim Financial Reporting’, to the extent applicable.

- i. The annual financial information shall include the following financial statements:
 - a. Balance Sheet;
 - b. Statement of Profit and Loss/Income and Expenditure;
 - c. Statement of Changes in Unit holders’ Equity;

- d. Statement of Cash Flows;
 - e. Statement of Net Assets at Fair Value;
 - f. Statement of Total Returns at Fair Value;
 - g. Explanatory notes annexed to, or forming part of, any statements referred above.
- ii. The half yearly financial information shall include the following financial statements-
- a. Statement of Profit and Loss/Income and Expenditure;
 - b. Explanatory notes annexed to, or forming part of, any statements referred above.
- iii. For the key financial statements listed above, the minimum information to be disclosed shall be as specified in Section H of Annexure-A to the SEBI Circular No. CIR/IMD/DF/114/2016 dated October 20, 2016 (“**October 2016 Circular**”) on ‘Disclosure of financial information in offer document/placement memorandum’.
- iv. Financial statements shall disclose all ‘material’ items, i.e., the items if they can, individually or collectively, influence the economic decisions made on the basis of the financial statements.

For determining materiality, the InvIT shall be guided by Paragraph 3.5 in Section A of Annexure-A to the October 2016 circular.

- v. In cases of any sale/redemption of any holdings/investments in underlying SPV(s)/ holding corporations or any sale of infrastructure assets by the InvIT, the profit/ loss on such transactions should be shown on a gross basis.

F. Additional disclosures while submission of financial information

In addition to the key financial statements referred above, the following disclosures shall also be included as a part of both the half yearly as well as the annual financial information unless otherwise specified. Further, the below mentioned disclosures shall also be subjected to audit/limited review if applicable:

- i. Statement of Net Distributable Cash Flows (“**NDCFs**”):

An InvIT shall disclose statements of NDCFs of the InvIT as well as of all the underlying holding corporations and SPVs. Such statements shall be prepared in accordance with, the definition of NDCFs and the framework for calculation of NDCFs, as defined by the InvIT/Investment Manager and as disclosed in the offer document.

ii. Investment Manager and Project Manager Fees:

- a. Explanations and justification for the fees paid to the Investment Manager and the Project Manager, including details about methodology for computation of the fees.
- b. Whether there has been any material change (materiality to be judged and determined by trustees in light of various pertinent factors including but not restricted to the size of InvIT, amount of change, prevailing circumstances, etc.) in the fees paid to project manager and investment manager compared to the previous reporting period? If yes, detailed reasons and information thereof.

ii. Sub-sector investments:

If the InvIT holds assets (whether directly or through its holding corporations/SPV(s)) in more than 1 (one) infrastructure sectors/sub-sectors, then it shall disclose a breakup of the investments across all sectors/sub-sectors clearly showing investments in each major sector/sub-sector (major sector/sub-sector would constitute not less than 5% of the total investment in the major classification) together with the percentage thereof in relation to the total investment.

For determining the infrastructure sectors/sub-sectors, the InvIT shall be guided by latest notifications and any other communications by Ministry of Finance.

iii. Changes in Accounting policies:

In cases of changes in accounting policies, if any, InvIT shall make adequate disclosures required as per the applicable accounting laws including Ind AS 8 issued by the Institute of Chartered Accountants of India (“ICAI”).

iv. Disclosures related to Modified Opinion(s)

The following mentioned disclosures would be required only in case of annual financial information of the InvIT:



- a. If the auditor has expressed any modified opinion(s) in respect of the audited annual financial information of the InvIT, then the InvIT, while submitting such financial information to the Stock Exchange(s), shall file a 'Statement on Impact of Audit Qualifications' disclosing such modified opinion(s) and the cumulative impact of the same in the format as specified in Annexure I to the SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016. Further, the aforementioned statement on impact of audit qualifications shall be signed by the following:
 1. Chairperson/CEO/MD of the Investment Manager
 2. CFO or the Head of the Finance of the Investment Manager
 3. Statutory Auditor
 - b. If the auditor had expressed any modified opinion(s) or other reservation(s) in his audit report or limited review report in respect of the financial results of the immediately preceding financial year or half year, which had an impact on the profit or loss of that period, then the InvIT shall disclose the following:
 1. Statement of Earnings per Unit
 2. Statement of Contingent liabilities
 3. Statement of Commitments
 4. Statement of Related party transactions
- v. Other Statements:
- a. The InvIT shall also disclose the following statements:
 1. Statement of Earnings per Unit
 2. Statement of Contingent liabilities
 3. Statement of Commitments
 4. Statement of Related party transactions
 - b. The details and the basis of disclosures for the above statements shall be same as specified in Paragraph 4 in Section A of Annexure-A of the October 2016 circular.
- G. Approval and authentication of financial information:
- a. Before submission of the financial information to the Stock Exchanges, the financial information shall be approved by the Board of Directors/Governing Body of the Investment Manager and shall be authenticated and signed in the following manner:

1. The financial information shall be signed by two designated personnel of the Investment Manager certifying that the financial information do not contain any false or misleading statement or figures and do not omit any material fact which makes the statements or the figures contained therein misleading.
2. Subsequent to the above, the financial information shall be signed by the Chairperson or the Managing director/partner or the Whole time director/partner on the Board of Directors/Governing Body of the Investment Manager and in the absence of all of them; it shall be signed by any other director/partner of the Investment Manager who is duly authorized by the Board of Directors/Governing Body to sign the financial information.

H. Audit of Financial Information:

- i. The annual financial information shall be audited, whereas the half yearly financial information may be either audited or unaudited. In case the InvIT opts to submit unaudited financial information, the same shall be subject to limited review by the auditor of InvIT.
- ii. The audit/limited review shall be carried out by the auditor appointed for the InvIT as per the InvIT regulations.
- iii. The auditor, so appointed, shall be the one who has subjected itself to the peer review process of the ICAI and who holds a valid certificate issued by the Peer Review Board of ICAI.
- iv. In case the financial information is audited, it shall comply with all the requirements specified in Paragraph 5 in Section A of Annexure-A of October 2016 circular, to the extent applicable, and the audit report shall contain disclosures stated therein.
- v. the auditor shall also give his opinion on the following:
 - a. whether the statement of NDCFs gives a true and fair view of NDCFs for the years/periods ended at the balance sheet dates
 - b. The financial information submitted to the Stock Exchanges shall be accompanied with Audit Report or Limited Review Report, as the case may be.

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Warm Regards,

Dipali Sarvaiya Sheth

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