

International Financial Services Centres Authority

Seventh Authority Meeting held on 30th June, 2021

Gist of Agenda item: International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021

1. Objective

1.1. This memorandum seeks approval of the Authority to notify the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 (“Listing Regulations”).

2. Background

2.1. In today's world of globalization, global capital acts as an important driver of economic growth and development wherever global investment opportunities exist. The setting up of the International Financial Services Centre (IFSC) in India is aimed at tapping global capital flows to meet India’s development needs and simultaneously provide a globally competitive financial platform for the full range of international financial services at the regional and global level.

2.2. It may be noted that sub-section (3) of section 23 of the Companies Act, 2013 has been inserted on September 28, 2020, permitting Indian public companies to list their securities in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed. While the detailed rules / guidelines in this regard are awaited, it may be noted that IFSC is one of the permissible jurisdictions (currently for the purpose of listing of depository receipts of Indian Companies).

2.3. There have been changes in market practices and regulatory environment over a period of time with respect to primary market activities across the globe. For example, recently, listing of Special Purpose Acquisition Company (“SPAC”) has been very popular in some jurisdictions, particularly in United States of America.

- 2.4. The Hon'ble Finance Minister in the Union Budget for the financial year 2021-22, has announced setting up of a 'world-class' fintech hub at GIFT City in a bid to bolster innovation in the fintech industry. There is a need to provide an enabling framework for capital raising and listing of start-ups in IFSC.
- 2.5. The countries worldwide are investing into Environment, Social, Governance ("ESG") projects, pursuant to the Paris Agreement and Sustainable Development Goals. The financial sector has been identified as being instrumental in advancing the zero-carbon energy transition. Considering the importance of ESG issues and the ESG targets, there is a need for the regulators to provide an ecosystem for sustainable financing.
- 2.6. In view of the above, a need has been felt to review the existing regulatory framework for listing of securities in IFSC so as to align them with latest market developments and to ensure that the best practices are adopted. Further, a need has been felt to simplify and prescribe a single regulatory framework for issuance and listing of various types of securities, and prescribe suitable initial and continuous disclosure requirements.
- 2.7. Accordingly, IFSCA, issued a consultation paper on March 10, 2021 proposing an all-encompassing framework for IFSCA (Issuance and Listing of Securities) Regulations, 2021. Comments have been received from 10 stakeholders. Further, IFSCA has interacted with several stakeholders including stock exchanges, seeking their comments on the proposed Listing Regulations.

Proposed Listing Regulations

3. Based on the comments received during the consultation paper and benchmarking with the global practices, the proposed Regulations have been revised.
4. The salient features of the proposed Listing Regulations are as follows:

A. Scope and Applicability

- 4.1. The regulatory framework has been prescribed for the following types of listing by issuers based in India, IFSC or any foreign jurisdiction (as defined in the Regulations):

- a) an initial public offer of specified securities by an unlisted issuer;
- b) a follow-on public offer of specified securities by a listed issuer;
- c) listing of specified securities by a start-up company or an SME company;
- d) secondary listing of specified securities;
- e) an initial public offer of specified securities by a SPAC;
- f) listing of depository receipts;
- g) listing of debt securities; and
- h) listing of ESG debt securities

B. Listing of specified securities through IPO (including offer for sale)

4.2. The salient features for raising of capital through IPOs on a recognised stock exchange in IFSC are as follows:

Eligibility criteria: The issuer shall have operating revenue of at least USD 20 million in the preceding financial year; or average pre-tax profit, based on consolidated audited accounts, of at least USD one million during the preceding three financial years; or any other eligibility criteria that may be prescribed by IFSCA. Additionally, the issuer should have commenced business at least three years prior to the date of filing of prospectus.

Issue size: Not less than USD 15 million (or any other amount as may be specified by IFSCA)

Pricing: Fixed price or book building

Minimum Subscription: For the offer to be successful, the following conditions shall be satisfied:

- a) The minimum subscription received in the issue shall be at least 75% of the issue size; and
- b) The minimum number of subscribers shall be 200 or as may be specified by the Authority.

Allotment: Proportionate or discretionary basis (as per disclosure in the offer document). However, no single investor shall be allotted more than 10% of the post issue capital.

Green shoe option: Over allotment permitted up to 15% for price stabilisation.

Lock-up: The pre-issue shareholding of all shareholders of the issuer shall be locked-up for a period of 180 days from the date of allotment.

C. Follow-on public offers (FPOs)

4.3. The salient features for raising of capital through IPOs on a recognised stock exchange in IFSC are as follows:

Fast track FPOs permitted if the issuer satisfies certain conditions (1 year listing, compliance with all regulatory requirements, no show cause notice issued by IFSCA, no adverse opinion by auditors, no irregularities disclosed by any director, key managerial personnel or compliance officer). In fast track FPOs, the issuer shall be permitted to proceed with the offer by filing a copy of the offer document with IFSCA.

Regulatory provisions similar to IPO: The provisions including relating to issue size, pricing, minimum subscription, allotment, etc. are similar to IPOs.

D. Listing of Start-up and SME companies

4.4. The salient features of the regulatory framework for listing of start-up and SME companies are as follows:

Eligibility Criteria

- **Start-up company:** Less than 10 years since incorporation and annual turnover should not have exceeded USD 20 million in any of the financial years.
- **SME company:** annual turnover should not have exceeded USD 50 million since incorporation.

There are two types of listing that have been proposed in respect of listing of start-up and SME companies: (a) Listing without public offer; and (b) Listing with public offer.

Listing without public offer

- In-principle approval from stock exchanges required.

- The company is required to file information memorandum (containing relevant information about the company), approved by the board of directors of the company and signed by all the directors, the Chief Executive Officer/ Managing Director and the Chief Financial Officer of the company, with the IFSCA.

Listing with public offer

- The process for filing offer document, initial disclosures in offer document, pricing, offer period, allotment etc. are similar to IPOs.
- **Issue size:** USD two million or more but less than USD fifteen million, or any other amount as may be specified by IFSCA.
- **Minimum Subscription:** For the offer to be successful, the following conditions shall be satisfied:
 - a) The minimum subscription received in the issue shall be at seventy-five percent of the offer size; and
 - b) The minimum number of subscribers shall be 50 or as may be satisfied by the Authority.

E. Secondary Listing of Specified Securities

4.5. Any company which is having its specified securities listed in India (outside IFSC) or in a Foreign Jurisdiction may be permitted to list their specified securities on a recognised stock exchange(s) in the following ways:

- a) Listing without public offer: In the manner prescribed by stock exchanges
- b) Listing with public offer: The regulatory requirements may be similar to IPOs.

F. Listing of SPACs

4.6. The salient features of the regulatory framework for listing of SPACs are as follows:

Area	Regulatory Provisions	Remarks
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Key Definitions	<p>SPAC: A company which does not have any operating business and has been formed with the primary objective to affect a business combination.</p> <p>Business Combination: a merger or amalgamation or acquisition of shares or assets of one or more companies having business operations.</p>	Multiple companies may be permitted to be acquired / merger in a business combination, in line with other jurisdictions such as USA, Canada
Eligibility	<p>Target business combination should not have been identified prior to the IPO</p> <p>SPAC should have the provisions relating to redemption and liquidation in line with these Regulations</p>	In line with other jurisdictions
Track Record of Sponsor	A sponsor of the SPAC issuer shall have a good track record in SPAC transactions or business combinations or fund management or merchant banking activities, and the same shall be disclosed in the offer document.	The investors participate in the IPO based on the track record of the sponsors.
Issue Size	Not less than USD 50 million, or any other amount as may be specified by the IFSCA from time to time	Considering that SPACs are recent innovative listings and do not have any operating business, it has been proposed to keep a higher threshold for SPACs.
	<p>Sponsors shall hold 15% - 20% of the post issue paid up capital.</p> <p>Provided that the sponsors shall also have aggregate subscription (all securities) in terms of amount in the SPAC company prior to or simultaneous to the IPO, amounting to at least 2.5% of the issue size or USD 10 million, whichever is lower, or any other amount as may be specified by the Authority.</p>	<p>Based on research, it has been noted that SPACs normally hold 20% of the post issue paid up capital.</p> <p>However, it would be difficult to prescribe exact 20%, considering that the level of subscription would not be known prior to the IPO. Therefore, range of 15% - 20% may be provided.</p> <p>Further, Singapore Stock Exchange (SGX) in its recent consultation paper has proposed requirement for sponsor to contribute in terms of monetary value. We may have similar approach to align the interests</p>

		of sponsors and investors.
Pricing	Fixed Price (not less than USD 5 per share)	Based on research, it has been noted that most SPACs have fixed price for listing.
Underwriting	<p>May be underwritten</p> <p>If underwritten,</p> <ul style="list-style-type: none"> • Adequate disclosures to be made in the offer document • At least 50% of the underwriting commission shall be deferred until completion of business combination, and deposited in the escrow account • In case of liquidation, the underwriter shall waive their rights on the deferred commission deposited in the escrow account 	Based on research, this is in line with the market practice followed by SPACs.
Application and Allotment	<p>Min. application size of USD 100,000/-</p> <p>Min. subscription:75% of the issue size and at least 50 subscribers (or as may be specified by the Authority)</p> <p>No single application shall be allotted more than 10% of the post issue capital and the allotment to investors shall be on proportionate basis or discretionary basis, as disclosed in the offer document</p>	<p>SPACs are considered to be riskier than normal IPOs and therefore smaller retail investors may not be permitted.</p> <p>At the same time, in order to promote liquidity, the threshold may not be too high. Therefore, USD 100,000 has been proposed.</p>
Escrow Account	Entire proceeds of the IPO required to be kept in an interest-bearing escrow account controlled by an independent custodian until consummation of the SPAC's business combination	<p>Normally, most jurisdictions prescribe 90% of the amount in escrow.</p> <p>However, based on research, it has been noted that the market practice in USA has been to deposit 100% in escrow account.</p> <p>100% amount in escrow is in the interest of investors.</p>
	Escrow funds shall be invested only in	This requirement would be in the

	instruments disclosed in the offer document and shall include only short-term investment grade liquid instruments.	interest of the investors.
	<p>Interest and other income derived from the amount placed in the escrow account may be withdrawn by the SPAC issuer for the following purposes:</p> <p>(a) Payment of taxes; and</p> <p>(b) General working capital expenses, subject to prior approval by way of special resolution of the shareholders other than sponsors.</p>	<p>Some SPACs have provisions for withdrawal of amount (interest and other income derived from the escrow account) for general working capital expenses.</p> <p>SGX in its consultation paper has also proposed that where exceptional circumstances that warrant a draw down from the escrow account, the SPAC may seek independent shareholders' approval by way of a special resolution and SGX's approval for such draw down.</p>
Prospectus of the target business combination	The SPAC shall file a detailed prospectus with the recognised stock exchange(s) containing all relevant disclosures regarding the proposed business combination, while seeking shareholders' approval	<p>Similar requirement is there in other jurisdictions such as Toronto.</p> <p>We may have this requirement.</p>
Approval of proposed business combination	Majority of shareholders other than sponsors	<p>US: majority of shareholders</p> <p>Toronto: majority of shareholders except sponsors</p> <p>SGX (proposed): majority of independent shareholders</p>
Redemption Right	If a shareholder (other than sponsors) has <u>voted against</u> the proposed business combination, he shall have the redemption right for converting its securities into a pro rata portion of the aggregate amount held in the escrow account (net of taxes payable).	In line with the proposed framework of SGX.
	In the event of change in control of the SPAC, the SPAC issuer shall provide the redemption option to the shareholders (other than sponsors).	SGX has proposed similar requirement in respect of an event of material change.
Timeline	36 months	In line with the requirements in other

		jurisdictions
Liquidation	<p>If the business combination is not completed within the permitted time frame, the escrow account shall be liquidated</p> <p>The sponsors shall not participate in the liquidation distribution</p>	In line with the requirements in other jurisdictions
Restriction on sponsor	A sponsor shall not transfer or sell any of his specified securities prior to the completion of a business combination	This requirement is in the interest of investors
Business Combination	Shall have an aggregate fair market value equal to at least 80% of the aggregate amount deposited in the escrow account, excluding deferred underwriting commissions held in escrow and any taxes payable on the income earned on the escrowed funds.	In line with the requirements in other jurisdictions
Restriction on related party transaction	The SPAC and the sponsors shall ensure that there is no related party transaction or connection of sponsor or any of their associates with the business combination	This requirement is in the interest of investors
Warrants	<p>Where warrants have been issued in the IPO, the SPAC shall comply with the following:</p> <p>a) Each unit may consist of one share and no more than one share purchase warrants;</p> <p>b) The exercise price of the warrants shall not be lower than the price of the equity shares offered in the IPO;</p> <p>c) The warrants may be detached with the equity shares and traded separately on the recognised stock exchanges provided that details have been appropriately disclosed in the offer document;</p> <p>d) The warrants shall not be exercisable prior to the completion of the business combination;</p> <p>e) In case of liquidation of SPAC, the</p>	<p>Based on research, it has been noted that warrants are generally issued along with shares in a SPAC IPO.</p> <p>Therefore, we may prescribe these requirements for SPACs.</p>

	warrants shall expire; and f) The warrants shall not have any entitlement to the funds lying in the escrow account upon liquidation or redemption.	
Post business combination	Resulting issuer shall immediately disclose details regarding the completed transaction to the recognised stock exchange(s)	Transparency
	Resulting issuer shall be required to meet the listing eligibility criteria set out in these regulations within 180 days, in order to continue listing on the recognised stock exchange(s). The resulting issuer shall comply with the listing obligations and continuous disclosure requirements	Resulting Issuer to comply with listing criteria and continuous disclosure requirements
Lock-up	Sponsors - 1 year Shareholding of the promoters, promoter groups, controlling shareholders, directors and key managerial personnel of the resulting issuer – 1 year	This requirement is in the interest of investors

G. Listing of Depository Receipts

4.7. The framework for listing of Depository Receipts proposed in the Listing Regulations is largely in line with the IFSCA circular dated October 28, 2020. The salient features of the regulatory framework for listing of Depository Receipts are as follows:

IPO of DRs

- The process for filing of offer document may be similar to IPO
- **Initial Disclosures:** Issuer Disclosure, Securities Disclosure, Issue related disclosures
- **Minimum subscription:** Not less than USD 700,000/- or any other amount as may be specified by the Authority

Listing and Trading (without public offer)

- Any company which is having its depository receipts listed in India (outside IFSC) or in a Foreign Jurisdiction may list their depository receipts on a recognised stock exchange, in the manner prescribed by the stock exchanges.

H. Listing of Debt Securities

4.8. The debt securities are currently being listed on both the stock exchanges based on the IFSC Guidelines and the regulatory framework prescribed by the respective exchanges. Currently, listing of debt securities is a successful product on the exchanges. The framework for listing of debt securities proposed in the Listing Regulations is therefore aligned with the IFSC Guidelines. The salient features are as follows:

- a) **Initial Disclosures** in prospectus, shelf prospectus or information memorandum
- b) **Mandatory listing for issuers based in IFSC:** An issuer incorporated in IFSC and desirous of issuing debt securities shall mandatorily apply for listing of its debt securities on a recognised stock exchange.
- c) **Minimum Subscription in case of private placement:** Not less than USD hundred thousand or such amount as may be specified by the Authority from time to time.
- d) **Credit Rating:** The issuer may obtain credit rating for its debt securities from a credit rating agency registered with the Authority or registered in India or any Foreign Jurisdiction (as defined in the Regulations). In case credit rating has been obtained, the issuer shall disclose details of the credit ratings in the document.

I. Listing of ESG Debt Securities

4.9. The salient features of the regulatory framework for listing of ESG debt securities are as follows:

- a) The debt securities shall be labelled as “green”, “social”, “sustainability” or “sustainability-linked” only if aligned with the internationally recognised frameworks such as International Capital Market Association Principles/ Guidelines, Climate Bonds Standards, ASEAN Standards, European Union Standards / Taxonomy, any framework or methodology prescribed by a competent authority in India, or other international standards.

- b) Issuer shall appoint independent external reviewer to ascertain that the ESG debt securities are in alignment with the above mentioned international standards.
- c) **Additional Disclosures in offer document / information memorandum:**

Green, Social and Sustainable debt Securities

- A statement on ESG objectives of the issue of debt securities;
- Details of process followed by the issuer for evaluating and selecting the project(s) and/or asset(s);
- Proposed utilisation of the proceeds of the issue shall include details of the project(s) and/or asset(s); and
- Details of the systems and procedures to be employed for tracking the deployment of the proceeds of the issue.

Sustainability-linked debt Securities

- Shall adhere to pre-issuance and post-issuance obligations in accordance with the international standards that the securities are aligned with.

- d) **Additional Continuous Disclosure Requirements**

Green, Social and Sustainable debt Securities

- Utilisation of proceeds of the issue
- Allocation – List of projects/assets
- ESG Impact

Sustainability-linked Debt Securities

- up-to-date information on the performance of the selected Key Performance Indicator(s)
- any information enabling investors to monitor the level of ambition of the Sustainability Performance Targets
- a verification report by an independent external reviewer.

J. Listing obligations and disclosure requirements

4.10. The salient features of the regulatory framework for listing obligations and disclosure requirements are as follows:

1. Companies with specified securities listed on stock exchanges as a primary listing

- a) Disclosure of material or price sensitive information
- b) Prior intimation about the meeting of the board of directors and immediately disclose outcome of the meeting of the board of directors, to the stock exchange(s) in respect of proposals relating to dividend, buy-back of securities, decisions with respect to fund raising or change in capital, financial results and decision on voluntary delisting;
- c) Proceedings of Annual and Extraordinary general meetings
- d) Change in directors, key managerial personnel, Auditor and Compliance Officer
- e) Resignation of auditors, along with detailed reasons for resignation
- f) Any adverse opinion, disclaimer of opinion, qualified opinion by the auditors on the financial statements
- g) Details of encumbrance created or invoked or released by promoters and controlling shareholders
- h) Shareholding pattern
- i) Audited standalone and consolidated financial statements for the full financial year
- j) Quarterly financial results
- k) Annual Report
- l) Statement of deviation or variation in the use of proceeds
- m) Corporate Governance in the annual report
- n) Sustainability Report (companies having market cap. of USD 50 million or more)
- o) Corporate actions
- p) Meeting of shareholders and Voting
- q) Maintenance of website

2. Secondary Listing of Specified Securities

Such companies may be required to release all disclosures in English to the recognised stock exchange(s) at the same time as they are released to its home exchange or regulator where it has a primary listing.

3. Companies having depository receipts listed on a recognised stock exchange

- a) Audited Financial Statements for the full financial year

- b) Quarterly financial results
- c) Disclosure of material or price sensitive events
- d) Shareholding pattern
- e) Corporate Governance in annual report
- f) Change of depository
- g) Corporate actions
- h) Release all disclosures in English to the stock exchange(s) at the same time as they are released to its home exchange or regulator where it has a primary listing.

4. Debt Securities listed on a recognised stock exchange

- a) Disclosure of material or price sensitive events
- b) Audit Financial Statements on a yearly basis
- c) Annual Report
- d) Change in credit rating
- e) Record Date

K. Permitted to trade (without listing)

4.11. In addition to the above, considering that IFSC is a nascent jurisdiction, the stock exchanges may be permitted to trade securities (without listing on exchanges in IFSC) that are listed on an exchange in India or in a Foreign Jurisdiction, subject to compliance with applicable laws of the jurisdictions in which the securities are listed and the exchanges ensuring clearing and settlement of the trades.

5. Proposals

5.1. Approval of the Authority is sought for notifying the draft International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 in the Official Gazette, after carrying out changes, if any, of drafting and consequential nature. The Authority is further requested to authorize the Chairperson to make such necessary, consequential and incidental steps to operationalize the Listing Regulations.