

International Financial Services Centres Regulations - An Overview

13 September 2021

This update covers:

1	Special Purpose Acquisition Companies	2
2	Public Offerings through IFSC Stock Exchanges	3
3	Listing by Start-Ups and SME Companies	4
4	Secondary Listings	4
5	Depository Receipts	5
6	Debt Securities	5
7	Continuous Disclosure Requirements	6
8	Non-compliance	6
9	Conclusion	6

International Financial Services Centres (IFSCs) are special economic zones in India set up with the intent of catering to international market participants in the financial services economy, and to promote ease of doing business. IFSCs enjoy various fiscal benefits, including in relation to taxes levied

In 2019, the International Financial Services Centres Authority Act, 2019 (IFSCA Act) was enacted to provide for the establishment of the International Financial Services Centres Authority (IFSCA), a statutory authority to develop and regulate the financial services market in IFSCs. As the dynamic nature of business required inter-regulatory consolidation, IFSCA was set up as a unified regulatory authority which exercises powers of various other regulators such as Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), etc. in so far as such powers relate to the regulation of the financial products, financial services or financial institutions in IFSCs. The objective of the IFSCA is to develop a strong global connect and focus on the needs of the Indian economy as well as to serve as an international financial platform for the entire region and the global economy as a whole.

The International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 were recently notified to provide a consolidated issuance and listing framework (under the jurisdiction of a single regulator) for accessing capital markets by various entities at International Financial Services Centres.

The IFSCA, on 16 July 2021, notified the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 (**Regulations**), superseding the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015. The Regulations provide a consolidated regulatory framework (under the jurisdiction of a single regulator, as the erstwhile regulations were prescribed by SEBI) for accessing capital markets by issuance and listing of securities by various entities.

Pursuant to the Regulations, companies incorporated in India, an IFSC or in foreign jurisdictions are eligible to list their securities on stock exchanges established in IFSCs (**IFSC Stock Exchanges**). Further, entities and SMART cities notified by state or central governments, and entities whose securities are irrevocably guaranteed by a Sovereign, are also eligible to list their securities. Currently, there are two IFSC Stock Exchanges i.e. India International Exchange and NSE International Exchange.

The Regulations provide for various avenues to access capital markets through IFSC Stock Exchanges (including those which are prevalent in international markets). These avenues include extant structures such as initial public offerings (**IPOs**), follow-on public offerings (**FPOs**), preferential issues, rights issues, issuance of depository receipts and debt securities (through IFSC Stock Exchanges). Some new avenues that have been introduced include listing of securities by start-ups, secondary listings, IPOs by Special Purpose Acquisition Companies (**SPACs**), Environment, Social and Governance (**ESG**) debt securities, masala bonds and medium term note programmes (through IFSC Stock Exchanges).

We discuss below some of the key aspects of raising capital in IFSCs.

1 Special Purpose Acquisition Companies

The Regulations have introduced the concept of a SPAC in India, i.e. a company which does not have any operating business, and has been formed with the primary objective to affect a merger or amalgamation or acquisition of shares or assets of one or more companies having business operations (**Business Combination**).

A SPAC is eligible to list its securities by way of an IPO, if (a) it has not identified the Business Combination prior to the IPO, and (b) it complies with certain provisions of redemption and liquidation of the SPAC as well the SPAC proceeds. The SPAC also requires a "sponsor" i.e. a person sponsoring the formation of the SPAC.

In terms of the eligibility criteria, the sponsor cannot be debarred from accessing the capital market, or be declared as a wilful defaulter or fugitive economic offender. Further, the sponsor is required to have a good track record in SPAC transactions, business combinations, fund management, or merchant banking activities.

A SPAC listing is required to follow a similar process as has been prescribed for an IPO in an IFSC under the Regulations. Similar to an IPO, a SPAC is required to file an initial offer document, which contains customary disclosures typical to public offerings. Additionally, a SPAC initial offer document is required to contain specific disclosures pertaining to liquidation, redemption rights, track record of sponsors, target business sector, and time period for completion of the Business Combination. The SPAC is also required to file a detailed prospectus with the IFSC Stock Exchange, containing all relevant disclosures regarding the proposed Business Combination, while seeking shareholders' approval, including information about (a) target company, (b) Business Combination transaction, (c) valuation and methodology used, (d) process for the business transaction, (e) the approvals which are required, and (f) information about the resulting issuer company that would be formed after completion of the Business Combination.

Unlike an IPO where pricing can be undertaken by way of book building, a SPAC envisages a fixed price mechanism only. The underwriters involved in a SPAC are required to defer at least 50% of the underwriting

commission until the successful completion of the Business Combination (by depositing it in an escrow account). In case of a liquidation, such deferred commission is waived.

The minimum issue size is required to be USD 50 million. Further, the sponsor is required to hold a minimum of 15% but not more than 20% of the post-IPO share capital of the SPAC, and is also required to hold an aggregate subscription of at least 2.5% of the issue size or USD 10 million, whichever is lower, prior to, or simultaneous to the IPO. It may be noted that the shareholding of the sponsors, promoters, promoter groups, controlling shareholders, directors and key managerial personnel of the SPAC in the resulting issuer is locked up for a period of one year from the date of closing of the business combination. Further, a sponsor cannot transfer or sell any of their securities prior to the completion of a business combination.

The entire proceeds of the IPO are required to be kept in an interest-bearing escrow account controlled by an independent custodian until consummation of the SPAC's Business Combination, and such funds can only be invested only in short-term investment grade liquid instruments (which are required to be disclosed in the offer documents). The interest and other income derived from the amount placed in the escrow account may be withdrawn for the purpose of payment of taxes, and general working capital expenses, subject to prior approval of majority of the shareholders (other than sponsors).

The Business Combination is required to be completed by the SPAC within 36 months from the date of listing on the IFSC Stock Exchanges, and requires a prior approval from majority of shareholders (other than sponsors). Further, the SPAC is required to ensure that the businesses acquisition shall have an aggregate fair market value equal to at least 80% of the aggregate amount deposited in the escrow account with certain exclusions prescribed.

2 Public Offerings through IFSC Stock Exchanges

The Regulations enable IPOs of securities through IFSC Stock Exchanges by issuers who have:

- a. an operating revenue of at least USD 20 million in the preceding financial year, and
- b. an average consolidated pre-tax profit, of at least USD one million during the preceding three financial years, and
- c. commenced business at least three years prior to the date of filing of prospectus.

An IFSC IPO requires issuers to meet the aforesaid financial parameters as part of the eligibility test, unlike conventional IPOs wherein issuers who do not meet prescribed financial parameters can make an offering by undertaking increased allocation to qualified investors.

For cases where the IPO involves an offer for sale of shares, such shares must be held for a period of one year prior to the date of filing of the draft offer document (including holding periods in case of convertible securities prior to conversion), subject to certain exceptions.

The IPO process would require the appointment of lead managers, filing of a draft offer document (which is reviewed by the IFSCA), followed by a final offer document similar to conventional IPOs. However, the disclosure requirements in the offer documents are abridged in comparison to conventional IPOs in non-IFSC stock exchanges. Further, the financial statements do not require restatement, unlike conventional IPOs, which is likely to have a positive impact on the timelines for the IPO.

The minimum issue size is required to be USD 15 million. There are also similar provisions applicable in respect of FPOs, which may be undertaken by issuers who have their securities listed on IFSC Stock Exchanges. Further,

an expedited process for fast-track FPOs by issuers complying with certain criteria, has also been provided. The liability of the lead managers is consistent with conventional IPOs, with lead managers being required to submit a due diligence certificate.

3 Listing by Start-Ups and SME Companies

	Start-Ups	SME Companies
Eligibility Criteria for listing	A start-up company is eligible to list its securities on an IFSC Stock Exchange, if: (a) the offer document is filed within a period of 10 years from the date of incorporation/ registration, (b) the annual turnover of the company for any of the financial years since incorporation/ registration has not exceeded USD 20 million, and (c) company is working towards innovation, development or improvement of products or processes or services, or it is a scalable business model with a high potential of employment generation or wealth creation.	A small and medium enterprise company is eligible to list its securities on an IFSC Stock Exchange, if the annual turnover of the company for any of the financial years since incorporation/ registration has not exceeded USD 50 million.
Methodology	(a) Public Offer Listing may be undertaken by making a public offer (in which case the process and requirements applicable for an IPO need to be satisfied). OR (b) Without Public Offer/Direct Listing In case the listing is proposed to be undertaken without making a public offer, i.e. a direct listing, the company must file a single information document with IFSCA and the IFSC Stock Exchange, and ensure that the securities are listed within 30 days of receipt of approval from stock exchanges. The issue size for such listings may be between USD 2 million – USD 15 million.	

Direct listing offerings are likely to open up exit horizons for start-up companies with existing investors, without having to undergo the rigorous process of a conventional IPO and help create a public market for their securities.

4 Secondary Listings

The Regulations introduce provisions allowing dual listings in India for companies having their securities listed outside the IFSC or on foreign bourses. The Regulations provide that any company which has its securities listed in India (outside IFSC) or in a foreign jurisdiction, may list its securities on a IFSC Stock Exchange by

undertaking a public offer through the process prescribed in respect of IPOs in IFSC Stock Exchange as discussed above, to the extent applicable. Further, such companies also have the option to list their securities without undertaking an IPO, by filing a listing application, in the manner specified by the IFSC Stock Exchange, and by complying with the listing requirements.

5 Depository Receipts

A company incorporated in India (outside IFSC) or a foreign jurisdiction can undertake issue of depository receipts through IFSC Stock Exchanges, if it is:

- a. authorised to issue depository receipts, and
- b. the issue is in accordance with the applicable laws of its home jurisdiction.

Further, the depository receipts are eligible to list only if the underlying securities, which the depository receipts represent, are listed in the home jurisdiction of the issuer before listing of depository receipts on IFSC Stock Exchanges.

In case of a public offer, the process in respect of an IPO, to the extent applicable, must be followed. The minimum issue size must be USD 700,000 (or equivalent in foreign currency).

Further, depository receipts may be listed without making a public offer, by filing a listing application, in the manner specified by the IFSC Stock Exchange, and by complying with the listing requirements.

6 Debt Securities

The Regulations set out the specific categories of debt securities which are eligible for listing on an IFSC Stock Exchange, such as debt securities issued by an issuer incorporated in an IFSC or by an issuer incorporated in India or overseas (in a currency other than INR) or by supranational, multilateral, or statutory organisations, debt securities irrevocably guaranteed by a Sovereign etc., and masala bonds. Such debt securities include standalone issuances, or series of issuances such as medium term note programmes.

Until now, Indian issuers used to turn towards foreign bourses for issuance of bonds or establishment of term note programmes. Introduction of such diversified debt offerings will further open up debt capital markets in India, especially with regard to the corporate bond market.

Issuers are required to file a listing application with the IFSC Stock Exchange along with a copy of the prospectus, shelf prospectus or information memorandum, as applicable, in line with the requirements specified by the IFSC Stock Exchanges. The timeline for admission of debt securities issued under a programme (including medium term notes programme), by an IFSC Stock Exchange is 12 months after the approval of the application. The minimum subscription amount in case of private placement per investor cannot be less than USD 100,000.

The Regulations also introduce the concept of ESG debt securities. ESG debt securities comprise of securities labelled as 'green', 'social' or 'sustainable'. Such labelling may be opted for, if the funds raised through the issuance of such debt securities are to be utilised for financing or refinancing projects and/or assets aligned with any of the recognised frameworks such as International Capital Market Association Principles, Climate Bonds Standard, ASEAN Standards, European Union Standards, any framework recognised by a competent authority in India or any other international standard considered on a case to case basis by the recognised stock exchange or IFSCA.

In this regard, the issuer must appoint an independent external reviewer to ascertain that the ESG debt securities are in alignment with any of the recognised framework. The Regulations also require issuers to make certain additional ESG specific disclosures.

7 Continuous Disclosure Requirements

The Regulations also prescribe disclosure requirements, similar to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, for issuers with listed securities on IFSC Stock Exchanges.

8 Non-compliance

In the event of any non-compliance with the Regulations, the stock exchanges may suspend trading of securities of the issuer, in terms of the Regulations. Further, Section 13 of the IFSCA Act empowers IFSCA to exercise all powers exercisable by specified regulators, including SEBI and RBI, in so far as it relates to the regulation of the financial products, financial services or financial institutions. Accordingly, IFSCA is empowered to enforce similar penalties and fines as SEBI or RBI, in case of non-compliance with the Regulations.

9 Conclusion

While the Regulations open new options for issuers, there are certain aspects which require further clarity. For instance, the Regulations only prescribe the categories of disclosures, and do not specify detailed lists for indicative disclosures as in the case of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. Accordingly, the scope of disclosures in offer documents could be debatable and likely be shaped by market practice in the absence of further regulatory directives. Similarly, the provisions for rights issues and preferential allotments have not yet been notified.

Considering companies incorporated in India are eligible to tap into IFSC capital markets, which will see significant participation by non-residents, the impact of the extant foreign exchange framework will be another factor to be assessed.

Further, the Regulations provide various thresholds relating to issue size, and financial parameters for eligibility in USD. This could lead to ambiguity on account of currency fluctuation, and the timing of the reference rate to be adopted would need to be ascertained. While it has been clarified that the minimum issue size for an IPO and an FPO in IFSC Stock Exchange needs to be USD 15 million, it is not clear whether fast track FPOs have any such restrictions.

Lastly, the IFSC Stock Exchanges currently provide listing framework only in respect of debt securities, real estate investment trusts, infrastructure investment trusts, and depository receipts. Additional avenues which have been notified for accessing capital markets will require notification of corresponding listing frameworks by IFSC Stock Exchanges.

If you require any further information about the material contained in this newsletter, please get in touch with your Trilegal relationship partner or send an email to alerts@trilegal.com. The contents of this newsletter are intended for informational purposes only and are not in the nature of a legal opinion. Readers are encouraged to seek legal counsel prior to acting upon any of the information provided herein.