

# Infrastructure Investment Trusts

## Lesson 10

### KEY CONCEPTS

■ Holdco ■ Declassification of Sponsor ■ SPV ■ Sponsor/Inducted Sponsor ■ Strategic Investor ■ Anchor Investor ■ Senior Management ■ Independent Director ■ Change in Control

### Learning Objectives

#### To understand:

- Meaning of Infrastructure Investment Trust (InvIT)
- Difference between REITs and InvITs
- Intermediaries involved in an InvIT
- Regulatory Framework of InvITs in India
- Conceptual understanding on Important Terminologies
- Issue and Listing units by InvITs
- Basics of the systems, procedures and rules that are essential for entities seeking to list InvITs in India
- Framework for issuance of subordinate units
- Framework for unit based employee benefit scheme

### Lesson Outline

- Introduction
- How units of an InvIT are differ with Traditional Investments?
- Difference between REITs and InvITs
- Structure of InvIT
- SEBI (Infrastructure Investment Trusts) Regulations, 2014
- Key Stakeholder
- Eligibility Criteria
- Offer and Listing of Units
- Framework for issuance of subordinate units
- Framework for unit based employee benefit scheme
- Guidelines for Public Issue of Units of InvITs
- Guidelines for preferential issue of units by InvITs
- Listing and Trading of Units
- Delisting of Units
- Investment Conditions and Distribution Policy
- Rights and Meetings of Unit Holders
- Governance Norms for InvITs
- Minimum Information to be placed before Board of Directors of the Investment Manager
- Power to relax strict enforcement of Regulations
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- SEBI (Infrastructure Investment Trusts) Regulations, 2014
- Guidelines for Public Issue and Preferential Issue of Units of InvITs
- SEBI( Listing Obligation and Disclosures Requirements) Regulations, 2015
- The Trust Act, 1882
- The Registration Act, 1908
- The FEMA, 1999
- The Income Tax Act, 1961

## INTRODUCTION

An Infrastructure Investment Trust (InvITs) is Collective Investment Scheme similar to a mutual fund, which enables direct investment of money from individual and institutional investors in infrastructure projects to earn a small portion of the income as return. SEBI (Infrastructure Investment Trusts) Regulations, 2014 provides a regulatory framework for registration and regulation of InvITs in India. The regulations, *inter alia*, prescribe conditions for making a public offer and private placement, initial and continuous disclosures, investment conditions, unit-holder approval requirements, related party disclosures, etc.

InvITs work like mutual funds or real estate investment trusts (REITs) in features. InvITs can be treated as the modified version of REITs designed to suit the specific circumstances of the infrastructure sector. The purpose of InvITs is to encourage and provide additional financing for investment in the infrastructure sector in India. It aims to provide stable long term cash flows to its unit holders; suited for long term capital such as Pension Funds and Insurance Companies. InvITs support diversification of ownership of infrastructure assets such as power transmission, roads, ports, renewable projects etc.

Often, infrastructure projects such as roads or highways take some time to generate steady cash flows. Meanwhile, the infrastructure company has to pay interest to banks for the loans taken by it. An InvIT essentially gives the company the leeway to fulfil its debt obligations quickly.

An infrastructure investment trust is a trust formed under the Trusts Act and registered under the Registration Act. In accordance with the Trusts Act, a trust is an obligation attached to the ownership of property. The obligation is created by the author of the trust, accepted by the owner of property and owed to the beneficiaries identified in the Trust Deed. In the context of an InvIT, the trust is created by the Sponsor, the ownership of the property vests in the Trustee and the beneficiaries are the Unit holders of the InvIT.

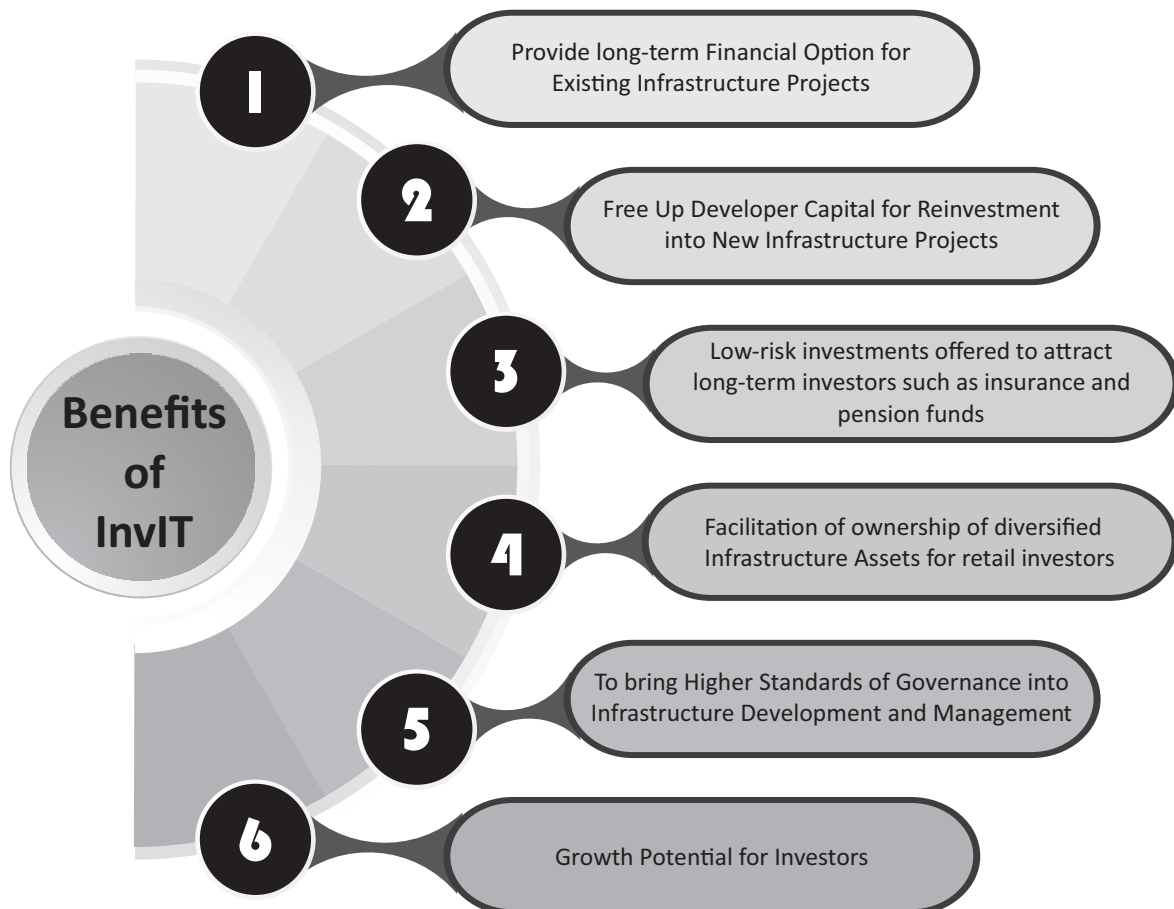
An InvIT, is a private trust set-up under the Indian Trusts Act, 1882, and registered with SEBI as an InvIT.

There is also a project manager which actually executes the projects. It is over seen by the investment manager. Lastly, since the instrument is essentially a trust, the company will also appoint a trustee, who has to ensure that the functions of the InvIT, investment manager and project manager comply with SEBI laws.

SEBI introduced infrastructure investment trust (InvIT) regulations for infrastructure projects keeping in mind the huge infrastructure needs of our country. India Grid Trust had in 2016 filed a draft offer document with SEBI for India's first ever power sector InvIT. As on May 22, 2024, following InvITs are registered with SEBI in India.

1. IRB InvIT Fund
2. Anantam Highways Trust
3. Capital Infra Trust
4. Digital Fibre Infrastructure Trust
5. Oriental Infra Trust
6. Energy Infrastructure Trust
7. IRB Infrastructure Trust
8. Indian Highway Concessions Trust
9. IndiGrid Infrastructure Trust
10. Roadstar Infra Investment Trust
11. POWERGRID Infrastructure Investment Trust
12. Shrem InvIT
13. Athaang Infrastructure Trust
14. Highways Infrastructure Trust
15. Anzen India Energy Yield Plus Trust
16. Indus Infra Trust
17. Cube Highways Trust
18. Schoolhouse InvIT
19. Data Infrastructure Trust
20. Intelligent supply chain infrastructure trust
21. NDR InvIT Trust
22. Interise Trust
23. NX-Infra Trust
24. Sustainable Energy Infra Trust.
25. Maple Infrastructure Trust

### How does it benefit investors?



### How units of an InvIT are differ with Traditional Investments ?

#### Comparative Analysis InvITs vis-à-vis traditional investments

	<i>InvIT Units</i>	<i>Direct Investment in Infrastructure segment</i>	<i>Infrastructure Company Equity Shares</i>
<b>Investment Characteristics</b>	<ul style="list-style-type: none"> <li>● Minimum lot size of 1 unit</li> <li>● Freely transferable listed securities</li> <li>● Professionally managed</li> <li>● No entry / exit load</li> </ul>	<ul style="list-style-type: none"> <li>● Nothing less than one crore (For strata units)</li> <li>● Illiquid &amp; non-transparent market</li> <li>● Hassles in managing assets</li> <li>● Transaction costs involved</li> </ul>	<ul style="list-style-type: none"> <li>● Minimum lot size of 1 share</li> <li>● Freely transferable listed securities</li> <li>● No entry / exit load</li> </ul>
<b>Return Profile</b>	<ul style="list-style-type: none"> <li>● Returns driven by capital appreciation and regular cash distribution (90% mandatory)</li> </ul>	<ul style="list-style-type: none"> <li>● Returns driven by a timely and profitable exit</li> </ul>	<ul style="list-style-type: none"> <li>● Returns driven by capital appreciation and dividends (Not mandatory)</li> </ul>
<b>Tax Efficiency</b>	<ul style="list-style-type: none"> <li>● Dividends: Exempted#</li> <li>● Interest: Taxable#</li> <li>● Rent: Taxable#</li> </ul>	<ul style="list-style-type: none"> <li>● Rent is taxable</li> </ul>	<ul style="list-style-type: none"> <li>● Dividends are taxable</li> </ul>

**Notes:** #Investors need to check which type of income they receive and applicable tax treatment

### Distinguish between REITs and InvITs

<i>Particulars</i>	<i>REITs</i>	<i>InvITs</i>
<b>Meaning</b>	REITs serves as an investment tool that helps own and operate income-generating real estate properties. Such properties serve as a stream of annual revenue and mostly include warehouses, healthcare centres, commercial buildings, malls, etc.	InvITs is planned to pool money from investors to invest it in assets generating cash flow. Moreover, they invest in projects like roadways, highways and other high-value infrastructural units.
<b>Growth prospect</b>	The growth prospects of REITs rely on the redevelopment or acquisition of assets, new construction, etc.	Their growth prospect depends mainly on the success of acquisition and concession of assets.

<i>Particulars</i>	<i>REITs</i>	<i>InvITs</i>
<b>Income Stability</b>	REITs tend to provide a steady flow of income mostly because their income yielding properties come with extensive rental contracts.	The stability of income for InvITs depends mainly on those factors that tend to affect the capacity of usage and also the scalability of tariffs. Hence, in most cases, income is quite uncertain.
<b>Associated risks</b>	REITs are better insulated from regulatory/political risks. REITs tend to hold properties that are either leased or owned on a freehold basis.	The infrastructure sector is prone to react to regulatory policies and political interference. Thus, parking funds in infrastructure investment trusts often prove risky.

### Parties and Intermediaries involved in an InvIT

**Trustee:** An independent debenture trustee registered with SEBI and responsible for holding the InvIT assets in trust for, and for the benefit of, the unit holders of the InvIT.

**Sponsor:** Typically, a body corporate, LLP, promoter or a Company with a net worth of, at least Rs. 100 crores classifies as a sponsor. When it comes to a public-private partnership projects, sponsors serve as a Special Purpose Vehicle (SPV)

**Investment Manager:** As a body corporate or LLP, an investment manager supervises all the operational activities and day to day activities of the InvIT.

**Project Manager:** The Project Manager is responsible for the execution of an infrastructure project and achieving project milestones in accordance with the project documents or concession agreement.

**Compliance Officer:** The officer who is responsible for the Compliance related to InvIT.

**Lead Member:** It means Lead member of the Concessionaire SPV for PPP projects as defined in the project documents.

**Custodian:** It means a person registered under (Custodian of Securities) Regulations, 1996.

**Merchant Banker** is one who looks after the entire process of issue of units.

**Auditor:** is one who conducts the audit of accounts of InvIT.

**Valuer:** is one who undertakes valuation of the assets.

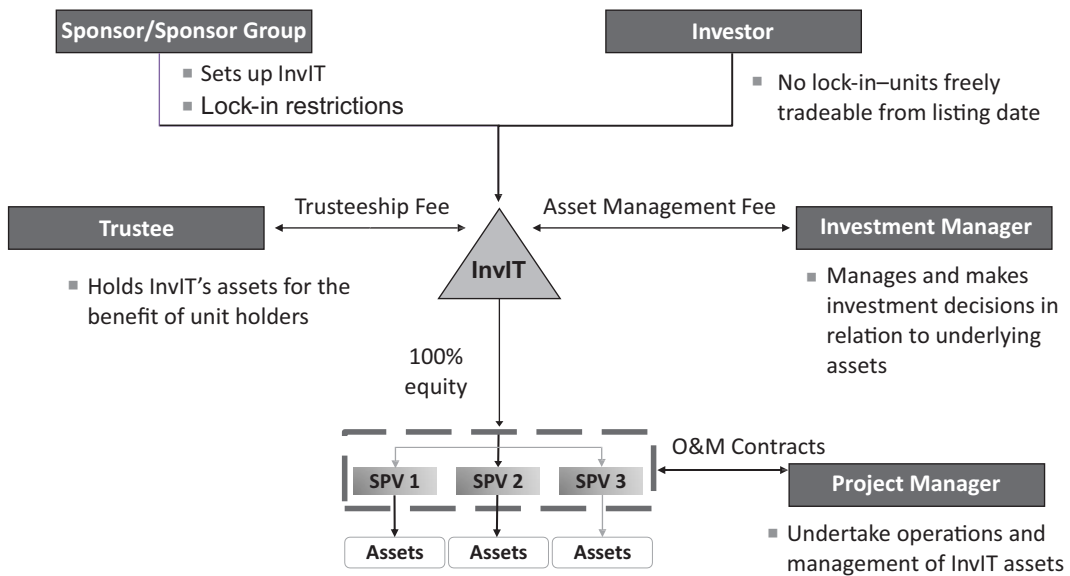
Special Purpose Vehicle (SPV) is a Company or LLP who holds not less than 80% of its assets directly in properties and in which InvIT or the holding company holds or proposes to hold not less than 50% of Equity share capital or interest. Also, any Company or LLP which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development.

**Unitholders** are the one who holds units of the InvIT.



Structure of InvIT

Structure of InvITs



**Listing and trading of units of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) on recognized stock exchanges in International Financial Services Centers (IFSC)**

The stock exchanges operating in IFSC may permit dealing in following types of securities and products in such securities in any currency other than Indian rupee, with a specified trading lot size on their trading platform subject to prior approval of the SEBI:

- i. Equity shares of a company incorporated outside India;
- ii. Depository receipt(s);
- iii. Debt securities issued by eligible issuers;
- iv. Currency and interest rate derivatives;
- v. Index based derivatives;
- vi. Such other securities as may be specified by the SEBI.

SEBI vide its circular dated September 16, 2020 decided to permit 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions' as permissible security under sub-clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015

List of Permissible Jurisdictions and International Exchanges are mentioned below:

1. United States of America - NASDAQ, NYSE
2. Japan - Tokyo Stock Exchange
3. South Korea - Korea Exchange Inc.
4. United Kingdom excluding British Overseas Territories- London Stock Exchange
5. France - Euronext Paris
6. Germany - Frankfurt Stock Exchange
7. Canada - Toronto Stock Exchange.

**Difference between Sponsor/Sponsor Group of InvIT and Promoter of a Company**

**Sponsor/Sponsor Group of InvIT-** The Sponsor is the author of the InvIT and is responsible for transferring or undertaking to transfer the initial portfolio of assets to the InvIT and is responsible for the formation transactions involved in setting-up and establishing an InvIT. Sponsor is required to lock-in 15% or 25% (as the case may be) of the outstanding units of an InvIT, held by it, for a period of three years and any additional unitholding for a period of one year.

However, '**promoter**' shall include a person who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act: however, a person who is acting merely in a professional capacity shall not be deemed as Promoter.

A financial institution, scheduled commercial bank, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the SEBI, shall not be deemed to be a promoter merely by virtue of the fact that twenty per cent or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under SEBI (ICDR) Regulations, 2018.

**SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014**

The Securities and Exchange Board of India (SEBI) notified the Infrastructure Investment Trusts (InvITs) Regulations on 26 September 2014, thereby paving the way for introduction of an internationally acclaimed investment structure in India. The Finance Minister has also made necessary amendments to the Indian taxation regime to provide the tax pass through status, which is one of the key requirements for feasibility of InvITs. The Infrastructure Investment Trusts (InvITs) Regulations, 2014, provide a positive push to the Indian Capital Markets and Infrastructure sector. It also creates liquidity to some extent for the Infrastructure players. Further, it would provide investors an opportunity to invest in Indian stabilized assets through an Indian listed platform.

SEBI (Infrastructure Investment Trusts) Regulations, 2014 provides a regulatory framework for registration and regulation of InvITs in India. The regulations, *inter alia*, prescribe conditions for making a public offer and private placement, initial and continuous disclosures, investment conditions, unit-holder approval requirements, related party disclosures, etc.

**DEFINITIONS****“Change in control” –**

- (i) in case of a body corporate, -
  - a) if its shares are listed on any recognized stock exchange, shall be construed with reference to the definition of control in terms of regulations framed under clause (h) of sub-section (2) of section 11 of the Act;
  - b) if its shares are not listed on any recognized stock exchange, shall be construed with reference to the definition of control as provided in sub-section (27) of section 2 of the Companies Act, 2013.
- (ii) in a case other than a body corporate, shall be construed as any change in its legal formation or ownership or change in controlling interest. Here, “controlling interest” means an interest, whether direct or indirect, to the extent of not less than 50% of voting rights or interest.

**“Completed and revenue generating project”** means an infrastructure project, which prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions:

- (i) the infrastructure project has achieved the commercial operations date as defined under the relevant project agreement including concession agreement, power purchase agreement or any other agreement of a similar nature entered into in relation to the operation of the project or in any agreement entered into with the lenders;
- (ii) the infrastructure project has received all the requisite approvals and certifications for commencing operations; and
- (iii) the infrastructure project has been generating revenue from operations for a period of not less than one year.

**“Concession Agreement”** means an agreement entered into by a person with a concessioning authority for the purpose of implementation of the project as provided in the agreement.

**“Concessioning Authority”** means the public sector concessioning authority in PPP projects.

**“Eligible Infrastructure Project”** means an infrastructure project which, prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions, –

- For PPP projects,–
  - a) the Infrastructure Project is a completed and revenue generating project; or
  - b) the Infrastructure Project, which has achieved commercial operations date and does not have the track record of revenue from operations for a period of not less than one year; or
  - c) the Infrastructure Project is a pre-COD project.
- In non-PPP projects, the infrastructure project has received all the requisite approvals and certifications for commencing construction of the project.

**“Employee Unit Option Scheme”** means a scheme under which the investment manager grants unit options to its employees through an employee benefit trust.

Here, employees of the investment manager shall include all directors of the investment manager except independent directors.

**“group entities of the Investment Manager”** means:

- (i) entities or person(s) which are controlled by the Investment Manager;
- (ii) entities or person(s) who control the Investment Manager;
- (iii) entities or person(s) which are controlled by entities or person(s) specified in point (ii) above.

**“holdco” or “holding company”** means a company or LLP,-

- (i) in which InvIT holds or proposes to hold controlling interest and not less than fifty one per cent of the equity share capital or interest and which in turn has made investments in other SPV(s), which ultimately hold the infrastructure assets;
- (ii) which is not engaged in any other activity other than holding of the underlying SPV(s), holding of infrastructure projects and any other activities pertaining to and incidental to such holdings.

**“Independent director”** in case of a company means a director, other than a nominee director of the Manager:-

- (i) who, in the opinion of the Board of Directors of the Manager, is a person of integrity and possesses relevant expertise and experience;
- (ii) who is not or was not the promoter of parties to the InvIT, its holding company, the subsidiary or associate or a member of the sponsor group of the InvIT;
- (iii) who is not related to the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, the subsidiary or associate or their promoters or directors;
- (iv) who, apart from receiving a director’s remuneration, does not have or has had any material pecuniary relationship with the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, the subsidiary or associate or their promoters or directors, during the three immediately preceding financial years or during the current financial year;
- (v) none of whose relatives –
  - is holding securities of or interest in the InvIT, its Holdco and/or SPV, parties to the InvIT, their holding Company, subsidiary or associate during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the unit capital of the InvIT, two percent of the paid-up capital of the parties to the InvIT, their holding Company, subsidiary or associate or Holdco and/or SPV respectively or such higher sum as may be specified;
  - is indebted to the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate or their promoters or directors, during the three immediately preceding financial years or during the current financial year, in excess of such amount as may be specified;
  - has given a guarantee or provided any security in connection with the indebtedness of any third person to the InvIT, its Holdco or SPV, parties to the InvIT, its holding company, subsidiary or associate or their promoters or directors, during the three immediately preceding financial years or during the current financial year, for such amount as may be specified; or
  - has any other pecuniary transaction or relationship with the REIT, its Holdco and/or SPV, parties to the REIT, its holding company, subsidiary or associate amounting to two percent or more of its gross turnover or total income.

However, the pecuniary relationship or transaction with the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate or their promoters or directors shall not exceed

two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.

(vi) who, neither himself or herself, nor whose relative(s) —

- holds or has held the position of a key managerial personnel or is or has been an employee of the Holdco and/or SPV, parties to the InvIT or its holding, subsidiary or associate or any company belonging to parties to the InvIT, in any of the three financial years immediately preceding the financial year in which he/she is proposed to be appointed.

However, in case of a relative who is an employee other than a key managerial personnel, the restriction under this clause shall not apply for his/her employment.

- is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he/she is proposed to be appointed, of-
  1. a firm of auditors or **company secretaries in practice** or cost auditors of the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate; or
  2. any legal or a consulting firm that has or had any transaction with the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate amounting to ten per cent or more of the gross turnover of such firm.
- holds together with his relatives two per cent or more of the total voting power of the InvIT, its Holdco and/or SPV, parties to the InvIT;
- is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate, any of its promoters, directors or that holds two per cent or more of the total voting power of the InvIT, its Holdco and/or SPV, parties to the InvIT;
- is a material supplier, service provider or customer or a lessor or lessee of the InvIT, its Holdco and/or SPV, parties to the InvIT, its holding company, subsidiary or associate.

(vii) who is not less than 21 years of age; or

(viii) who possesses such other qualifications as may be specified by the SEBI.

**“Inducted sponsor”** means any company or LLP or body corporate which has been inducted as a sponsor in accordance with sub-regulation (7) of regulation 22.

**“Infrastructure”** includes all infrastructure sub-sectors as defined vide notification of the Ministry of Finance dated October 07, 2013 and shall include any amendments or additions made thereof and “Infrastructure project” means any project in the infrastructure sector.

**“InvIT”** shall mean a trust registered as such under the InvIT Regulations.

**“InvIT assets”** means assets owned by the InvIT, whether directly or through a holdco and/or SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

**“Infrastructure Developer”** in case of PPP projects shall mean the lead member of the concessionaire SPV.

**“Institutional Investor”** means -

- (i) a qualified institutional buyer; or
- (ii) family trust or systematically important NBFCs registered with RBI or intermediaries registered with SEBI,

all with net-worth of more than five hundred crore rupees, as per the last audited financial statements.

**“Liquid asset”** means cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds.

**“NAV” or “Net Asset Value”** means the value of the InvIT assets reduced by the external debt” divided by the number of outstanding units as on a particular date. While calculating the number of outstanding units, any outstanding subordinate units shall not be included.

**“Parties to the InvIT”** shall include the sponsor groups, investment manager, project manager(s) and the trustee.

**“PPP Project”** means an infrastructure project undertaken on a Public- Private Partnership basis between a public concessioning authority and a private SPV concessionaire selected on the basis of open competitive bidding or on the basis of an MoU with the relevant authorities.

**“Pre-COD project”** means an infrastructure project which:

- a) has not achieved commercial operation date as defined under the relevant project agreements including
  - (i) the concession agreement;
  - (ii) power purchase agreement; or
  - (iii) any other agreement of a similar nature entered into in relation to the operation of a project; or
  - (iv) any agreement entered into with the lenders; and
- b) has,
  - (i) achieved completion of at least fifty per cent of the construction of the infrastructure project as certified by an independent engineer of such project; or
  - (ii) expended not less than 50% of the total capital cost set forth in the financial package of the relevant project agreement.

**“Related Parties”** shall be defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include, –

- (i) Parties to the InvIT;
- (ii) Promoters, directors and partners of the person mentioned in clause (i).

**“Self-sponsor Investment Manager”** means the Investment Manager of an InvIT who has dual responsibilities of both the investment manager as well as the sponsor.

**“Senior Management”** means the officers and personnel of the investment manager who are members of its core management team, excluding the Board of Directors, and shall also comprise all members of the management, one level below the Chief Executive Officer or Managing Director or Whole Time Director or manager (including Chief Executive Officer and manager, in case they are not part of the Board of Directors) and shall specifically include the Compliance Officer and Chief Financial Officer.

**“Sponsor group”** includes-

- (i) the sponsor(s);
- (ii) entities or person(s) which are controlled by such sponsor;

- (iii) entities or person(s) who control such body corporate;
- (iv) entities or person(s) which are controlled by entities or person(s) specified in point (iii) above.

**“SPV” or “Special Purpose Vehicle”** means any company or LLP,

- (i) in which either the InvIT or the holdco holds or proposes to hold controlling interest and not less than fifty per cent of the equity share capital or interest;

In case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions of InvIT Regulations.

- (ii) which holds not less than ninety percent of its assets directly in infrastructure projects and does not invest in other SPVs; and
- (iii) which is not engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects.

**“Strategic Investor”** means-

- a) an infrastructure finance company registered with Reserve Bank of India as a Non-Banking Financial Company;
- b) a Scheduled Commercial Bank;
- c) a multilateral and/or bilateral development financial institution;
- d) a systemically important Non-Banking Financial Companies registered with Reserve Bank of India;
- e) a foreign portfolio investors,
- f) an insurance company registered with the Insurance Regulatory and Development Authority of India;
- g) a mutual fund who invest, either jointly or severally, not less than 5% of the total offer size of the InvIT or such amount as specified by the SEBI from time to time, subject to the compliance with the applicable provisions, if any, of the Foreign Exchange Management Act, 1999 and the rules or regulations or guidelines made thereunder.

**“Subordinate unit”** means an instrument issued by an InvIT which can be reclassified as an ordinary unit”;

**“Unit or ordinary unit”** means beneficial interest of the InvIT.

**“Under-Construction Project”** means an infrastructure project whether PPP or non-PPP, which has either not achieved commercial operation date as defined under the relevant project agreements including: the concession agreement; power purchase agreement; or any other agreement of a similar nature entered into in relation to the operation of a project; or in any agreement entered into with the lenders; or has achieved commercial operation date and does not have the track record of revenue from operations for a period of not less than one year.

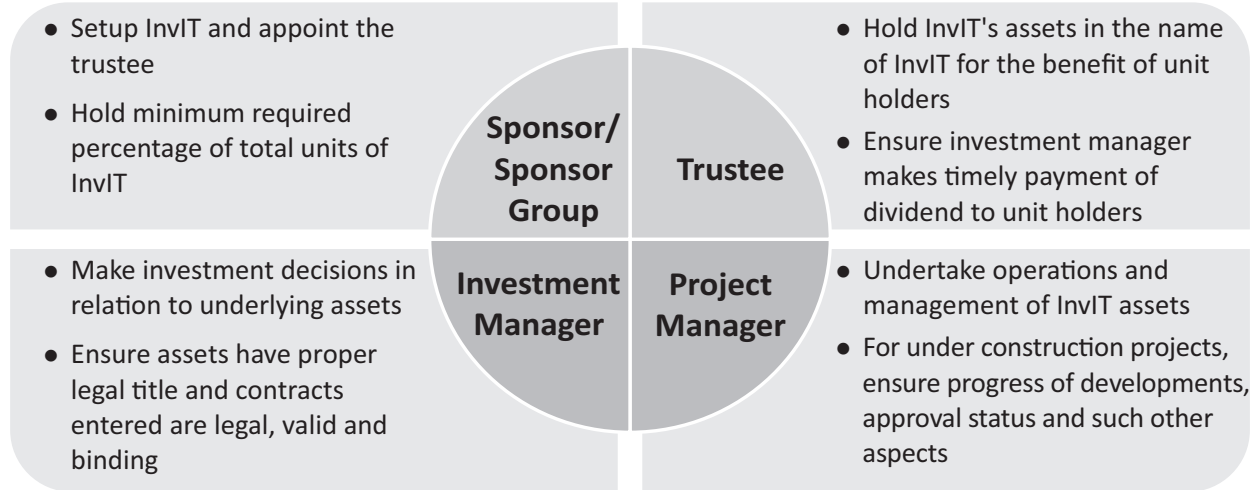
**“Valuer”** means any person who is a “registered valuer” under section 247 of the Companies Act, 2013 or as specified by SEBI from time to time.

**“Value of the InvIT assets”** means value of assets of the InvIT as assessed by the valuer based on value of the infrastructure and other assets owned by the InvIT, whether directly or through holdco and/or SPV.

**KEY STAKEHOLDERS**

The key stakeholders and typical InvIT structure can be represented by the following chart:

**InvIT Structure**



- No individual can be sponsor of InvIT. A company, limited liability partnership or body corporate, which is the settlor and author of the trust is designated as the 'sponsor' of an InvIT.

**Key Features of SEBI (InvIT) Regulations, 2014 and Compliances**

<b>Governing Code</b>
<ul style="list-style-type: none"> <li>● SEBI (Infrastructure Investment Trusts) Regulations, 2014.</li> </ul>
<b>Legal Structure</b>
<ul style="list-style-type: none"> <li>● Trust being setup under Indian Trusts Act, 1882.</li> </ul>
<b>Parties to the InvITs</b>
<ul style="list-style-type: none"> <li>● Sponsor Group, unit holders, Inducted Sponsor, Manager and Trustee.</li> </ul>
<b>Maximum number of sponsors that InvITs can have &amp; Unit holding obligation</b>
<ul style="list-style-type: none"> <li>● Each sponsor shall hold or propose to hold minimum 5% of units of InvITs on post-initial offer basis.</li> <li>● Collectively hold not less than-                         <ul style="list-style-type: none"> <li>- 15% of units of the InvITs, for three years from the date of listing of units in the initial offer: If it exceeds from 15 % by any sponsor or sponsor groups, it shall be held for a period of not less than one year from the date of listing.</li> <li>- 5% of total units of InvITs from beginning of 4th year till the end of 5th year</li> <li>- 3% of total units of InvITs from beginning of 6th year till the end of 10th year</li> <li>- 2% of total units of InvITs from beginning of 11th year till the end of 20th year</li> <li>- 1% of total units of InvITs after the end of 20th year from the date of listing of units issued in the initial offer</li> </ul> </li> </ul>

However, the maximum value of the units to be held by the sponsor(s) and sponsor group(s) for compliance shall not exceed five hundred crore rupees.

<ul style="list-style-type: none"> <li>● Shall be registered as a Trustee under SEBI (Debenture Trustee) Regulations,1993 and shall not be an associate of Sponsor/Manager.</li> </ul>
<b>Listing requirement</b>
<ul style="list-style-type: none"> <li>● Listing is mandatory for units.</li> </ul>
<b>Investment conditions</b>
<ul style="list-style-type: none"> <li>● Not less than 80% of value of the InvIT assets shall be invested in eligible infrastructure projects either directly or through holdcos or through SPVs;</li> <li>● in completed and revenue generating infrastructure projects</li> </ul> <p>A Project SPV may be a company or an LLP in which either the InvIT or the Holdco (as defined below) holds or proposes to hold controlling interest and not less than 51% of the equity share capital or interest. However, in case of PPP Projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions of the InvIT Regulations. It also includes a company or an LLP in</p> <ul style="list-style-type: none"> <li>(i) which hold not less than 90% of its assets directly in infrastructure projects and does not invest in other Project SPVs; and</li> <li>(ii) which is not engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects.</li> </ul>
<p>An InvIT may invest in infrastructure projects through a Project SPV subject to certain investment restrictions, including</p> <ul style="list-style-type: none"> <li>(i) the partner or shareholder of the Project SPV should not have any rights which may prevent the InvIT from complying with the InvIT Regulations; and</li> <li>(ii) the Investment Manager, in consultation with the Trustee, should appoint majority of the board of directors or governing boards of the Project SPVs, as may be applicable.</li> <li>(iii) the holding interest of the InvIT in the Project SPV(s) should be at least 26%; and</li> <li>(iv) the Investment Manager, in consultation with the Trustee, should appoint majority of the board of directors or governing boards of the Project SPVs, as may be applicable.</li> </ul>
<b>Other Permissible Investments</b>
<ul style="list-style-type: none"> <li>● Not more than 20% of value of the INVIT assets shall be invested in following: <ul style="list-style-type: none"> <li>➤ Under construction infrastructure project not more than 10%</li> <li>➤ listed or unlisted debt of companies or body corporate in infrastructure sector</li> <li>➤ Listed equity shares of companies which derive not less than 80% of their operating income from infrastructure sector</li> <li>➤ government securities</li> <li>➤ Money market instruments, liquid mutual funds or cash equivalents.</li> </ul> </li> </ul>

<b>Valuation of assets</b>
<ul style="list-style-type: none"> <li>● Full valuation on a yearly basis and updating the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.</li> </ul>
<b>Distribution of Income</b>
<ul style="list-style-type: none"> <li>● At least 90% of the net distributable income after tax of the InvIT/Holdco shall be distributed as dividend to the unit holders at least on half-yearly basis and shall be made not later than fifteen days.</li> </ul>
<b>Initial offer restrictions</b>
<ul style="list-style-type: none"> <li>● Minimum offer size should be at least Rs. 250 crore.</li> </ul>
<b>Minimum Subscription Amount and unit size</b>
<ul style="list-style-type: none"> <li>● Under both the initial offer and follow-on offer, rights issue, QIP, minimum subscription size for units of InvIT shall be in range of ten thousand rupees to fifteen thousand rupees.</li> <li>● The units offered to the public in initial offer shall not be less than 25% of the number of units of the InvIT on post-issue basis. Can offer less than 25% subject to certain conditions</li> <li>● Trading lot shall be 1 unit.</li> <li>● Value of Assets by InvIT shall be at least Rs. 500 crores.</li> <li>● Minimum Number of Unit holders other than sponsor(s), its related parties and its associates forming part of public shall be at least 200.</li> </ul>

## ELIGIBILITY CRITERIA

Any person shall not act as an InvIT unless it has obtained a certificate of registration from the SEBI under these regulations. An application for grant of certificate of registration as InvIT shall be made by the sponsor on behalf of the Trust in such form and in such a manner as prescribed in these regulations.

The following conditions shall be considered before grant of registration:

<b>Applicant</b>	<ul style="list-style-type: none"> <li>➤ The applicant is the sponsor on behalf of the trust and the trust deed must be registered in India under the provisions of the Registration Act, 1908 containing undertaking activity of InvIT as main objective and includes responsibilities of the trustee.</li> </ul>
<b>Sponsor/ Sponsor Group</b>	<ul style="list-style-type: none"> <li>➤ Each sponsor and sponsor group shall be clearly identified in the application of registration to the SEBI and in the offer document/ placement memorandum, as applicable. However, for each sponsor group not less than one person shall be identified as a sponsor:</li> <li>➤ Each Sponsor has a net worth of at least INR 100 crores in case of body corporate or a company or net intangible assets of INR 100 crores in case of a Limited Liability Partnership (LLP).</li> <li>➤ Minimum experience of at least 5 years and has completed at least two projects.</li> <li>➤ Net worth of at least INR 10 crores in case of body corporate or a company or net intangible assets of INR 10 crores in case of a LLP;</li> </ul>

<b>Investment Manager</b>	<ul style="list-style-type: none"> <li>➤ Minimum experience of 5 years in fund management/advisory services/ development in infrastructure sector/combined experience of the directors/partners/employees of the investment manager in fund management or advisory services or development in the infrastructure sector is not less than 30 years;</li> <li>➤ Two or more key personnel, having more than 5 years of experience in fund management/ advisory services/development in infrastructure sector;</li> <li>➤ One or more employee who has at least 5 years of experience in relevant sub-sector in which InvIT proposes to invest;</li> <li>➤ Not less than half of its directors/members should be independent and they should not be directors/members of another InvIT;  However, if by a vacancy in the office of Independent Director of the Investment Manager, such vacancy shall be filled by the Investment Manager.</li> <li>➤ An office in India from where operations pertaining to InvIT is proposed to be conducted;</li> <li>➤ The investment manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the investment manager.</li> </ul>
<b>Project Manager</b>	<ul style="list-style-type: none"> <li>➤ The project manager has been identified and shall be appointed in terms of the project implementation/management agreement;  However, the project implementation agreement/management agreement shall be submitted along with the draft offer document/or the placement memorandum.</li> </ul>
<b>Trustees</b>	<ul style="list-style-type: none"> <li>➤ Registered with SEBI and is not an associate of sponsor/investment manager;</li> <li>➤ Sufficient resources with respect to infrastructure, personnel etc. as specified by SEBI; and</li> <li>➤ Holds InvIT assets in trusts for the benefit of unit holders.</li> </ul>
<b>Other Conditions</b>	<ul style="list-style-type: none"> <li>➤ There shall be only one class of units and all units shall carry equal voting rights and distribution rights associated with such units.</li> <li>➤ The unitholder(s) holding not less than 10% of the total outstanding units of the InvIT, either individually or collectively, shall -             <ol style="list-style-type: none"> <li>(i) be entitled to nominate one director on the board of directors of the Investment Manager, in such manner as specified by the SEBI. However, the director so nominated shall recuse from voting on any transaction where such nominee director or associate of such nominee director or the unitholder who nominated such nominee director or associate of such unitholder is a party;</li> <li>(ii) comply with stewardship code specified in Schedule VIII of these regulations which states the following principles:                 <ol style="list-style-type: none"> <li>1. They must act in the best interests of the InvIT and its unitholders as a whole;</li> <li>2. They should formulate a comprehensive policy on the discharge of their stewardship responsibilities and review and update the same periodically;</li> </ol> </li> </ol> </li> </ul>

	<ol style="list-style-type: none"> <li>3. They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities;</li> <li>4. They should periodically monitor the InvIT and its investee entities viz. HoldCo(s) and SPV(s);</li> <li>5. They should have a policy on intervention in the InvIT and its HoldCo(s) and SPV(s);</li> <li>6. They should have a policy on voting.</li> </ol> <ul style="list-style-type: none"> <li>➤ The applicant has clearly described at the time of registration, details pertaining to proposed activities of the InvIT;</li> <li>➤ The InvIT and parties to the InvIT are fit and proper persons based on the criteria as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008;</li> <li>➤ Whether any previous application for grant of certificate made by the InvIT or the parties to the InvIT or their directors/members of governing board has been rejected by SEBI;</li> <li>➤ Whether any disciplinary action has been taken by SEBI or any other regulatory authority against the InvIT or the parties to the InvIT or their directors/members of governing board under any Act or the regulations or circulars or guidelines made thereunder.</li> </ul>
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## OFFER AND LISTING OF UNITS

1.	<p><b><i>No initial offer of units by an InvIT shall be made unless</i></b></p> <ol style="list-style-type: none"> <li><b><i>1. The InvIT is registered with SEBI;</i></b></li> <li><b><i>2. The value of InvIT assets is not less than Rs. 500 crore. Such value shall mean the value of the specific portion of the holding of InvIT in the underlying assets or holdco or SPVs;</i></b></li> <li><b><i>3. The offer size is not less than Rs. 250 crore.</i></b></li> </ol> <p>However, the requirement of ownership of assets and offer size may be complied at any point of time before allotment of units in accordance with offer document/placement memorandum subject, to a binding agreement with the relevant party(ies) that such the requirements shall be fulfilled prior to such allotment of units and a declaration to SEBI and to the designated stock exchanges to that effect, where applicable and adequate disclosures in this regard in the offer document or placement memorandum.</p>
2.	<p><b><i>The minimum offer and allotment to public through an offer document/placement memorandum shall be:</i></b></p> <ol style="list-style-type: none"> <li><b><i>1. Atleast 25% of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is less than Rs. 1600 crore:</i></b> <b><i>However, the offer price shall not be less than Rs. 250 crore.</i></b></li> <li><b><i>2. Of the value of atleast Rs. 400 crore, if the post issue capital of the InvIT calculated at offer price is to or more than Rs. 1600 crore and less than rupees four thousand crore;</i></b></li> <li><b><i>3. Atleast 10% of the total outstanding units of the InvIT, if the post issue capital of the InvIT calculated at offer price is equal to or more than Rs. 4000 crore.</i></b></li> </ol>

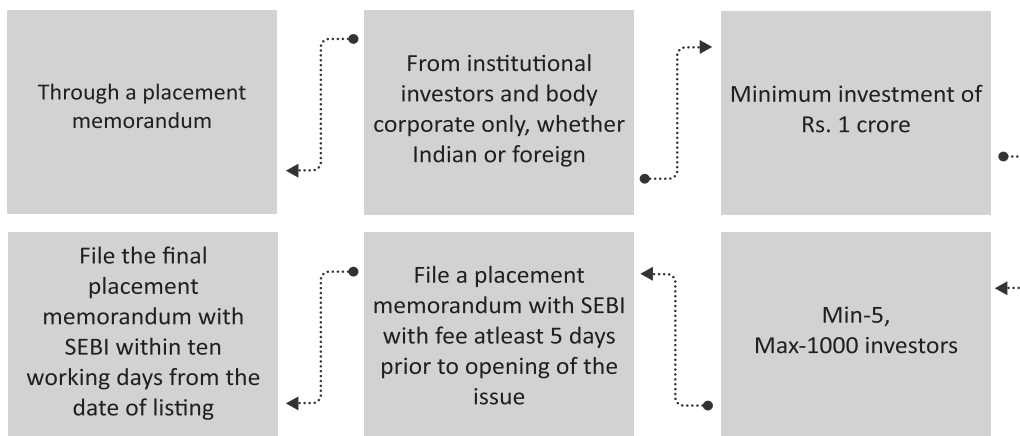
However, any units offered to sponsor or the investment manager or the project manager or their related parties or their associates shall not be counted towards units offered to the public.

Further that any listed InvIT which has public holding below 25% on account of clauses (b) and (c) above, such InvIT shall increase its public holding to at least 25%, within a period of three years from the date of listing pursuant to initial offer.

<b>Post Issue Capital of the InvIT</b>	<b>Minimum Public Shareholding</b>
Less than Rs. 1600 crore	At least 25% of the total outstanding units of the InvIT
Rs. 1600 crore and more but less than Rs. 4000 crore	Of the value of atleast Rs 400 crore
Rs. 4000 crore and more	At least 10% of the total outstanding units of the InvIT

**3. If the InvIT, raises funds by way of private placement**

- a) it shall do it through a placement memorandum;
- b) from institutional investors and body corporate only, whether Indian or foreign.  
 However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time;
- c) with minimum investment from any investor of rupees one crore;  
 Apart the above, if such an privately placed InvIT invests or proposes to invest not less than 80% of the value of the InvIT assets in completed and revenue generating assets, the minimum investment from an investor shall be Rs. 25 crores;
- d) from not less than 5 and not more than 1000 investors maximum subscription form any investor other than sponsor related parties and its associates, in initial offer shall not be less than 25% of the total unit capital;
- e) shall file a placement memorandum with SEBI along with the fee as specified in the SEBI InvIT Regulations, at least 5 days prior to opening of the issue;  
 However, such opening of the issue shall not be at a date later than 3 months from the receipt of in-principle approval for listing, from exchange(s);
- f) it shall file the final placement memorandum with SEBI within a period of ten working days from the date of listing of the units issued therein.



4. ***If the InvIT raises funds by public issue InvITs***

- (a) ***it shall be by way of initial public offer;***
- (b) ***any subsequent issue of units after initial public offer may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI;***
- (c) ***minimum subscription amount from any investor in initial and follow-on offer shall fall within in range of Rs. 10,000 to Rs. 15,000;***

However, maximum subscription from any investor other than sponsor(s), its related parties and its associates, in initial offer shall not be more than 25% of the total unit capital.

- (d) ***prior to initial public offer and follow-on offer, the merchant banker shall file the draft offer document along with prescribed fees with the designated stock exchange(s) and SEBI not less than thirty working days before filing the offer document with the designated stock exchange and SEBI;***
- (e) ***the draft offer document filed with SEBI shall be made public, for comments, if any, by hosting it on the websites of SEBI, designated stock exchanges, InvIT and merchant bankers associated with the issue for a period of not less than 21 days;***
- (f) ***SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit;***
- (g) ***the lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably addressed prior to the filing of the offer document with the designated stock exchanges;***
- (h) ***in case no observations are issued by SEBI in the draft offer document within 21 working days from the date of receipt of satisfactory reply from the lead merchant bankers or manager, the InvIT may file the offer document or follow on offer document with SEBI and the stock exchange(s);***
- (i) ***the draft offer document and offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker;***
- (j) ***the offer document shall be filed with the designated stock exchanges and SEBI not less than five working days before opening of the offer;***
- (k) ***the InvIT may open the initial public offer or follow-on offer or right issue within a period of not more than one year from the date of issuance of observations by SEBI. However, if the initial public offer or follow-on offer or right issue is not made within the prescribed time period, a fresh draft offer document shall be filed;***

Further, the InvIT shall not be required to file draft offer document with the SEBI in case of a fast track rights issue, subject to the fulfillment of the conditions as specified by the SEBI from time to time.

- (l) ***the InvIT may invite for subscriptions and allot units to any person, whether resident or foreign. However, in case of foreign investors, such investment shall be subject to guidelines as may be specified by RBI and the government from time to time;***
- (m) ***the application for subscription shall be accompanied by a statement containing the abridged version of the offer document detailing the risk factors and summary of the terms of issue;***

- (n) **initial public offer and follow-on offer shall not be open for subscription for a period of more than 30 days;**
- (o) **in case of over-subscriptions, the InvIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber;**
- (p) **the InvIT shall allot units or refund application money, as the case may be, within twelve working days from the date of closing of the issue;**
- (q) **the InvIT shall issue units in only in dematerialized form to all the applicants;**
- (r) **the price of InvIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the guidelines issued by SEBI and in the manner as may be specified by SEBI;**
- (s) **the InvIT shall refund money, –**

(a) all applicants in case it fails to collect subscription of atleast 90% of the fresh issue size as specified in the offer document.

(b) applicants to the extent of over subscription in case the money received is in excess of the extent of over-subscription as specified in the offer document, money shall be refunded to applicants to the extent of the over subscription.

(c) all applicants in case the number of subscribers to the initial public offer forming part of the public less than 20.

*Note* : - It may be noted that in case of Clause (b), right to retain such over subscription cannot exceed twenty five percent of the issue size. Further, that the offer document shall contain adequate disclosures towards the utilisation of such oversubscription proceeds, if any, and such proceeds retained on account of oversubscription shall not be utilised towards general purposes.

- (t) **If the investment manager fails to allot or list the units or refund the money within the specified time, then the investment manager shall pay interest to the unit holders at the rate of 15% per annum, till such allotment or listing or refund and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT;**
- (u) **units may be offered for sale to public subject to other guidelines as may be specified by SEBI in this regard;**
- (v) **The amount for general purposes, as mentioned in objects of the issue in the draft offer document filed with SEBI, shall not exceed 10% of the amount raised by the InvIT by issuance of units.**

If the InvIT fails to make any offer of its units, whether by way of public issue or private placement, within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and cease to operate as an InvIT.

However, SEBI, if it deems fit, may extend the period by another one year. Further, the InvIT may later re-apply for registration, if it so desires.

**No InvIT shall undertake any activity related to privately placed unlisted InvITs.**

**No InvIT shall raise funds through public issue if any subordinate units have been issued and are outstanding.**

**Question: Is there a mandatory listing requirement under the InvIT Regulations?**

**Answer:** Yes, an InvIT is required to list its units under the InvIT Regulations. Under the extant InvIT Regulations, if an InvIT fails to offer its Units (either through a public offer or a private placement) within three years from the date of registration of the InvIT with SEBI, it is required to surrender its certificate of registration and should cease to operate as an InvIT.

SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by an InvIT, whether by way of public issue or private placement.

**FRAMEWORK FOR ISSUANCE OF SUBORDINATE UNITS****Applicability**

- Applicable to subordinate units issued.
- Disclosure requirements mentioned in this framework shall also apply to any subordinate units issued prior to notification of this Chapter.
- The provisions of these regulations applicable to ordinary units shall apply mutatis mutandis to issuance of subordinate units.

**Issuance of Subordinate Units**

- The subordinate units shall only be issued by a privately placed InvIT upon acquisition of an infrastructure project.
- The subordinate units shall be issued only to the sponsor, its associates and the sponsor group and shall be deemed to be a part of the consideration for acquisition of the infrastructure project from such sponsor, its associates and the sponsor group.
- The subordinate units shall not carry any voting rights or distribution rights.
- The subordinate units shall be issued in a dematerialized form with an International Securities Identification Number, distinct from that of the ordinary units.
- The subordinate units shall be listed on a recognised stock exchange after their reclassification into ordinary units.
- The subordinate units may be issued by way of an initial offer or any offer subsequent to the initial offer, either along with the issue of ordinary units or without the issue of ordinary units.
- The issue of subordinate units made after the initial offer by the InvIT shall require the approval of the unitholders where votes cast in favour of the resolution shall not be less than one and a half times the votes cast against the resolution. However, any unitholder who is party to the acquisition of the infrastructure project including the sponsor, its associates and sponsor group, shall not be entitled to vote.
- The price of subordinate units shall be determined according to the pricing guidelines applicable for issuance of ordinary units.
- Prior to issuance of subordinate units, the investment manager shall obtain in-principle approval from the recognised stock exchange for listing of such subordinate units after their reclassification into ordinary units.

- The enabling provisions authorising the issuance of subordinate units shall be specified in the Trust Deed.
- The investment manager shall disclose the terms and conditions governing subordinate units in the Term Sheet.
- The investment manager shall disclose the impact of potential reclassification of subordinate units into ordinary units in the Term Sheet in such manner as specified by the SEBI.
- The investment manager shall disclose the Term Sheet in the placement memorandum, the explanatory statement to the notice for unitholders meeting as well as any document which may be disclosed to investors including prospective investors.
- The InvIT shall also disclose the Term Sheet, the placement memorandum and the notice for unitholders meeting including the explanatory statement on its website and shall file the same with the recognised stock exchange.
- The amount of subordinate units issued at the time of acquisition of an infrastructure project by the InvIT shall not exceed 10% of the acquisition price of the infrastructure project.
- The total number of outstanding subordinate units issued by an InvIT at any point of time shall not exceed 10% of the total number of outstanding ordinary units issued by such InvIT.
- The terms and conditions of the subordinate units shall not be varied after their issuance.

#### **Transfer of subordinate units**

- The subordinate units shall be locked in till its reclassification into ordinary units
- The subordinate units shall not be transferable to any person except the sponsor, its associates and the sponsor group entities.
- The subordinate units shall not be encumbered in favor of any person except the sponsor, its associates and the sponsor group entities.
- The depository shall not register the transfer or encumbrance of a subordinate unit in favour of any person unless such a person is a sponsor of the InvIT, associate of such sponsor or belongs to the sponsor group of the InvIT.
- The investment manager shall disclose any inter-se transfer or inter-se encumbrance of subordinate units to the recognised stock exchange within one working day of such transfer or encumbrance.
- In case of a change in the sponsor, the outgoing sponsor shall transfer the subordinate units held by it, if any, to another sponsor, its associates or sponsor group.

#### **Entitlement date, entitlement event and performance benchmark**

- The entitlement date, the entitlement event and the performance benchmark for reclassification of subordinate units to ordinary units shall be clearly defined and specified in the Term Sheet.
- The performance benchmark for reclassification of subordinate units shall be quantifiable, objective and based on the audited financial statements.
- The minimum time period between the issuance of subordinate units and entitlement date for reclassification of the subordinate units to ordinary units shall be three years.
- The entitlement date may be extended in the manner specified in the Term Sheet, subject to the following conditions:

- (a) the entitlement date shall not be extended for more than one year at a time and shall not be extended more than two times in total;
- (b) the extension of the entitlement date may be done only for cases where a possibility of such extension is clearly contemplated, duly approved and disclosed in the Term Sheet prior to the issuance of subordinate units;
- (c) the extension of entitlement date shall be allowed only in case of any unforeseen circumstances as mentioned in the Term Sheet such as impossibility on account of a force majeure event or illegality on account of change in law or an order of any court or authority;
- (d) the explanatory statement to the notice of unitholders meeting convened for seeking approval for the extension in entitlement date shall disclose the reasons for proposing such extension and the potential impact on account of such extension on the ordinary unitholders, including any potential dilution of their beneficial interest in the InvIT; and
- (e) the extension of the entitlement date shall require the approval of the unitholders as per the regulations.

#### Progress related to achievement of performance benchmark

- (1) The investment manager shall monitor the progress related to the achievement of performance benchmark and shall report such progress annually or with such frequency as may be specified by the Board, after certification by the statutory auditor of the InvIT and approval of the trustee and the audit committee of the investment manager.
- (2) The investment manager shall disclose the progress related to achievement of performance benchmark in the Annual Report of the InvIT
- (3) The investment manager shall disclose the diluted NAV and the diluted distribution per unit to the stock exchange along with NAV and distribution per unit till the time subordinate units are outstanding.

**“Diluted NAV” or “Diluted Net Asset Value”** means the value of the InvIT assets reduced by the external debt divided by the total number of outstanding ordinary units and subordinate units; and

**“Diluted Distribution per unit”** means the value of total distribution, divided by the total number of outstanding ordinary units and subordinate units.

#### Process for reclassification of subordinate unit

- (1) The status of achievement of performance benchmark shall be certified by the statutory auditor of the InvIT for reclassification of subordinate units to ordinary units and shall be reviewed by the trustee and the audit committee of the investment manager.
- (2) If the performance benchmark is achieved at the end of the entitlement date, including extended period, if any; the subordinate units shall be reclassified into equal number of ordinary units on a *pari passu* basis in accordance with the terms and conditions of subordinate units mentioned in the Term Sheet.

*Explanation 1.* - The reclassification can happen for all subordinate units either together or on a piecemeal basis in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.

*Explanation 2.* - The subordinate units may be reclassified into ordinary units, in part or in full in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.

- (3) If the performance benchmark is not achieved at the end of the entitlement date, including extended period, if any, the subordinate units shall be extinguished without any payment to the holder of subordinate units.
- (4) The board of directors of the investment manager shall consider reclassification of subordinate units into ordinary units or extinguishment of the subordinate units depending on the achievement of the performance benchmark and pass a resolution making the necessary recommendation to this effect to the trustee.
- (5) The recommendation for reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, shall be considered by the trustee and after ensuring compliance with the provisions of these regulations, the trustee may approve reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, and intimate the same to the investment manager.
- (6) Pursuant to the approval of the trustee, the investment manager shall make the necessary intimation to the recognised stock exchange, depositories and the Registrar and Transfer Agent.
- (7) The investment manager shall ensure that the record date is disclosed as part of the intimation made under this regulation, at least two working days prior to the record date, excluding the date of intimation and the record date.

Record date here means the date from when subordinate units shall be reclassified as ordinary units.

- (8) The subordinate units upon being reclassified as ordinary units shall be listed on the recognised stock exchange(s) upon receipt of final listing and trading approval from such stock exchange(s).";

## FRAMEWORK FOR UNIT BASED EMPLOYEE BENEFIT SCHEME (CHAPTER IV B)

### Applicability

- Applicable to all unit based employee benefit scheme w.e.f this framework come into force
- Disclosure requirements mentioned in this framework shall apply to any unit based employee benefit scheme introduced prior and subsisting as on the date of this framework come into force.
- For unit based employee benefit scheme introduced prior to this framework come into force, any unit acquired or any unit based employee benefit options granted by any employee benefit trust after the date of this framework come into force, shall be in compliance with this framework.

### Nature of scheme and implementation of scheme through trust

- The unit based employee benefit scheme shall be in the nature of employee unit option scheme.
- Any offer of a unit based employee benefit scheme by the investment manager shall not result in any additional cost to the InvIT, its HoldCo and SPV.
- The unit based employee benefit scheme shall be implemented through a separate employee benefit trust which shall be created by the investment manager.
- The investment manager shall ensure that the trust deed under which the employee benefit trust is formed is formed as per these regulations.

### Manner of receiving units by the employee benefit trust

The employee benefit trust may receive units of the InvIT in the following manner for the purpose of offering unit based employee benefit scheme:

- (a) The investment manager may receive the units of InvIT in lieu of management fees, through the employee benefit trust, only for the limited purpose of providing unit based employee benefit on such units;
- (b) A shareholder of investment manager may transfer full or part of the units of InvIT held by it to the employee benefit trust;

However, in case a sponsor is also a shareholder of the investment manager, then sponsor group and associate of the sponsor may also transfer full or part of the units held by them to the employee benefit trust;

- (c) The investment manager may transfer full or part of the units of InvIT by it to the employee benefit trust;

For the purpose of clauses (b) and (c), any transfer of units to the employee benefit trust shall be irrevocable and without any consideration in return i.e. shall constitute a gift to the employee benefit trust.

1. Subordinate units shall not be eligible for being transferred to the employee benefit trust or being made part of a unit based employee benefit scheme.
2. The cash accumulated by the employee benefit trust on account of distributions received on units of the InvIT held by such trust, income earned on the assets held by the employee benefit trust and receipt of exercise price from the employees of the investment manager on exercise of options, may be used by the employee benefit trust for acquiring units of the InvIT either from the secondary market or during any fresh issuance of units by the InvIT only for the purpose of using such units for unit based employee benefit scheme.
3. The employee benefit trust may subscribe to the units of the InvIT subject to compliance with the minimum lot for primary market transaction specified under these regulations.

However, the minimum trading lot specified under these regulations shall not be applicable for vesting of units of a privately placed InvIT in employees of the investment manager and exercised by them. Also, in case of a privately placed InvIT, the employees of the investment manager may sell an odd lot quantity of the units vested upon them, in off-market transaction(s).

### Secondary acquisition

1. The employee benefit trust shall not be used as a mode for trading in units of the InvIT.
2. Secondary acquisition in a financial year by the employee benefit trust shall not exceed 2% of the total outstanding units of the InvIT as at the end of the previous financial year.

Here, “secondary acquisition” means acquisition of existing units of the InvIT by the employee benefit trust on the platform of a recognised stock exchange for cash consideration for the purpose of unit based employee benefit scheme.

3. The total number of units under secondary acquisition held by the employee benefit trust shall at no point of time exceed five per cent of the total outstanding units of the REIT as at the end of the financial year immediately prior to the year in which the unitholders approval is obtained for such secondary acquisition.
4. The investment manager shall obtain approval of unitholders for secondary acquisition.
5. The employee benefit trust shall be required to hold the units acquired through secondary acquisition for a minimum period of six months.
6. The employee benefit trust shall disclose the period during which it plans to undertake secondary

acquisition, in advance of at least seven working days (excluding the date of intimation and the date of start of such period), to the recognised stock exchanges and the depositories.

7. The employees of the manager shall not sell units of the InvIT held by them during the period as mentioned in point no. 6 above.
8. The investment manager shall submit a list of its employees to the depositories along with relevant details of the employees including their Income Tax Permanent Account Number, in advance of at least seven working days (excluding the date of intimation and the date of start of the period during which the employee benefit trust plans to undertake secondary acquisition).
9. The depositories shall impose lock-in on the holdings of units of InvIT by such employees and the lock-in shall be released after the period during which the employee benefit trust plans to undertake secondary acquisition, as disclosed to the recognized stock exchanges and depositories has elapsed.

#### **Role of nomination and remuneration committee.**

1. The nomination and remuneration committee of the investment manager shall be responsible for the administration and superintendence of the unit based employee benefit scheme.
2. The nomination and remuneration committee shall formulate the detailed terms and conditions of the unit based employee benefit scheme which shall include the provisions as specified in Part B of Schedule IX of these regulations.
3. The nomination and remuneration committee of the investment manager shall frame suitable policies and procedures to ensure compliance with all securities laws particularly the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 by the investment manager, its directors, its key managerial personnel, sponsor, recipients of units under the unit based employee benefit scheme, employee benefit trust and trustee of the employee benefit trust.

#### **Listing**

1. In case a new issue of units is made under any unit based employee benefit scheme, units so issued shall be listed immediately on all recognised stock exchange(s) where the existing units are listed, subject to the following conditions:
  - a) The unit based employee benefit scheme is in compliance with these regulations;
  - b) A statement as specified is filed and the manager obtains an in-principle approval from the recognised stock exchange(s);
  - c) As and when an exercise is made, the manager notifies the concerned recognized stock exchange(s) as per the statement as specified in these regulations.

#### **Trustee of the employee benefit trust**

1. The trustee of the employee benefit trust shall be a trustee registered under SEBI (Debenture Trustees) Regulations, 1993.
2. The trustee of the InvIT shall not act as the trustee of the employee benefit trust.
3. The employee benefit trust or its trustee shall not be eligible to vote on account of the units of the InvIT held by such trust.

## GUIDELINES FOR PUBLIC ISSUE OF UNITS OF INVITs

On May 11, 2016, SEBI had issued detailed guidelines relating to the public issue and allotment of units by an InvIT, and the advertisement relating to the offer. These guidelines are placed below :

### Filing of offer document

- The draft offer document has to be filed with SEBI and the designated stock exchanges (DSE).
- The lead merchant bankers(LMB) have to submit a certificate confirming that the agreement is entered between the investment manager on behalf of the InvIT and LMB, and a due diligence certificate in the prescribed form has to be filed with the draft offer document.
- The draft offer document shall be hosted on the websites of SEBI, DSEs, InvIT and merchant bankers, for comment within 21 days of filing.
- SEBI may specify changes or issue observations within the prescribed time, pursuant to which the draft offer document has to be suitably modified and filed with SEBI as offer document.
- After filing offer document with SEBI, Merchant Banker shall issue pre-issue advertisement on the websites of sponsor, investment manager and stock exchanges. Merchant Banker may also issue such advertisement in newspapers.

### Allocation in public issue

- Institutional investors shall not be allocated more than 75% in a public offering of the InvIT units.
- Other investors, including retail investors, have to be allocated at least 25% of the InvIT units.

### Anchor Investors

#### Who is an Anchor Investor?

“Anchor Investor” means a qualified institutional buyer who makes an application for a value of at least ten crore rupees in a public issue on the SEBI main board made through the book building process or makes an application for a value of at least two crore rupees for an issue made in accordance with Chapter IX of the SEBI (ICDR) Regulations, 2018.

- A strategic investor may participate in an offer as an anchor investor.
- The investment manager, on behalf of the InvIT, may allocate up to 60% of the portion available for allocation to institutional investors to anchor investors.
- The anchor investors will have to make an application of a value of at least INR 10 crore in the public issue.
- Allocation to anchor investor shall be on a discretionary basis, and subject to the minimum of two investors for allocations of upto Rs. 250 crore and minimum five investors for allocations exceeding Rs. 250 crore.
- The bidding for anchor before the issue opening date and the allocation must be completed on the same day.
- The number of units allocated and the allocation price must be disclosed on the websites of the stock exchange(s), sponsor(s), investment manager and merchant banker(s).
- If the price fixed as a result of book building is higher than the price at which the allocation is made to

Anchor Investor, the Anchor Investor shall bring in the additional amount within 2 days of the date of closure of the issue.

- The lock-in period shall be thirty days for anchor investors other than a strategic investor. However, lock-in should be one year for strategic investors investing as anchor investors.
- Neither the merchant bankers nor any person related to the merchant bankers in the concerned public issue can apply under the anchor investor category, except mutual funds, insurance companies and pension funds.

### Security Deposit

The investment manager, on behalf of the InvIT, will have to deposit before the opening of subscription, and keep deposited with the stock exchanges, an amount calculated at the rate of 0.5% of the amount of units offered for subscription to the public or Rs. 5 crore, whichever is lower.

### Opening of an issue and subscription period

- The issue shall open after at least five working days from the date of filing of the final offer document with SEBI.
- The lead merchant banker shall submit a due diligence certificate in prescribed format, immediately before the opening of the issue.
- The public issue shall remain open for at least three working days, but not more than thirty days. Further, in case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the final offer document shall be extended for a minimum period of one day, provided that the total bidding period shall not exceed thirty days. Further, the price revision can be done maximum twice during the bidding period.
- The investment manager on behalf of the InvIT may issue advertisements for issue opening and issue closing.

### Price and Price Band

- The floor price or the price band has to be announced at least two working days before the opening of the bid on the website of the sponsor, investment manager, stock exchanges, InvIT and in all newspapers in which the pre-issue advertisement was released.
- Differential pricing shall not be offered to any investor.
- The final price of the units ("cut-off price") may be determined in consultation with the lead book runner.

### Bidding process

- The InvIT shall accept bids using only the Application Supported by Blocked Amount(ASBA) facility for making payment. Further, the bidding process shall be done only through an electronic bidding platform provided by recognised stock exchanges.
- 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 or with any intermediaries as prescribed in the guidelines. Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchange(s) and submitting the form to SCSBs for blocking of

funds (except in case of SCSBs, where blocking of funds will be done by respective SCSBs only) Stock Exchanges to provide transparent electronic bidding facility.

- The lead merchant banker shall ensure that adequate infrastructure is available with syndicate members for data entry of the bids in a timely manner.
- The bidding terminals shall contain an online graphical display of demand and bid prices updated at periodic intervals, not exceeding thirty minutes.
- The Investment manager on behalf of the InvIT may decide to close the bidding by qualified institutional buyers one day prior to the closure of the issue subject to the condition that bidding shall be kept open for a minimum of three days for all categories of applicants and suitable disclosures made in the draft offer document and offer document.
- No investor shall either withdraw or lower the size of bids at any stage.
- The identity of Institutional Investors other than strategic investors making the bidding shall not be made public.

### **Basis of allotment**

- On receipt of the sum payable on application, the investment manager on behalf of the InvIT shall allot the units in to the applicants.
- Allotment of units other than anchor investors shall be on proportionate basis within the specified investor categories, subject to minimum allotment, as per InvIT regulations.
- In case of under-subscription in any investor category, the unsubscribed portion may be allotted to applicants in the other categories.

### **Public communications, publicity materials, advertisements and research materials**

- Public communication shall not contain any matter extraneous to the offer document, and shall be truthful and fair.

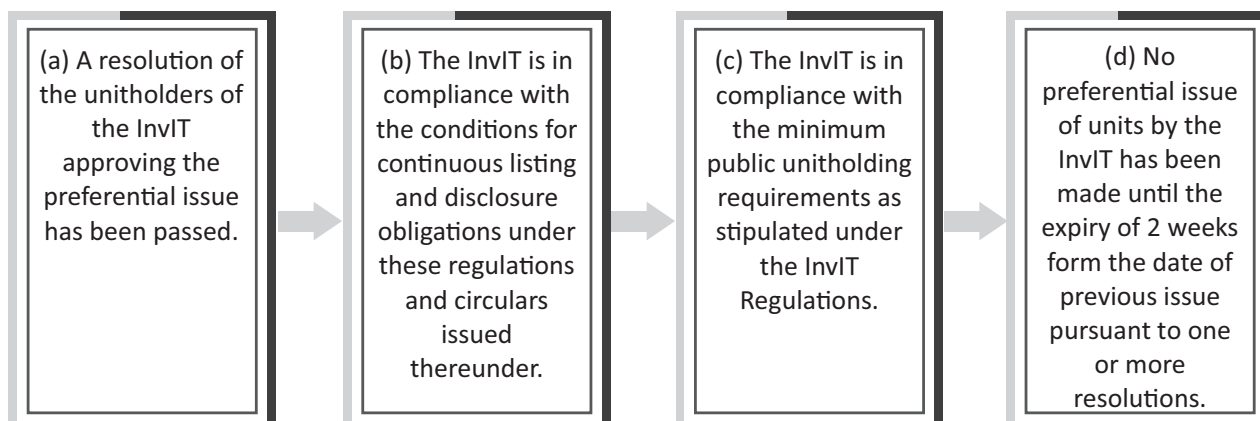
### **Other conditions**

- No InvIT can make a public issue of units if it or any of its sponsors, investment managers, or trustees is debarred from accessing the capital market by SEBI, or is on the list of wilful defaulters published by the Reserve Bank of India.
- Investment managers have to appoint a compliance officer for monitoring compliance of securities laws and for redressal of investor grievances.

### **GUIDELINES FOR PREFERENTIAL ISSUE OF UNITS BY INVITs**

Regulation 2 (1) (zo) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 defines a preferential issue. Regulation 14(4) (b) read with Regulations 2(1) (zo) provides for any subsequent issue of units after an initial offer in a manner specified by SEBI. Accordingly, the detailed guidelines for preferential issue by an InvIT are provided herein.

A listed InvIT may make preferential issue of units to an institutional investor as defined in the InvIT regulations, if it satisfies the following conditions:



- Preferential issue pursuant to the unitholders resolution referred above shall be completed within a period of twelve months from the date of passing of the resolution.
- Allotment pursuant to preferential issue shall be completed within 12 days.
- The units shall be issued only in dematerialized form.
- The units to be issued in preferential issue shall be of same class or kind as the units issued in the initial offer by the InvIT.

Further, such units have been listed on a recognised stock exchange, having nationwide trading terminal for a period of at least six months prior to the date of issuance of notice to its unitholders for convening the meeting to approve the preferential issue.

- The minimum subscription and trading lot for the units to be issued in preferential issue shall be same as that for units issued in the initial offer by the InvIT.
- The units in a preferential issue shall be offered and allotted to a minimum of two investors and maximum of 1000 investors in a financial year.

Relevant date for the purpose of preferential issue shall mean the date of the meeting in which the board of directors of the investment manager of the InvIT or the committee of directors duly authorised by the board of directors of the investment manager of the InvIT decides to open the proposed issue.

### Placement Document

- The InvIT may appoint one or more SEBI registered intermediaries to carry out the obligations relating to the issue.
- The preferential issue of units by an InvIT shall be done on the basis of a placement document, which shall contain disclosures as specified in the InvIT Regulations.
- The placement document shall be serially numbered and copies shall be circulated only to select investors subject to compliance with above mentioned clause.
- The InvIT shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate issued by its merchant banker or statutory auditor confirming compliance with the provisions of these guidelines along with any other documents required by the stock exchange.

- The placement document shall also be placed on the website of the concerned stock exchange and the InvIT with a disclaimer to the effect that it is in connection with a preferential issue and that no offer is being made to the public or to any other investor.

### Pricing

- The preferential issue shall be made at a price not less than the average of the weekly high and low of the closing prices of the units quoted on the stock exchange during the two weeks preceding the relevant date.
- The InvIT shall not allot partly paid-up units.
- The prices determined for preferential issue shall be subject to appropriate adjustments, if the InvIT:
  - a) makes a rights issue of units;
  - b) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

### Locked-in requirements

- a) The units allotted to sponsor(s) and sponsor group(s) shall be locked-in as under:
  - 15% of the units allotted to sponsor(s) and sponsor group(s) shall be locked-in for a period of three years from the date of trading approval granted for the units, subject to the condition that the project manager of the InvIT is the sponsor or an associate of the sponsor and shall continue to act in such capacity for a period of minimum three years from the date of trading approval granted for the units unless suitable replacement is appointed by the unitholders through the Trustee. However, 25% of the units allotted to sponsor(s) and sponsor group(s) shall be locked-in for a period of three years from the date of trading approval granted for the units if the condition specified above relating to project manager of the InvIT is not satisfied.
  - the remaining units allotted to sponsor(s) and sponsor group(s) shall be locked-in for a period of one year from the date of trading approval granted for the units. However, the sponsor(s) and sponsor group(s) shall comply with the minimum unitholding requirement specified in Regulation 12(3) and 12(3A) of SEBI (Infrastructure Investment Trusts) Regulations, 2014, at all times.
- b) The units allotted to persons other than the sponsor(s) shall be locked-in for a period of one year from the date of trading approval for such units.
- c) The entire pre-preferential issue unitholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval.
- d) The lock-in requirement mentioned at point b) and c) above shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations.
- e) Units allotted under a preferential issue to a sponsor or its sponsor group entities which are subject to lock-in, may be transferred among such sponsor or its sponsor group entities, subject to the condition that the lock-in on such units shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer such units till the expiry of the lock-in period originally applicable to such units.

### Restriction on allotment

- No allotment shall be made, either directly or indirectly, to any party to the InvIT or their related parties except to the sponsor only to the extent that is required to ensure compliance with regulation 12 (3) of the InvIT Regulations.

**Explanation:** To determine the “related parties”, the term related party as defined under the InvIT Regulations shall be applicable. However, Mutual Funds, Insurance Companies and Pension Funds shall not be treated as related parties.

- The applicants in preferential issue shall not withdraw their bids after the closure of the issue.

### Transferability of Units

The units allotted under preferential issue shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

## LISTING AND TRADING OF UNITS

### Mandatory Listing

- It shall be mandatory for units of all InvITs to be listed on a recognized stock exchange having nationwide trading terminals.
- Not applicable if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI InvIT Regulations.

### Listing Permission

- The listing of the units shall be in accordance with the listing agreement entered into between the InvIT and the designated stock exchanges.
- In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by SEBI the units shall not be eligible for listing and the InvIT shall be liable to refund the subscription monies, to the respective allottees immediately alongwith interest at the rate of fifteen per cent per annum.

### Trading

- The units of the InvIT listed in the designated stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of designated stock exchanges and such conditions as may be specified by SEBI.
- Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.
- The units shall remain listed on the designated Stock Exchanges unless delisted under the SEBI InvIT Regulations.

### Holding and Redemption

- Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.
- The InvIT shall redeem units only by way of a buyback or at the time of delisting of units.

- It shall be mandatory for units of all InvITs to be listed on a recognized stock exchange having nationwide trading terminals, whether publicly issued or privately placed.

However, this shall not apply if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI InvIT Regulations.

- The listing of the units shall be in accordance with the listing agreement entered into between the InvIT and the designated stock exchanges.
- In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by SEBI, wherever applicable, the units shall not be eligible for listing and the InvIT shall be liable to refund the subscription monies, if any, to the respective allottees immediately along with interest at the rate of fifteen percent per annum from the date of allotment.
- The units of the InvIT listed in the designated stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of designated stock exchanges and such conditions as may be specified by SEBI.
- The InvIT shall redeem units only by way of a buyback or at the time of delisting of units.
- The units shall remain listed on the designated Stock Exchanges unless delisted under the SEBI InvIT Regulations.
- The minimum public holding for the units of the InvIT after listing shall be in accordance with the provisions of issue and listing of units, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.
- The minimum number of unit holders in an InvIT other than the sponsor(s), its related parties and its associates,–
  - in case of privately placed InvIT, shall be five;
  - forming part of public shall be twenty;

at all times post listing of the units, failing which action may be taken as may be specified by SEBI and by the designated stock exchanges including delisting of units under these regulations.

- With respect to listing of privately placed units,–
  - its units shall be mandatorily listed on the designated stock exchange(s) within thirty working days from the date of allotment;
  - trading lot for the purpose of trading of units on the designated stock exchange shall be Rs. 25 lakhs.

Apart from the above, if an InvIT invests not less than eighty per cent of the value of the InvIT assets, in completed and revenue generating assets, the trading lot for the purpose of trading of units on the designated stock exchange of such InvIT shall be rupees two crore;

- With respect to listing of publicly offered units,–
  - Its units shall be mandatorily listed on the designated stock exchange(s) within 12 working days from the date of closure of the initial public offer. This shall not apply if the initial public offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI InvIT Regulations.
  - Trading lot for the purpose of trading of units on the designated stock exchange shall be 1 unit.
- Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.
- SEBI and designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the InvIT by issuance of guidelines or circulars.

**DELISTING OF UNITS**

- The investment manager shall apply for delisting of units of the InvIT to SEBI and the designated stock exchanges if ,-
- (a) the public holding falls below the specified limit under the InvIT Regulations.
  - (b) the number of unit holders of the InvIT falls below the limit as prescribed in the InvIT Regulations.
  - (c) if there are no projects or assets remaining under the InvIT for a period exceeding six months and InvIT does not purpose to invest in any project in future. The period may be extended by further 6 months, with the approval of unit holders.
  - (d) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or these regulations or the Act.
  - (e) the trustee and investment manager requests such delisting and such request has been approved by unit holders in accordance with these regulations.
  - (f) unit holders apply for such delisting in accordance with these regulations.
  - (g) SEBI or the designated stock exchanges require such delisting in the interest of the unit holders.

*Note:-*

- If clause (a) or (b) is breached, the trustee may provide a period of six months to the investment manager to rectify the same, failing which shall apply for such delisting.
  - In case of PPP projects, such delisting shall be subject to relevant clauses in the concession agreement.
- SEBI and the designated stock Exchanges may consider such application for delisting for approval or rejection as may be appropriate in the interest of the unit holders.
  - SEBI may, instead of delisting of the units, if it deems fit, provide additional time to the InvIT or parties to the InvIT to comply with above mentioned conditions.
  - SEBI may reject the application for delisting and take any other action, as it deems fit, under the SEBI InvIT Regulations or the Act for violation of the listing agreement or these regulations or the Act.
  - The procedure for delisting of units of InvIT including provision of exit option to the unit holders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.
  - After delisting of its units, the InvIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of an InvIT.
  - The InvIT and parties to the InvIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the InvIT notwithstanding surrender of registration to SEBI.

**INVESTMENT CONDITIONS AND DISTRIBUTION POLICY**

1. The investment by an InvIT shall only be in Holdco and/or SPVs or infrastructure projects or securities in India in accordance with the SEBI InvIT Regulations and the investment strategy as detailed in the offer document or Placement memorandum.
2. In case of PPP projects, the InvIT shall mandatorily invest in the infrastructure projects through Holdco and/or SPV.
3. The InvIT may invest in infrastructure projects through SPVs subject to the following,—
  - a. no other shareholder or partner of the SPV shall exercise any rights that prevents the InvIT from complying with the provisions of the SEBI InvIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the SPV;  
  
However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the holdco and/or the SPV.  
  
Further, the provisions of the SEBI InvIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT under the SEBI InvIT Regulations.
  - b. in case the SPV is a company/LLP, the investment manager, in consultation with the trustee, shall appoint majority of board of directors or governing board of such SPVs as applicable;
  - c. the investment manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.
4. The InvIT may invest in infrastructure projects through holdcos subject to the following,—
  - a. the ultimate holding interest of the InvIT in the underlying SPV(s) is not less than twenty six per cent;
  - b. no other shareholder or partner of the holdco or the SPV(s) shall exercise] any rights that prevent the InvIT, the HoldCo or the SPV(s) from complying with the provisions of the SEBI InvIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the holdco/SPV:  
  
However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the holdco and/or the SPV.  
  
Further, the provisions of the SEBI InvIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT under these regulations.
  - c. the investment manager, in consultation with the Trustee, shall appoint the majority of the Board of directors or governing board of the holdco and SPV(s); the investment manager shall ensure that in every meeting including annual general meeting of the Holdco and SPV(s), the voting of the InvIT is exercised;
5. In case of InvIT as specified under the SEBI InvIT Regulations, the InvIT shall invest not less than eighty per cent of the value of the InvIT assets in eligible infrastructure projects either directly or through holdcos or through SPVs. However, un-invested funds may be invested in instruments as provided under below clause.
6. In case of InvITs as specified above :

- a. not less than 80% of the value of InvIT the assets shall be invested, proportionate to the holding of the InvITs, in completed and revenue generating infrastructure projects subject to the following;
  - (i) if the investment has been made through a holdco and/or SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in completed and revenue generating projects by such Holdco and/or SPVs shall be considered and the remaining portion shall be included under clause (b) as mentioned below;
  - (ii) if any project is implemented in stages, the part of the project which can be categorized as completed and revenue generating project shall be considered and the remaining portion shall be included under clause (b) as mentioned below;
- b. not more than 20% of value of the InvIT assets, shall be invested in,—
  - (i) under-construction infrastructure projects, whether directly or through Holdco and/or SPVs. However, investment in such assets shall not exceed 10% of the value of the InvIT assets;
  - (ii) listed or unlisted debt of companies or body corporate in infrastructure sector. However, this shall not include any investment made in debt of the Holdco and/or SPV.
  - (iii) equity shares of companies listed on a recognized stock exchange in India which derive not less than 80% of their operating income from infrastructure sector as per the audited accounts of the previous financial year;
  - (iv) government securities;
  - (v) money market instruments or cash equivalents.
  - (vi) unlisted equity shares of a company which provides project management and other incidental services, subject to the following conditions:
    - such services are provided exclusively to the InvIT, its HoldCo(s) and SPV(s); and
    - the entire shareholding or interest in such company is held by the InvIT either directly or through its HoldCos or SPVs.
  - (vii) units of liquid mutual funds schemes where the credit risk value is at least 12 and which fall under the Class A-I in the potential risk class matrix as specified by the Board;
  - (viii) interest rate derivatives, including interest rate futures, forward rate contract and interest rate swap, subject to the following conditions:
    - investment in interest rate derivative shall be solely to hedge an underlying interest rate risk in the existing borrowings which qualifies as an effective hedge as per the applicable Indian Accounting Standards;
    - that such investment shall only be made as a user or a client of such interest rate derivative, and shall not be in the nature of market making;
    - adequate disclosures regarding investment in interest rate derivative shall be made in the annual report;
    - for valuation of the investment in interest rate derivative, norms applicable for Mutual Funds shall be followed; and
    - the requirements applicable to the clients or users of interest rate derivatives, including those specified by the Reserve Bank of India, are complied with.

- c. if the conditions specified in clauses (a) and (b) are breached, the investment manager shall inform the same to the trustee and ensure that the conditions as specified in these Regulations are satisfied within six months of such breach.

However, the period may be extended to one year subject to approval from investors in accordance with these regulations.

7. The investment conditions as specified above, shall be complied at the time of Offer document/ placement memorandum and thereafter.
8. With respect to distributions made by the InvIT and the Holdco and/or SPV,-
  - a. not less than 90% of net distributable cash flows of the SPV shall be distributed to the InvIT/ holdco in proportion of its holding in the SPV subject to applicable provisions in Companies Act, 2013 or Limited Liability Partnership Act, 2008;
  - b. not less than 90 % of net distributable cash flows of the InvIT shall be distributed to the unit holders;
  - c. with regard to distribution of net distributable cash flows by the holdco to the InvIT, the following conditions shall be complied;
    - with respect to cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the InvIT; and
    - with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the InvIT.
  - d. cash flows generated by all InvIT assets shall be considered.
  - e. Such distributions shall-
    - i. be declared not less than once every six months in every financial year in case of publicly offered InvITs;
    - ii. be declared not less than once every financial year in case of privately placed InvITs; and
    - iii. shall be made within five working days from the record date.

Here, record date for the payment of distribution shall be two working days from the date of the declaration of distribution, excluding the date of declaration and the record date.
  - f. Subject to clause (6), such distribution shall be in the manner as mentioned in the offer document or placement memorandum.
  - g. any amount remaining unclaimed or unpaid out of the distributions declared by a InvIT shall be transferred to the 'Investor Protection and Education Fund' constituted by the SEBI. However, the amount transferred to Investor Protection and Education Funds shall not bear any interest.
9. If any infrastructure asset is sold by the InvIT or Holdco or SPV or if the equity shares or interest in the Holdco or SPV are sold by the InvIT–
  - if the InvIT proposes to re-invest the sale proceeds into another infrastructure asset, it shall not be required to distribute any sales proceeds to the InvIT or to the investors;
  - If the InvIT proposes not to invest the sales proceeds into any other infrastructure asset within a period of one year, it shall be require to distribute the same.
10. If the distributions are not made within the timeline as mentioned in point 8(e) above, then the investment

manager shall be liable to pay interest to the unit holders at the rate of 15% per annum till the distribution is made and such interest shall be not be recovered in the form of fees or any other form payable to the investment manager by the InvIT.

11. An InvIT shall not invest in units of other InvITs.
12. An InvIT shall not undertake lending to any person other than the holdco/ SPV(s) in which the InvIT has invested in. However, investment in debt securities shall not be considered as lending.
13. An InvIT shall hold an infrastructure asset for a period of not less than three years from the date of purchase of such asset by the InvIT, directly or through Holdco and/or SPV. However, this shall not apply to investment in securities of companies in infrastructure sector other than SPVs.
14. In case of any co-investment with any person(s) in any transaction–
  - a. the investment by the other person(s) shall not be at terms more favourable than those to the InvIT;
  - b. the investment shall not provide any rights to the person(s) which shall prevent the InvIT from complying with the provisions of these regulations;
  - c. the agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the InvIT to receive not less than pro-rata distributions and mode for resolution of any disputes between the InvIT and the other person(s).
    - No schemes shall be launched under the InvIT.
    - SEBI may specify any additional conditions for investments by the InvIT as deemed fit.

## RIGHTS AND MEETINGS OF THE UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the offer document or placement memorandum.
2. With respect to any matter requiring approval of the unit holders-
  - a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favour of the resolution exceed a certain percentage as specified in these regulations, of total votes cast;
  - the voting threshold shall be calculated on the basis of unit holders present and voting. For the determination of unit holders present and voting, the unit holders voting through the electronic voting facility and postal ballot shall be counted;
  - the voting may also be done by postal ballot or electronic mode;
  - a notice of not less than twenty one days shall be provided to the unit holders. However, a meeting of unit holders may be called after giving shorter notice than that specified in this clause if consent, in writing or by electronic mode, is accorded thereto -
    - i. in case of an annual meeting, by not less than 95% of the unit holders entitled to vote thereat; and
    - ii. in case of any other meeting, by majority of the unitholders in number entitled to vote thereat and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting.
  - voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;

- investment manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holder, subject to overseeing by the trustee.

However, in issues pertaining to the investment manager such as change in investment manager including removal of the investment manager or change in control of the investment manager, trustee shall convene and handle all activities pertaining to conduct of the meetings.

Further that in respect of issues pertaining to the trustee including change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.

- For all unit holder meetings, the investment manager shall provide an option to the unit holders to attend the meeting through video conferencing or other audio visual means and the option of remote electronic voting in the manner as may be specified by the SEBI.

#### Right of Unit holders in InvITs

- Right to receive returns through cash distributions made by the trust
- Rights to vote on matters pertaining to acquisition of new assets or borrowing
- Right to vote on related party matters
- Right to vote on matters such as appointment or change of the Investment Manager
- Right to vote on induction of a Sponsor, with the opportunity to exit for dissenting voters
- Right to vote on exit of Sponsor
- Right to receive periodic disclosures like annual report, valuation report, quarterly/ semi-annual financials etc.

#### 3. For an InvITs–

- an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months;
- with respect to the annual meeting of unit holders–
  - any information that is required to be disclosed to the unit holders and any issue that, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including,–
    - (a) latest annual accounts and performance of the InvIT;
    - (b) approval of auditor and fees of such auditor, as may be required;
    - (c) latest valuation reports;
    - (d) appointment of valuer, as may be required;
    - (e) any other issue.
  - for any issue taken up in such meetings which require approval from the unit holders, votes cast in favour of the resolution shall be more than 50% of the votes cast for the resolution.

#### 4. In case of–

- any approval from unit holders required for investment conditions, related party transactions and valuation of assets;

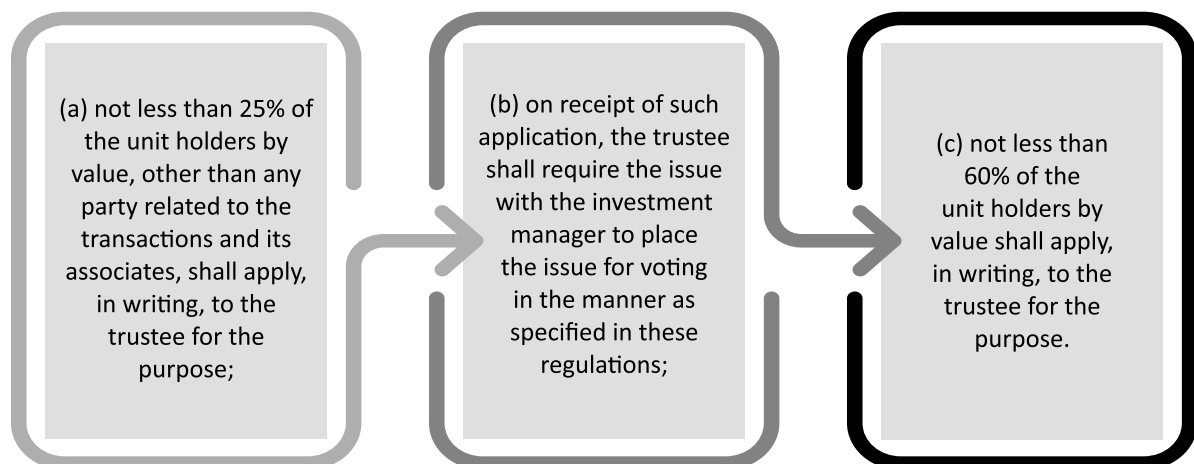
- any transaction, other than any borrowing, value of which is equal to or greater than twenty five per cent of the InvIT assets;
  - any borrowing in terms of limit specified as required under the provision for borrowing and deferred payment as mentioned under the SEBI InvIT Regulations;
  - any issue of units after initial public offer by InvIT, in whatever form, other than any issue of units which may be considered by SEBI;
  - increasing period for compliance with investment conditions to one year in accordance with these regulations;
  - any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or investment manager, is material and requires approval of the unit holders, if any;
  - any issue for which SEBI or the designated stock exchanges requires such approval; approval from unit holders shall be required where votes cast in favour of the resolution shall be more than 50% of the votes cast for the resolution.
5. In case of –
- any change in investment manager including removal of the investment manager or change in control of the investment manager;
  - any material change in investment strategy or any change in the management fees of the InvIT.
  - the trustee or investment manager proposing to seek delisting of units of the InvIT.
  - any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or investment manager or trustee requires approval of the unit holders.
  - any issue for which SEBI or the designated stock exchanges requires approval.
  - any issue taken up on request of the unit holders including–
    - removal of the investment manager and appointment of another investment manager to the InvIT;
    - removal of the auditor and appointment of another auditor to the InvIT;
    - removal of the valuer and appointment of another valuer to the InvIT;
    - delisting of an InvIT, if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders;
    - any issue which the unit holders have sufficient reason to believe that is detrimental to the interest of the unit holders;
    - change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unitholders;
  - introduction of unit based employee benefit scheme after an initial offer;
  - unit based employee benefit scheme proposed at the time of initial offer;
  - acquisition of units by the employee benefit trust
  - issuance of units to the employee benefit trust

- transfer of units to the employee benefit trust
  - a separate resolution that shall be required for grant of options to identified employees, during any one year, equal to or exceeding one per cent of the unit capital of the InvIT at the time of grant of options;
  - variation of the terms of the unit based employee benefit scheme including repricing of the options.
- approval from unit holders shall be required where votes cast in favour of the resolution shall be at least 60% of total votes cast for the resolution.

In case of any borrowing by an InvIT in terms of the limit specified in clause (b) of sub-regulation 3 of regulation 20, the approval from 75% of the unit holders by value shall be obtained.

No person, other than sponsor(s), its related parties and its associates, shall acquire units of an InvIT which taken together with units held by such person and by persons acting in concert with such person in such InvIT, exceeds 75% of the value of outstanding InvIT units unless approval from 75% of the unit holders by value excluding the value of units held by parties related to the transaction, is obtained. However, if the required approval is not received, the person acquiring the units shall provide an exit option to the dissenting unit holders to the extent and in the manner as may be specified by the SEBI.

6. With respect to the right(s) of the unit holders under sub-point (f) of point no.(5)-



7. In case of any change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor or conversion to self-sponsor investment manager-
- a) prior to such change, approval from 75% of the unit holders by value excluding the value of units held by parties related to the transaction has to be obtained;
  - b) if the required approval is not received,-
    - i. in case of change of sponsor or inducted sponsor, the proposed inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the SEBI;
    - ii. in case of change in control of the sponsor or inducted sponsor, the said sponsor or inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the SEBI.

- iii. in case of conversion to Self-Sponsored Investment Manager, the Investment Manager shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the SEBI.

*Explanation:* Change in sponsor or inducted sponsor shall mean any change due to entry of a new sponsor or exit of an existing sponsor.

- 8. The existing sponsor(s) proposing to disassociate as sponsor(s) by seeking to convert the Investment Manager to Self-Sponsored Investment Manager shall comply with the following conditions:

- (i) the InvIT has been listed for a period of at least five years;
- (ii) the InvIT has undertaken not less than twelve distributions on a continuous basis and has complied with the distribution norms as per these Regulations in the preceding five years;
- (iii) the InvIT is rated AAA by a registered credit rating agency for a continuous period of five years immediately preceding the exit of the sponsor;
- (iv) during the period of preceding five years, the InvIT has not breached, at any time, the maximum leverage thresholds as specified in these regulations;
- (v) the Investment Manager is meeting the net worth criteria specified for the sponsor in these regulations;
- (vi) the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) shall be complied with, on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager, by the Investment Manager, shareholders of the Investment Manager and/or group entities of Investment Manager;

*Explanation:* Investment Manager, shareholders of the Investment Manager and/or group entities of Investment Manager may acquire units of the InvIT for the purpose of compliance of above condition.

- (vii) the sponsor(s) or its associate(s) do not own or control the Investment Manager of the InvIT on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager;
- (viii) the sponsor has not transferred / sold assets to the InvIT in the last three years and no assets/projects shall be acquired by the InvIT from the outgoing sponsor(s) for a period of one year from the date of conversion to Self-Sponsored Investment Manager;
- (ix) at least one of the sponsor(s) proposing to disassociate should have been a sponsor of the InvIT for a minimum period of five years;
- (x) the InvIT shall not have any under-construction assets acquired from the sponsor that have not commenced commercial operations;
- (xi) the sponsor(s) or its associate(s) are not the Project Manager and do not own or control the Project Manager on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager;
- (xii) unitholders approval in terms of sub-regulation (7) of InvIT regulation and consent of the Trustee has been obtained for conversion to Self-Sponsored Investment Manager;

There are no outstanding subordinate units.

- (xiii) such other conditions as may be specified by the SEBI.

**Maintenance of Records**

The investment manager shall maintain records pertaining to the activity of the InvIT, wherever applicable, including–

- (a) all investments or divestments of the InvIT and documents supporting the same including rationale for such investments or divestments;
- (b) agreements entered into by the InvIT or on behalf of the InvIT;
- (c) documents relating to appointment of persons;
- (d) insurance policies for infrastructure assets;
- (e) investment management agreement;
- (f) documents pertaining to issue and listing of units including placement memorandum, draft and final offer document, in-principle approval by designated stock exchanges, listing agreement with the designated stock exchanges, details of subscriptions, allotment of units, etc;
- (g) distributions declared and made to the unit holders;
- (h) disclosures and periodical reporting made to the trustee, SEBI, unit holders and the designated stock exchanges including annual reports, half yearly reports, etc.;
- (i) valuation reports including methodology of valuation;
- (j) books of accounts and financial statements;
- (k) audit reports;
- (l) reports relating to activities of the InvIT placed before the board of directors of the investment manager;
- (m) unit holders grievances and actions taken thereon including copies of correspondences made with the unit holder and SEBI, if any;
- (n) any other material documents;

The trustee shall maintain records, wherever applicable, pertaining to–

- (a) certificate of registration granted by SEBI;
- (b) registered trust deed;
- (c) documents pertaining to application made to the Board for registration as an InvIT;
- (d) titles of the infrastructure assets.

However, where the original title documents are deposited with the lender or any other person in respect of any loan or debt, the trustee shall maintain copies of such title documents;

- (e) notices and agenda sent to unit holders for meetings held;
- (f) minutes of meetings and resolutions passed therein;
- (g) periodical reports and disclosures received by the trustee from the investment manager;
- (h) disclosures, periodically or otherwise, made to SEBI, unit holders and the designated stock exchanges;
- (i) any other material documents.

The aforesaid records may be maintained in physical or electronic form. However, where records are required to be duly signed and are maintained in the electronic form, such records shall be digitally signed.

The investment manager and the trustee shall ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

The investment manager and trustee shall ensure that a business continuity plan and disaster recovery site is in place for the records maintained electronically, to maintain data and transaction integrity.

## GOVERNANCE NORMS FOR INVITs

### Applicability of SEBI (LODR) Regulations, 2015

The corporate governance norms applicable for listed companies shall be applicable to REITs as specified in Regulation 26G of SEBI InvITs Regulations.

For the purposes of this regulation, the interpretation of certain expression as mentioned in SEBI (LODR) Regulations, 2015 shall be read as under while reading with REITs Regulations:

<i>Expression in SEBI (LODR) Regulations, 2015</i>	<i>To be read as, while reading with InvITs Regulations</i>
promoters	parties to the REIT
listed entity	InvIT or investment manager of InvIT, as may be applicable
company secretary	compliance officer
executive director	non-independent director
non-executive director	independent director
Board of Directors of the listed entity	Board of Directors of Investment Manager
subsidiary of listed entity	HoldCo and/or SPV of InvIT as applicable

### Additional Requirements

- (1) The Board of Directors of the Investment Manager shall comprise of not less than six directors and have not less than one woman independent director.

However, if by a vacancy in the office of a director of the investment manager, the investment manager becomes non-compliant with such requirement, such vacancy shall be filled by the investment manager as follows -

- if such vacancy arises due to expiry of the term of office of the director, then the resulting vacancy shall be filled not later than the date such office is vacated; or
- if such vacancy arises due to any other reason, then the resulting vacancy shall be filled at the earliest and not later than three months from the date of such vacancy.

- (2) The quorum for every meeting of the Board of Directors of the Investment Manager shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

*Explanation* - The participation of the directors by video conferencing or by other audio-visual means

shall be counted for the purpose of quorum and shall be recorded by the Investment Manager.

- (3) The Board of Directors of the Investment Manager shall review compliance reports every quarter pertaining to all laws applicable to the InvIT as well as steps taken to rectify instances of non-compliances.
- (4) The minimum information as specified in SEBI InvITs Regulations shall be placed before the Board of Directors of the Investment Manager.
- (5) The Chief Executive Officer, the Chief Financial Officer and the Compliance Officer, shall provide the compliance certificate to the Board of Directors as specified in SEBI InvITs Regulations.
- (6) The Board of Directors of the Investment Manager shall set forth clearly the recommendation of the Manager in the notice to the unit holders for each item as mentioned in point no. 5 under Rights and meetings of Unit holders.

### Vigil Mechanism

- (1) The Investment Manager shall formulate a vigil mechanism, including a whistle blower policy for directors and employees to report genuine concerns.
- (2) The vigil mechanism shall provide for adequate safeguards against victimization of Director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.
- (3) An independent service provider may be engaged by the Investment Manager for providing or operating the vigil mechanism who shall report to the audit committee.
- (4) The audit committee shall review the functioning of the vigil mechanism.

### Secretarial Compliance Report

- (1) The Investment Manager shall submit a secretarial compliance report given by a **practicing company secretary** to the stock exchanges, in such form as specified, within sixty days from end of each financial year.
- (2) The secretarial compliance report shall be annexed with the annual report of the REIT.

### Quarterly Compliance Report on Corporate Governance

- (1) The Investment Manager shall submit a quarterly compliance report on governance in the format as may be specified by the SEBI to the recognized stock exchange(s) within twenty-one days from the end of each quarter.
- (2) The quarterly compliance report shall be signed either by the compliance officer or the chief executive officer of the Investment Manager.

### MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS OF THE INVESTMENT MANAGER

The following minimum information to be placed before Board of Directors of the investment manager:

- (a) Annual operating plans and budgets and any updates.
- (b) Capital budgets and any updates
- (c) Quarterly results for the investment manager and its operating divisions or business segments

- (d) Minutes of meetings of audit committee and other committees of the Board of Directors.
- (e) The information on recruitment and remuneration of senior officers just below the level of Board of Directors, including appointment or removal of Chief Financial Officer and the Compliance Officer.
- (f) Show cause, demand, prosecution notices and penalty notices, which are materially important.
- (g) Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- (h) Any material default in financial obligations to and by the InvIT, HoldCo. and/or SPV.
- (i) Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the investment manager or taken an adverse view regarding another enterprise that may have negative implications on the investment manager.
- (j) Details of any joint venture or collaboration agreement.
- (k) Significant labour problems and their proposed solutions, any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- (l) Sale of investments, HoldCo. and/or SPV, assets which are material in nature and not in normal course of business.
- (m) Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- (n) Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.
- (o) Reports of tabletop exercises or workshops for identifying risks and vulnerabilities, and specifying risk mitigations and processes for addressing vulnerabilities

### POWER TO RELAX STRICT ENFORCEMENT OF THE REGULATIONS

The SEBI may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets.

Any exemption granted by the SEBI under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified including conditions to be complied with on a continuous basis.

“regulatory sandbox” means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the SEBI.

For details about Regulatory Sandbox, click on the link: [https://www.icsi.edu/media/webmodules/Framework\\_for\\_Regulatory\\_Sandbox.pdf](https://www.icsi.edu/media/webmodules/Framework_for_Regulatory_Sandbox.pdf)

#### LESSON ROUND-UP

- An Infrastructure Investment Trust (InvITs) is like a mutual fund, which enables direct investment of small amounts of money from possible individual/institutional investors in infrastructure to earn a small portion of the income as return.

- SEBI notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 on September 26, 2014, providing for registration and regulation of InvITs in India. The objective of InvITs is to facilitate investment in the infrastructure sector.
- The key laws applicable to InvITs include the InvITs Regulations, 2014, the InvIT Guidelines, the Trusts Act, the Registration Act, the FEMA, Income Tax Act, 1961 and SEBI (International Financial Services Centre) Guidelines, 2015.
- SEBI (Infrastructure Investment Trusts) Regulations, 2014 comprises of Nine chapters and seven schedules.
- SEBI has issued the Guidelines for Public Issue & for Preferential Issue of InvITs in pursuance to SEBI (Infrastructure Investment Trusts), Regulations, 2014.
- The InvITs can raise capital from both domestic and foreign investors. Raising capital from foreign investor pursuant to initial offer of units or follow-on offer can be made.
- The offer document or placement memorandum of the InvIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.
- The advertisements shall be in accordance with the offer document and any circulars or guidelines as may be specified by SEBI in this regard.
- The Investment Manager shall submit valuation reports received to the designated stock exchanges within fifteen days from the receipt of such valuation reports.
- The records may be maintained in physical or electronic form. However, if records are maintained in electronic form it shall be digitally signed.

### GLOSSARY

**Bidder:** Any prospective investor, other than an Anchor Investor who makes a Bid in the issue.

**Concession Agreement:** An agreement entered into by a person with a concessioning authority for the purpose of implementation of the project as provided in the agreement.

**IMA:** Investment Management Agreement is an agreement between the trustee and the investment manager which lays down the roles and responsibilities of the manager towards the InvIT.

**Net Worth:** In relation to a company or a body corporate shall have the meaning assigned to it under sub-section (57) of section 2 of the Companies Act, 2013.

**Unit:** It means beneficial interest of the InvIT.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Elucidate the provisions with respect to the issue and listing of units under SEBI (Infrastructure Investment Trusts), Regulations, 2014.
2. What are the guidelines issued for Public issue of units of InvITs by SEBI?
3. Whether the units of InvITs can be issued on preferential basis? If yes, explain the guidelines issued by SEBI with respect to issue of units on preferential basis?

