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SEBI RELAXES NORMS FOR INVITs AND REITs TO WIDEN INVESTOR BASE

8 May 2019

Background

India's capital market regulator, the Securities and Exchange Board of India (SEBI) notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and the SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) in September 2014 with a view to increase investor participation in the infrastructure and real estate sector. The Government of India also introduced a tax regime applicable to InvITs and REITs in the Finance Act, 2014 defining them together as 'Business Trusts' under the Income Tax Act, 1961 (IT Act). Since the inception of InvIT Regulations and the REIT Regulations in 2014, SEBI has made several amendments in a bid to attract issuers and investors. Till date, 4 Infrastructure Investment Trusts (InvITs) and 1 Real Estate Investment Trust (REIT) have issued and listed their units on Indian stock exchanges. Based on representations from industry and market participants, SEBI issued a consultation paper dated 25 January 2019 proposing amendments to the InvIT and REIT Regulations to relax the applicable norms and increase investor access. Subsequently, SEBI notified the amendments to the InvIT Regulations (InvIT Amendment Regulations) and the REIT Regulations ((REIT Amendment Regulations) together with InvIT Amendment Regulations, the Amendment Regulations) on 22 April 2019.

Key Amendments

➤ Amendments to InvIT and REIT Regulations

- *Reduction in the minimum allotment and trading lot requirements for publicly issued InvITs and REITs.*

Based on suggestions from market participants, SEBI reviewed the minimum subscription requirements alongside the current requirements applicable in case of an initial public offering of equity shares, which ranges from ₹10,000 to ₹15,000. With a view to align the minimum subscription requirements with that of equity shares and to encourage participation by retail investors, the minimum subscription amount and trading lot has been amended as specified below:

	Existing minimum subscription	Amended minimum subscription	Existing trading lot	Amended trading Lot
InvIT	₹10 lakhs	₹1 lakh	₹5 lakhs	100 units

REIT	₹2 lakhs	₹50,000	₹1 lakh	100 units
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SEBI has also issued a circular dated 23 April 2019 (April Circular) which prescribes the manner of determining the minimum allotment and trading lot size for publicly offered REITs and InvITs. The April Circular sets out that for InvITs and REITs whose units are already listed, the recognised stock exchanges shall determine the trading lot within a period of six months from the April Circular.

➤ Amendments to InvIT Regulations.

- *Increase in leverage limits*

Prior to the InvIT Amendment Regulations, the aggregate consolidated borrowings and deferred payments of any InvIT, its holding company (holdco) and special purpose vehicles (SPVs) (net of cash and cash equivalents), were capped at a maximum of 49% of the value of the InvIT assets. Further, any borrowing exceeding 25% of the value of the InvIT assets required unitholders approval and mandatory credit rating. SEBI reviewed the existing leverage limits in light of representations received from market participants which stated that the existing leverage limit restricted the availability of capital for further acquisitions by the InvIT and also restricted InvITs from offering returns comparable to other alternative investment avenues. Based on recommendations, SEBI increased the limit for aggregate consolidated borrowing and deferred payments from 49% to 70% of the value of the InvIT assets subject to the following:

- credit rating of AAA shall be required;
- funds shall be utilized only for acquisition or development of infrastructure projects;
- the InvIT shall have a track record of at least six distributions on a continuous basis, post listing, in the year preceding the financial year in which the borrowings are proposed to be availed; and
- prior approval of 75% unitholders shall be obtained.

In addition to the conditions above, SEBI has also prescribed certain additional compliances for InvITs whose consolidated borrowings exceed 49% of the value of the InvIT assets such as:

- The valuation of the assets of such InvIT shall be conducted by the valuer for quarters ending June, September and December within one month from the end of each quarter which in case of other InvITs is required to be conducted on a half-yearly basis;
 - Such InvITs shall also be required to submit a quarterly report to the designated stock exchange within 30 days from the end of every quarter ending June and December, which in case of other InvITs is only required to be submitted for the half year ended September; and
 - Further, pursuant to the April Circular, such InvITs shall also disclose the following line items in addition to the financial disclosures specified vide SEBI Circular no. CIR/IMD/DF/127/2016 dated November 29, 2016: asset cover available; debt-equity ratio; debt service coverage ratio; interest service coverage ratio; and net worth.
- *New regulatory framework for privately placed unlisted InvITs.*

The InvIT Amendment Regulations have done away with the mandatory listing requirement for privately placed units of an InvIT and introduced a new

framework for private placement of unlisted units. The key relaxations provided by the new framework for unlisted privately placed InvITs are summarised below:

	Unlisted private InvITs	Listed private InvITs
Minimum number of investors	At the discretion of the InvIT	5 investors (other than the sponsor(s), its related parties and its associates)
Maximum number of investors	20	1,000
Minimum investment	₹10 million, irrespective of asset mix	₹250 million in case the InvIT invests 80% or more of its assets in completed revenue generating assets. In other cases, ₹10 million
Maximum investment by a single investor	No specified limit	25% of the units
Leverage limit	To be specified under the trust deed and in consultation with investors	70% of the value of the InvIT assets subject to compliance with specified conditions

The unlisted InvIT is required to invest 80% of the value of the InvIT assets in eligible infrastructure projects either directly or through holdcos or through SPVs. The InvIT Amendment Regulations also prescribe periodic disclosures which are required to be made by the InvIT to the unitholders and the trustee.

The InvIT Amendment Regulations also allow listed InvITs to delist their units by obtaining approval from not less than 90% of the unitholders by value provided that the dissenting unitholders are provided an exit opportunity. Further, an unlisted privately placed InvIT may list its units on a recognised stock exchange after meeting all requirements applicable to a listed privately placed InvIT.

Comment

The Amendment Regulations provide for much awaited changes to the minimum subscription requirements and trading lot to ensure wider participation by a diverse investor base. Further, the increase in leverage limits also address concerns raised from time to time by issuers and other market participants. These amendments are expected to provide an impetus to InvITs and REITs in India.

The new framework for privately placed unlisted InvITs is a welcome change for sophisticated institutional investors who are looking to invest large sums in infrastructure assets in India. SEBI has, through the InvIT Amendment Regulations, provided numerous relaxations to privately placed unlisted InvITs as detailed hereinabove. Regulations 12(3) and 12(4) of the InvIT Regulations, which require sponsor(s) of an InvIT to lock-in 15% of the units held by them for a period of 3 years and the remaining units for a period of 1 year respectively (Lock-in Periods), are also applicable to unlisted privately placed InvITs. However, given that the Lock-in Periods under Regulation 12 are reckoned from the *date of listing* of the units, it remains unclear

as to the date from which sponsor-held units in an unlisted privately placed InvIT are required to be locked-in.

Further, it is pertinent to note that 'Business Trust' is defined under the IT Act as a trust registered as an InvIT under the SEBI InvIT Regulations, the units of which are required to be listed on recognized stock exchange. Accordingly, the concessional taxation regime applicable to 'Business Trusts' under the IT Act, shall for now, not apply to an unlisted privately placed InvIT, unless corresponding amendments are made to the IT Act. These concessions primarily include beneficial provisions with respect to interest and dividend income (i.e. pass through status to InvIT for interest income and a complete exemption including dividend distribution tax with respect to dividends distributed by an SPV which is wholly owned by the InvIT) and deferral of tax on capital gains earned by the sponsor at the time of transfer of shares of the SPV in lieu of units of the InvIT. Accordingly, one awaits corresponding amendments to the IT Act to address this concern.

In the absence of corresponding amendments to the IT Act, it is difficult to ascertain if investors and issuers would find the unlisted privately placed InvITs an attractive option for fund-raising and investment.

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