



## ERGO

*Analysing developments impacting business*

### SEBI INTRODUCES NEW GUIDELINES FOR THE RIGHTS ISSUE OF UNITS BY REAL ESTATE INVESTMENT TRUSTS

23 January 2020

Under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations 2014 and relevant guidelines and circulars issued thereunder (REIT Regulations), a real estate investment trust (REIT) is required to list its units on a recognised stock exchange only through an initial public offer. Subsequently, further issuance of units may be undertaken by way of a follow on public offering, a preferential issue, an institutional placement or a rights issue, in the manner specified by the Securities and Exchange Board of India (SEBI).

In November 2019, SEBI had issued guidelines notifying the framework for preferential issue and institutional placement of units. Our ERGO on this issue can be accessed [here](#). Following up on the same, SEBI has issued a circular on 17 January 2020 detailing the guidelines for a listed REIT to undertake a rights issue of units (Circular).

#### Salient features of the Circular:

##### ➤ **Conditions for issuance**

- **Approval of Investment Manager:** A resolution of the board of directors of the investment manager approving the rights issue of the units should have been passed.
- **Listed units and in-principle approval:** The same class of units of the REIT, which are proposed to be allotted, should have been listed and an in-principle approval for listing of the units should have been obtained from the relevant stock exchanges.
- **Compliance with continuous obligations:** The REIT should be in compliance with the continuous listing and disclosure obligations under the REIT Regulations. However, imposition of monetary fines by stock exchanges shall not be a ground for ineligibility for undertaking rights issue.
- **Eligibility:** The promoters, partners or directors of the sponsor(s), sponsor group, investment manager or trustee of the REIT –
  - should not have been declared a 'fugitive economic offender';
  - should not have been debarred from accessing securities market by SEBI; and

- should not have been a promoter, director or person in control of any company sponsor, manager or trustee of any other REIT which is debarred from accessing the capital market by SEBI.

## ➤ **Manner of issuance**

- **Role of merchant bankers:** The merchant bankers, appointed by the investment manager, are required to conduct due diligence and satisfy themselves on the veracity and adequacy of the disclosures in the letter of offer. The merchant bankers are also required to submit a due diligence certificate to SEBI and to enter into an agreement with the investment manager on behalf of the REIT.
- **Letter of offer (LOF):** Similar to a rights issue by listed companies, the draft letter of offer is required to be filed with SEBI and the stock exchanges, and disseminated to public by uploading on the websites of the relevant parties, as prescribed. Post receipt of observations, if any, from SEBI, the updated draft letter of offer is required to be submitted to SEBI.
- **Pricing:** The manager, in consultation with the lead merchant banker, shall decide the issue price before determining the record date, and the issue price shall be disclosed in the LOF.
- **Timeline for issue:**
  - The investment manager is required to announce the record date to the stock exchanges, at least 3 working days (excluding the date of intimation and the record date), prior to the record date.
  - If the rights issue is withdrawn after announcing the record date, the REIT shall not be eligible to make an application for listing of any of its units for a period of twelve (12) months from the record date.
  - The subscription period in the rights issue is required to open within three (3) months from record date and shall be kept open for minimum of three (3) working days and a maximum of fifteen (15) working days.
- **Restriction on further capital issue:** No further units shall be issued, in any manner, during the period between the date of filing the draft letter of offer and listing of the units/refund of application monies.

## ➤ **Subscription, Allotment and Listing**

- Rights entitlements (which shall include the right to renounce the units) are required to be credited to the demat account of the unitholders before the date of opening of the issue. The Circular mandates that units shall only be allotted in demat form.
- For the issue to be considered successful, a minimum subscription of at least 90% of the total issue size should be received during the subscription period, failing which the application money is required to be refunded/unblocked within 15 days of issue closure.
- The sponsors, their associates and sponsor group who are unitholders as on the record date, may subscribe to additional units subject to appropriate disclosures in the draft letter of offer and LOF.
- Waterfall mechanism for allotment:

- Full allotment to eligible unitholders who have applied for their rights entitlement in full or in part, and to renounees, who have applied for the units renounced in their favour, in full or in part, as adjusted for fractional entitlement.
- Allotment to eligible unitholders who having applied for the units in full, to the extent of their rights entitlement and have also applied for additional units, shall be made on an equitable basis, having regard to the number of units held by them on the record date, provided there is an under-subscribed portion after making allotment in (a) above.
- Allotment to the renounees, who having applied for the units renounced in their favour and also applied for additional units, provided there is an under-subscribed portion after making full allotment specified in (a) and (b) above. Such allotment may be made on a proportionate basis.
- Allotment to sponsor(s), their associates and members of sponsor group, are unitholders on the record date and who have disclosed their intent to subscribe to additional units.
- Allotment to the underwriter.

#### ➤ **Disclosures in the LOF**

The Circular prescribes the disclosure required to be included in the LOF. These are largely similar to those required in an offer document filed for the initial offering of units, such as - details of the parties to the REIT, description of assets, leverage, litigation and regulatory actions, objects of the issue, related party transactions etc. The financial statements being included in the LOF are required to not be more than 6 months old from the issue opening date. Further, REITs which are in compliance with the REIT Regulations, may file unaudited financials with limited review for the stub period. In addition, the unit holding pattern of the REIT, review of credit rating, history of the distributions made in the last 3 years, and the manner of calculation are also required to be disclosed. The latest available valuation of the assets proposed to be financed through the proceeds of the issue, including the valuation report are also required to be provided.

#### **Comments**

The REIT Regulations envisaged further issuances of units by listed REITs through various modes, including by way of a rights issue, however the framework for the same was not provided. Therefore, SEBI has by way of the Circular, bridged that gap. Certain points to consider are -

- While for preferential issues and private placement of units of a REIT, the calculation of issue price is regulated by SEBI, in case of a rights issue, the investment manager, in consultation with the merchant bankers, is free to decide the issue price.
- A rights issue of units is required to be opened within 3 months from the record date, which is much shorter than the 12 months period provided for fast track rights issues for listed companies. In this regard, it is pertinent to note that if the issue is not opened within three months from the record date, the REIT will not be able to make an application for listing any of its units, on any stock exchange, for a period of 12 months. Accordingly, issuers should exercise due caution with regards to the market dynamics, prior to announcing the record date.
- SEBI has permitted disclosures in the draft letter of offer and letter of offer to be included by way of reference to any previous offer document, placement

memorandum, placement document or annual report, published by the REIT, and by including links to such documents which would be available on the websites of the REIT, the stock exchanges or SEBI. This is a refreshing change from the approach followed by SEBI traditionally in case of disclosures in offer documents and will make the drafting of the LOF time and cost efficient.

- Further, while SEBI has mandated that rights entitlements are required to be credited to the demat account of the unitholders, it is expected that SEBI shall notify the framework for crediting and trading of such rights entitlements by way of a circular.
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