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SEBI INTRODUCES GUIDELINES FOR RIGHTS ISSUES BY LISTED INFRASTRUCTURE INVESTMENT TRUSTS

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India's capital markets regulator, the Securities and Exchange Board of India (SEBI) has issued a circular dated 17 January 2020 introducing "*Guidelines for rights issue of units by a listed Infrastructure Investment Trusts (InvIT)*" (Guidelines). Under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations), a listed InvIT may issue units through various modes including a follow-on offer, preferential allotment, qualified institutional placement and rights issue. In November 2019 SEBI introduced frameworks for issue of units by listed InvITs through preferential issues and institutions placement. Our ERGO on same is available here.

Salient features of the Guidelines

- **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.

  - **Class of units and in-principle approval**: The proposed rights issue must be of units of the same class as already listed on the stock exchange(s). Further, in-principle approval of the stock exchanges is required for listing of the proposed units proposed to be issued.

  - **Compliance with continuous obligations***:* InvIT should be in compliance with continuous listing and disclosure obligations under the InvIT Regulations and circulars issued thereunder. 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) or investment manager or trustee of the InvIT (i) should not have been declared a 'fugitive economic offender'; (ii) should not be debarred from accessing the securities market by SEBI; and (iii) should not be a promoter, director or person in control of any other company or a sponsor, investment manager or trustee of any other InvIT which is debarred from accessing the capital market by SEBI.

- **Appointment of merchant banker(s) and underwriters:** The investment manager shall, on behalf of the InvIT, appoint one or more merchant bankers. The InvIT may also appoint underwriters in accordance with the Securities and Exchange Board of India (Underwriters) Regulations, 1993.

- **Filing of Letter of Offer:** The investment manager shall, file a Draft Letter of Offer (DLOF) with SEBI for its observations and the relevant stock exchanges through the lead merchant banker along with a due diligence certificate.

- **Disclosure**: The disclosure requirements envisaged under the Guidelines are similar to those provided under the guidelines for the preferential issue and institutions placement of units by InvITs including *inter alia*, objects of the issue, net asset value, related party transactions etc. The Guidelines allow disclosures to be included by reference to any earlier offer document, annual report, financial statements, valuation report along with the links to such documents which are available on the websites of the InvIT, the stock exchanges or SEBI. The financial statements provided should not be more than 6 months old from the issue opening date. Further, InvITs which are in compliance with the InvIT Regulations, may file unaudited financials with limited review for the stub period.

- **Pricing**: The investment manager shall, in consultation with lead managers decide the issue price before determining the record date. No pricing formula has been prescribed for rights issue of InvITs and the units can be freely priced.

- **Timelines:**

  - ***Record Date***: The record date shall be announced to the stock exchanges at least 3 days prior to the record date (excluding the date of the intimation and the record date). In case the InvIT withdraws the rights issue after announcing the record date, it shall not be eligible to make an application for listing of any of its units on any stock exchange for a period of 12 months from the record date so announced.

  - ***Issue opening and issue period***: The rights issue shall open within 3 months from the record date and shall be kept open for a minimum period of 3 working days and maximum of 15 working days.

  - ***Listing***: The units shall be listed within 6 working days from the date of issue closure.

- **Manner of issuance and payment mechanism:** The units shall only be issued in dematerialized form. Rights entitlements (which shall include the right to renounce the units) shall be credited to the demat account of the unitholders before the date of opening of the rights issue. All eligible investors in a rights issue are required to use Application Supported by Blocked Amount (ASBA) facility as a payment mechanism.

- **Minimum subscription and refunds:** The minimum subscription shall be 90% of the issue size through the letter of offer. In case such minimum subscription is not received, the application monies shall be refunded to the applicants no later than 15 days from the issue closing date.

- **Subscription by sponsor/their associates:** The sponsors and their associates who are unitholders on record date, may subscribe to additional units subject to appropriate disclosures in the DLOF and LOF, subject to compliance with minimum public unitholding requirements.

- **Waterfall for allotment:** The following waterfall is prescribed under the Guidelines:

  (a) full allotment to eligible unitholders who have applied for their rights entitlement either in full or part and the renouncee(s) who have applied for the units renounced in their favour in full or part, as adjusted for fractional entitlement;

(b) if there is undersubscription after making allotment under (a), allotment to eligible unitholders who have applied for their rights entitlement units in full and halve also applied for additional units as far as possible on an equitable basis, having due regard to the number of units held by them on the record date;

(c) if there is undersubscription after making allotment under (a) and (b), allotment to renouncees, who have applied for units renounced in their favour and also additional units;

(d) if there is undersubscription after making allotment under (a), (b) and (c) above, allotment to sponsor(s) and their associates who are unitholders as on the record date and who have disclosed their intention to subscribe to additional units in the LOF; and

(e) allotment to underwriters appointed for the purpose of the issue.

- **Minimum allotment and trading lot and oversubscription**: The minimum allotment and trading lot for units issued shall be equivalent to the minimum allotment and trading lot as applicable to the units of the same class. The InvIT shall not make any allotment in excess of the units offered except in case of oversubscription for the purpose of rounding off to even lots to make allotment. Such oversubscription shall not be more than 1 per cent of the issue size.

Conclusion

In light of the fact that listed InvITs are envisaging further issuance of units for acquisition of assets, SEBI previously issued guidelines for preferential issue and institutions placement and has now issued guidelines for rights issues. With these guidelines in place, procedures and processes for all modes similar to those commonly used by listed companies are now available to listed InvITs.

Rights issues of units have many advantages over other modes of raising funds by listed InvITs such as (i) free pricing; (ii) no unitholder approval is required; (iii) ability of sponsor and their associates to subscribe to additional units at the same price; and (iv) ability to underwrite the issue.

SEBI has permitted disclosures in the DLOF and LOF to be included by reference to any previous offer document, placement memorandum, placement document or annual report, published by the InvIT, provided that the links to such documents which are available on the websites of the InvIT, the stock exchanges or SEBI are also included. 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.

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