
SEBI releases consultation paper on disclosures to be made by InvITs in offer documents/ placement memoranda and valuation reports

July 12, 2016

In brief

Close on the heels of releasing the consultation paper on continuous disclosures to be made by Infrastructure Investment Trusts (InvITs) as per listing requirements and calculation of Net Distributable Cash Flows (NDCFs) on 15 June, 2016 (please refer our [Insight dated 17 June, 2016](#) for a snapshot of the proposals made in said consultation paper), the Securities and Exchange Board of India (SEBI) has issued another consultation paper on 8 July, 2016, proposing a framework for disclosures to be made by SEBI-registered InvITs in offer documents/ placement memoranda and valuation reports. The consultation paper classifies SEBI's proposals under the following two heads:

- Part A: Financial disclosures in offer documents/ placement memoranda
- Part B: Valuation of the units of the InvITs

SEBI has solicited public comments on the consultation paper to be provided by 31 July, 2016.

This Insight provides a snapshot of the proposals made in the consultation paper.

In detail

The proposals made in the consultation paper are summarised below:

A. Financial disclosures in offer documents/ placement memoranda

1. Financial information of the InvIT

1.1 Annual financial information

- If the InvIT has been in existence for \geq three years, Audited Financial

Statements (FS) for the last three Financial Years (FYs) must be disclosed (standalone as well as consolidated).

- If the InvIT has been in existence for $<$ three years, Combined Financial Statements (CFS) (assuming that the InvIT structure was in place at the commencement of the reported period) must be disclosed for periods where audited FS are not available. The consultation paper provides detailed guidance on preparation of the CFS.

Accounting standards

- The financial information (FS or CFS) should be prepared in accordance with the Indian Accounting Standards (Ind AS) and/ or any addendum thereto as defined in Rule 2 (1) (a) of the Companies (Indian Accounting Standards) Rules, 2015 (Companies Rules).

Financial statements and line items

- The financial information (FS or CFS) should include at least the following:

(i) balance sheet, (ii) profit and loss statement, (iii) statement of changes in equity, (iv) statement of cash flows and (v) explanatory notes annexed to, or forming part of, any statements referred to in (i) to (iv) above.

- The consultation paper also prescribes a list of line items, which should be included, at the minimum, in each statement referred in (i) to (v) above.

Audit of financial information

- An auditor appointed as per the SEBI (InvIT) Regulations, 2014 (InvIT Regulations) should conduct the audit.
- The auditor should prepare the audit report in accordance with the *Guidance Note on Reports in Company Prospectuses* that the Institute of Chartered Accountants of India has issued, to the extent applicable.
- The auditor should consider the audit reports in the FS of the various InvIT assets in preparing the audit report.
- The consultation paper also prescribes a list of items that should be included in the audit report.

Additional disclosures

- Operating cash flows from the projects (project-wise) for all InvIT assets that are included in the financial information for the previous three FYs.
- Earnings per Unit (EPU) for the previous three FYs.
- In case of a capital offering subsequent to the initial offer, the market value of the units traded on all designated stock

exchanges where the InvIT is listed.

1.2 Interim financial information

- Audited interim FS must also be disclosed if date of the draft offer document/ placement memorandum is more than six months from the end of the last FY.
- Proposals for the annual financial information (discussed in paragraph 1.1 above) should also extend to the interim financial information.

2. Financial information of the Manager and Sponsor

- Summary of the audited consolidated FS (prepared in accordance with Companies Rules and Companies Act, 2013) of the Manager and Sponsor(s) for the past three FYs should be disclosed in the offer document/ placement memorandum.
- In case a Manager/ Sponsor is a foreign entity and not legally required to comply with the Companies Rules, then the FS of such an entity should be prepared in accordance with the International Financial Reporting Standards.

3. Management discussion and analysis

- The InvIT should prepare and disclose the management discussion and analysis (MDA) based on historical FS and provide a comparison of the most recent financial information with the financial information of the previous two FYs.
- The consultation paper also prescribes a list of line items

that should be included in the MDA.

4. Projections of revenues and operating cash flows

- Projections of revenues and operating cash flows (including related assumptions) of assets, projects owned or projects proposed to be owned prior to the allotment of units in a public offer/ private placement should be disclosed project-wise for the next three years.
- The following notes should be disclosed at a minimum as part of the projections: (i) project-wise revenue, (ii) project-wise operating cash flows, (iii) assumptions for projections and (iv) any other item deemed important for better readability and understanding.

5. Payment history and working capital

- The Investment Manager should include a statement regarding the sufficiency of working capital to fulfil the present requirements (for at least twelve months from the date of listing).
- If sufficient working capital is not available in the opinion of the Investment Manager, then it should provide a statement describing how it proposes to provide additional working capital.
- A statement providing a history of interest and principal payments should be disclosed for the past three FYs.

6. Contingent liabilities

- A statement of contingent liabilities should be disclosed, including their classification

into (i) claims against the trust not acknowledged as debt, (ii) other money for which the trust is contingently liable, (iii) any claims against the InvIT pending litigation and (iv) other contingent liabilities (nature to be specified).

7. Commitments

- A statement of the InvIT's commitments as on the date of the offer document/ placement memorandum should be disclosed, including their classification into (i) estimated amount of contracts remaining to be executed on capital account and not provided for; (ii) uncalled liability on shares and other investments partly paid, including that of special purpose vehicles (SPVs), and (iii) other commitments (nature to be specified).

8. Other disclosures

- The InvIT should comply with the requirements of Ind AS 24 – Related Party Disclosures in the preparation of financial information. For this purpose, it should also provide relevant disclosures for all related parties as defined in the InvIT Regulations. The consultation paper also prescribes a list of line items which should be disclosed in this regard.
- A capitalisation statement showing the total debt, net worth and debt/ equity ratios before and after the completion of the issue should be provided. The consultation paper also prescribes an illustrative format for the capitalisation statements.

B. Valuation of the units of the InvITs

1. Definition of 'valuer'

- InvIT Regulations define the term, 'valuer' as a person who is a registered valuer as per section 247 of the Companies Act, 2013, and has been appointed by the Investment Manager to undertake valuation of the InvIT assets. Until this section comes into force, a SEBI-registered merchant banker or chartered accountant having minimum experience of ten years can be a valuer.
- The consultation paper provides that until section 247 of the Companies Act, 2013 comes into force, the definition of a valuer under InvIT Regulations should be modified to include (i) either a chartered accountant, company secretary or cost accountant who is in whole-time practice, or a retired member of the Indian Corporate Law Service, or a person holding equivalent Indian or foreign qualification that the Ministry of Corporate Affairs may recognise; (ii) a SEBI-registered merchant banker who has employed persons having qualifications prescribed under (i) above; (iii) a member of the Institute of Engineers who is in whole-time practice; (iv) a member of the Council of Architecture or the Indian Institute of Architects; and (v) a person or entity possessing necessary competence and qualification in valuation as the Central Government may have notified.
- The persons specified in (i) to (v) should have not less than five years of continuous experience in valuation after

acquiring membership of the respective institutions.

2. Mandatory disclosures in the valuation report

- The consultation paper prescribes a minimum set of disclosures to be made in the valuation report (in addition to the disclosures prescribed in Schedule V of the InvIT Regulations).
- Further, a brief summary of the valuation should also be provided as part of the valuation report.

The takeaways

The SEBI has consistently followed a consultative approach in formulating regulations for InvITs as well as for Real Estate Investment Trusts in India. The release of this consultation paper is another step in this direction, as SEBI is seeking stakeholder comments before finalising guidance on disclosures in offer documents/ placement memoranda and valuation aspects for InvITs.

We would be happy to receive your views on the proposals made in the consultation paper. Kindly also let us know if you have any issues with respect to these proposals, and we will try to incorporate those in our comments to the regulator.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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