

# ***SEBI releases Consultation Paper on continuous disclosures to be made by InvITs***

June 17, 2016

## ***In brief***

The Securities and Exchange Board of India (Infrastructure Investment Trust) Regulations, 2014 (InvIT Regulations) provide that a publicly offered Infrastructure Investment Trust (InvIT) shall ensure that the disclosures in the offer document are in accordance with Schedule III of the InvIT Regulations and any circulars or guidelines issued by the Securities and Exchange Board of India (SEBI) in this regard.

In view of the above, SEBI constituted two committees to evaluate the continuous obligations of InvITs under the InvIT Regulations and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 (LODR Regulations) and the accounting norms for InvITs. The combined proposals of the above two committees have been set out in a consultation paper issued by SEBI on 15 June, 2016 and have been classified under the following heads:

- Part A: Continuous financial disclosures to be made by the InvITs
- Part B: Other continuous disclosures to be made by the InvITs
- Part C: Framework for calculation of Net Distributable Cash Flows

SEBI has solicited public comments on the consultation paper, which can be provided by 28 June, 2016.

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

## ***In detail***

*The proposals made in the consultation paper are summarised below:*

### ***Part A: Continuous financial disclosures***

#### ***Frequency of disclosures***

- The disclosures to the stock exchanges (SE) to be continued to be made on a half-yearly basis or should be reduced to a quarterly basis.

#### ***Time period for disclosures***

- Disclosures other than annual disclosures should be made to the SE within 45 days from the end of each quarter/ half year.
- Audited standalone Financial Statements (FS) should be submitted within 60 days from the end of the financial year (FY).

#### ***Financial statements to be disclosed***

- Annual FS should include

(i) Balance Sheet (ii) Statement of Profit and Loss (iii) Statement of Changes in Equity (iv) Statement of Cash Flows (v) Explanatory notes annexed to, or forming part of, statements in (i) to (iv).

- InvIT should submit FS on both standalone and consolidated basis.
- FS [(i) to (v) as mentioned above] of the investment manager and project manager should not be

required to be given by the InvIT unless their net worth is reduced by 50% as compared to their net worth as on the last FY end date.

#### *Audited or limited review of financial statements*

- InvIT should submit either half-yearly audited results or unaudited results subject to limited review by the statutory auditor along with limited review report.

#### *Accounting Standard to be followed*

- For InvITs, FS should be prepared in accordance with Indian Accounting Standards (Ind AS) converged with the International Financial Reporting Standards notified under the Companies (Indian Accounting Standards) Rules, 2015. InvIT should also follow the accounting standards prescribed by their sectoral regulators from time to time.
- For SPV, requirements for preparation of FS would be as applicable.
- For consolidation purposes, SPV to provide financial information/ data to InvIT in accordance with Ind AS.

#### *Line items for financial statements*

- For consistency and uniformity in the presentation of the FS, generic/ basic line items should be prescribed for each of the FS. Illustrative line items have been provided in the consultation paper.

#### *Manner of approval and authentication of financial statements*

- Financial results to be submitted to the SE should be signed by two designated personnel of the investment

manager certifying that the financial results do not contain any false or misleading statement or figures, and do not omit any material fact that makes the statements or the figures contained therein misleading.

- Thereafter, the chairman of the Board of Directors of the investment manager should sign the FS.

#### *Obligation to maintain proper books of accounts and records, documents, etc.*

- InvIT should maintain proper books of accounts, records and documents, etc. relating to a period of not less than eight FYs, or if the InvIT has been in existence for a shorter period, then for all the preceding years.

#### **Part B: Other continuous disclosures**

##### *Listing Agreement*

- InvIT should enter into a simplified listing agreement with the SE as specified in the SEBI Circular<sup>1</sup>.
- For compliance with listing conditions, instead of LODR Regulations, InvIT to follow InvIT Regulations.

##### *Disclosure of Related Party Transactions (RPTs)*

- In addition to Regulation 19 of the InvIT Regulations for RPTs, additional disclosures for RPTs have been proposed in the consultation paper.

##### *Disclosure of Unit holding pattern*

- Unit holding pattern should be disclosed separately for each class of unitholders, within such intervals and format as prescribed in the consultation paper.

#### *Prior Intimations and disclosure of material and price sensitive information*

- Two working days' prior intimation should be provided to the SE about the meeting of the Board of Directors of the investment manager where financial results, declaration of distributions, issue of any additional units, buyback of units, or proposal for voluntary delisting of units are to be considered.
- InvIT should disclose material and price sensitive information as prescribed in the consultation paper.

#### *Credit Rating*

- Every rating to be obtained by the InvIT under the InvIT Regulations with respect to units shall be reviewed once a year by a registered credit rating agency.

#### *Composition of Board of Directors of SPVs*

- Investment manager shall in consultation with the trustee, appoint one or more authorised representatives on the Board of Directors/ Governing Board of the SPV.
- The number of such authorised representatives would be determined on a pro-rata basis depending on the stake held in the SPV excluding directors nominated by the government or government undertaking for pro-rata calculation.

#### *Website of InvIT*

- InvIT should maintain a functional website that should be updated upto two days and should contain the prescribed information.

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<sup>1</sup> SEBI Circular dated 13 October, 2015

**Part C: Framework for Calculation of Net Distributable Cash Flows (NDCFs)**

- The consultation paper proposes a framework for the calculation of NDCFs for InvIT, both at the standalone SPV level as well as the consolidated InvIT level.
- Proposed framework for computation of NDCFs is intended to be a broad guidance for InvITs. However, the InvIT/ investment manager shall define NDCFs for itself separately in compliance with the Companies Act, 2013 or Limited Liability Partnership Act, 2008 or any Central Government Act, as applicable.

- The definition of NDCFs decided by the InvIT/ investment manager shall be disclosed in the offer document, and complied with consistently pursuant to listing.

***The takeaways***

SEBI has consistently followed a consultative approach in formulating regulations for InvITs as well as Real Estate Investment Trusts in India. The release of this consultation paper is another step in the same direction as SEBI is seeking stakeholder comments before finalising guidance on disclosure and other operational 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. We may 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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