
PwC ReportingInBrief

Continuous disclosures by infrastructure investment trusts registered under SEBI

July 2016



Background

In 2014, the Securities Exchange Board of India (SEBI) introduced infrastructure investment trust (InvITs) regulations, providing a regulatory framework for the registration and regulation of InvITs in India. The regulations prescribe conditions for InvITs making a public offer and private placement, investment conditions, distribution policy, eligibility of sponsor, trustee and asset manager, key rights and responsibilities of sponsor/trustee, etc.

As a continuous process to clarify various matters related to continuous obligations under the InvIT regulations and accounting norms, on 15 June 2016, SEBI released a consultation paper¹ with various proposals on continuous disclosures by InvITs and sought comments from

stakeholders such as the government, market participants, industry associations and regulatory bodies.

The consultation paper covers matters related to financial disclosures, other continuous disclosures related to the listing agreement, related party transactions, unit-holding pattern and framework for the calculation of net distributable cash flows (NDCFs).

The introduction of a consultation paper from SEBI is a positive development towards the implementation of InvIT regulations and will provide more clarity to companies that are planning/commencing the InvIT listing process.

This alert highlights the key proposals from the consultation paper.

¹ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1465984573906.pdf



Continuous financial disclosures

Key matters	Proposed changes
Frequency of disclosures to designated stock exchange	Regulation 10(22) of the InvIT regulations requires the minimum frequency of disclosure to be half yearly. Comments are sought to change the frequency of disclosure from half yearly to quarterly.

Comments

The reduced frequency of disclosures will assist users of financial statements in assessing the performance of InvITs on a regular basis. Further, SEBI may consider providing an option to submit unaudited half-yearly financial results (reviewed by auditors). This will ensure that disclosure norms for InvITs are consistent with those for other listed companies in India. It is also to be noted that though under regulation 18(6)(c), a listed InvIT is to distribute its net distributable cash flows at least every six months, consistent with section 123 of the Companies Act, 2013, on payment of interim dividends, there does not seem to be a requirement to have the interim accounts audited. SEBI may want to consider the same.

Time period of disclosures	<p>InvIT regulations do not specify the time period within which the disclosures have to be made to the stock exchange(s). Comments are sought on the following options for the timelines within which the disclosures to the stock exchange(s) have to be made:</p> <ul style="list-style-type: none"> • Other than annual disclosures – 45 days from the end of each quarter/half year as applicable • Audited stand-alone financial results for the year along with audit report – 60 days from the end of the financial year
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Comments

The time period within which disclosures have to be made by InvITs could be made consistent with the time period in the existing equity listing agreement for listed companies in India.

Composition of financial statements	<p>Annual financial statements to include the following:</p> <ol style="list-style-type: none"> Balance sheet; Statement of profit and loss; Statement of changes in equity; Statement of cash flows; Explanatory notes annexed to, or forming part of, any statements referred to above <p>Quarterly/half-yearly financial information to include the following:</p> <ol style="list-style-type: none"> Statement of profit and loss; Explanatory notes annexed to, or forming part of, any statements referred to above <p>InvITs will be required to submit the above consolidated and stand-alone financial statements/information.</p> <p>An investment manager and project manager will submit financial statements/information as mentioned above in case their net worth is reduced by 50% as compared to their net worth as on the date of the last annual financial year end.</p>
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Comments

It is to be noted that financial information will be required for both stand-alone and consolidated financial statements. SEBI may consider a proposal to allow InvITs to publish quarterly financial information on a consolidated basis only. The consolidated financial information of InvITs will provide the activities of an InvIT and its subsidiaries in a single report and will offer investors meaningful information on the overall performance of the InvIT along with its controlled special purpose vehicles (SPVs). This will also ensure consistency with the equity listing agreement for listed companies in India.

Audited or limited review financial statements	InvITs may submit either half-yearly audited results or unaudited results subject to a limited review by the statutory auditor, which shall be accompanied by the limited review report.
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Comments

SEBI's proposal on the submission of audited/unaudited financial results accompanied by a limited review report from the statutory auditor will be consistent with the requirements of the equity listing agreement for listed companies in India.

Key matters	Proposed changes
Financial reporting framework	<ul style="list-style-type: none"> • InvITs shall prepare financial statements in accordance with the Indian Accounting Standards converged with the International Financial Reporting Standards notified under the Companies (Indian Accounting Standards) Rules, 2015. • InvITs shall also follow the relevant accounting standards, as prescribed by their sectoral regulators from time to time, with respect to the projects being executed by them. • SPVs will prepare financial statements based on the applicable financial reporting framework, i.e. Ind AS or Indian GAAP. • For the purpose of consolidation with InvITs, SPVs will provide financial information/data in accordance with Ind AS.

Comments

The preparation of stand-alone and consolidated financial statements by InvITs under Ind AS is an important proposal. However, under the proposal, SPVs would continue to apply Indian GAAP based on the applicability criteria at the stand-alone SPV level. Preparation of financial statements by SPVs under Indian GAAP for stand-alone purposes and then under Ind AS for consolidated purposes will lead to additional time and effort, including a two-GAAP regime. Accordingly, SEBI may consider that SPVs also prepare financial statements under Ind AS. This will also ensure consistency with the Ind AS road map issued by the Ministry of Corporate Affairs (MCA) for corporates, which requires a subsidiary, JV and associate of the covered entity to also comply with Ind AS.

Line items for financial statements	The proposal provides generic/basic minimum line items for financial statements.
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Comments

SEBI's effort to provide generic/basic minimum line items for financial statements is welcome. Further, compliance with disclosure requirements of Ind AS will ensure consistency across InvITs. However, SEBI may consider clarifying that in case of any contradiction between Ind AS disclosure requirements and minimum line items, disclosure requirements per Ind AS will prevail.

Auditor's report	<p>The consultation paper proposes matters to be included in the audit report. In addition to a true and fair opinion on the balance sheet, statement of profit and loss, cash flow statement and statement of changes of equity, the auditor will also be required to provide a true and fair view on the following:</p> <ul style="list-style-type: none"> • The statement of net assets at fair value gives a true and fair view of the net assets attributable to the unitholders per unit at the balance sheet date. • The statement of total return at fair value gives a true and fair view of the total return to the unitholders for the year/period ended at the balance sheet date. <p>The above matters will be applicable to both stand-alone and consolidated financial statements of InvITs.</p>
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Other matters to be followed while preparing the financial statements	<ul style="list-style-type: none"> • Explanations and justification for project manager and investment manager fees charged • Financial statements to include comparatives of immediately preceding reporting period except in case of first financial statements of the InvIT after incorporation • Material items to be disclosed as part of financial statements and materiality will be determined based on size or nature of the item or a combination of both • Component of half-yearly financial statements covered under Ind AS 34, 'Interim financial reporting', shall be prepared in accordance with Ind AS in so far as these relate to the preparation of condensed financial statements • Disclosures related to contingent liabilities and commitments • Related party disclosures under Regulation 19 of InvIT regulations to be made in addition to disclosures under Ind AS • Disclosure of earning per unit in accordance with Ind AS 33, 'Earnings per share' • Disclosure on market value of the units traded on all the designated stock exchanges where InvIT is listed • Presentation of profit/(loss) on sale/redemption of investments and profit/(loss) on sale of infrastructure assets on a gross basis • In addition to consideration of materiality, item of income or expenditure which exceeds 1% of the revenue from operations or 10,00,000 shall be disclosed separately either on the face of financial statements or in the notes.
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Other continuous disclosures by InvITs

Key matters	Proposed changes
Listing agreement	Comments are sought for InvITs to enter into a simplified listing agreement with the designated stock exchange, as specified under the SEBI circular dated 13 October 2015. However, with respect to compliance with the listing conditions, instead of following the SEBI (Listing Obligations and Disclosure Requirements), InvITs shall follow the InvIT regulations.
Disclosure of related party transactions	InvIT regulations contain comprehensive provisions on related party transactions and their disclosure to designated stock exchange(s) and unitholders. SEBI has sought comments to include additional disclosures on transactions related to the acquisition/disposal of assets with related parties or any other matter requiring unitholder approval.
Disclosure of unit-holding pattern	In order for unitholders to understand the holding pattern in InvITs, SEBI has sought comments on the disclosure of the unit-holding pattern for each class of unitholders such as Indian/foreign sponsors and sponsor groups and institutions/non-institutional public holding, as per the specified format in the consultation paper.
Prior intimations and disclosure of material and price-sensitive information	Proposal to intimate the stock exchanges two days prior to the meeting of the board of directors of the investment manager for disclosure on material and price-sensitive information. Prior intimation will be required for financial results, annual/half-yearly distribution, issue of additional units, buy-back of units and voluntary delisting from stock exchange(s). InvITs shall also disclose material and price-sensitive information on the following: <ul style="list-style-type: none"> • initiation or material update of any litigation in relation to any infrastructure asset of the InvIT; • appointment or removal of the investment manager, project manager, auditors or valuer; • any material amendment to the trust deed or investment management agreement; • any change in investment strategy from the last disclosed investment strategy, along with the reasons for the same and any change to the existing right of first refusal/offer granted to the InvIT.
Credit rating	InvIT regulations provide for the requirement of a credit rating from a credit rating agency registered with SEBI. A proposal has been made by SEBI for review of credit ratings once a year by the registered credit rating agency.
Composition of the board of directors of SPVs	InvIT regulations provide that an SPV means any company or limited liability partnership (LLP) in which the InvIT holds or proposes to hold a controlling interest and not less than 50% of the equity share capital. Currently, InvIT regulations provide governance requirements for SPVs. However, certain additional corporate governance requirements have been proposed, i.e. the appointment of one or more authorised representative on the board of directors/governing board of the SPV by the investment manager, in consultation with the trustee.



Framework for calculation of NDCFs

InvIT regulations provide the distribution policy to be followed by SPVs and InvITs. Under the regulations, at least 90% of the NDCFs of the SPVs will be distributed to an InvIT in proportion to its holding pattern subject to the applicable provisions in the Companies Act, 2013, or Limited Liability Partnership Act, 2008. Further, an InvIT will distribute not less than 90% of its NDCFs to unitholders.

In the absence of a definition of NDCFs, SEBI has proposed a broad framework under which NDCFs will be calculated by SPVs and InvITs for distribution. The framework includes the following adjustments to profit after tax as per the profit and loss account to determine NDCFs:

- depreciation and amortisation as per the profit and loss account
- loss/gain on sale of infrastructure assets
- adjustments to proceeds from the sale of infrastructure assets or equity shares or interest in the SPV
- proceeds from the sale of infrastructure assets not distributed pursuant to an earlier plan to reinvest, if such proceeds are not intended to be invested subsequently

- decrease/increase in the carrying amount of an asset or liability recognised in the profit and loss account on the measurement of the asset or liability at fair value
- interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight line basis, etc.
- repayment of external debt (principal)/redeemable preference shares/debentures, etc., if deemed necessary by the investment manager

Comments

We note that the calculation in the proposal to determine NDCFs excludes any decrease/increase in the carrying amount of an asset or liability recognised in the profit and loss account on the measurement of the asset or liability at fair value, interest cost as per the effective interest rate method, etc. The exclusion of key Ind AS adjustments impacts the determination of the net performance of InvITs and consequential net distributable cash flows. This matter may require more deliberation, including comparison with international best practices.





Consolidation of SPVs

As per the InvIT regulations, InvITs are required to hold the infrastructure assets directly or through an SPV which can be a company or an LLP. The consultation paper states that the consolidation of SPVs shall be applicable only when the InvIT holds a stake in the SPVs.

InvITs will be required to follow Ind AS for preparing consolidated financial statements, and the principles concerning consolidated financial statements under Ind AS are set out in Ind AS 110, 'Consolidated financial statements'. Ind AS 110 has a single definition of control and the objective is to establish principles for presenting and preparing consolidated financial statements when an entity controls one or more entities. Ind AS 110 sets out the requirements

for when an entity needs to prepare consolidated financial statements, defines the principles of control, explains how to apply the principles of control and explains the accounting requirements for preparing consolidated financial statements.

Comments

InvITs may also need to consider the applicability of 'investment entity' guidance under Ind AS 110 and consequential exemption from consolidating underlying SPVs, if certain criteria are met. In such situations, investment entities would generally account for the underlying investments at fair value through profit and loss. This may require further consideration.

Publications

Previous publications

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Ind-AS implementation: A step closer¹⁹⁷ / New paradigm of reporting on internal financial controls¹⁹⁸ / Companies Act, 2013 - Impact on controls of outsourced processes¹⁹⁹ / Disclosure of uncertainties about an entity's ability to continue as a going concern²⁰⁰ / Recent technical updates²⁰¹

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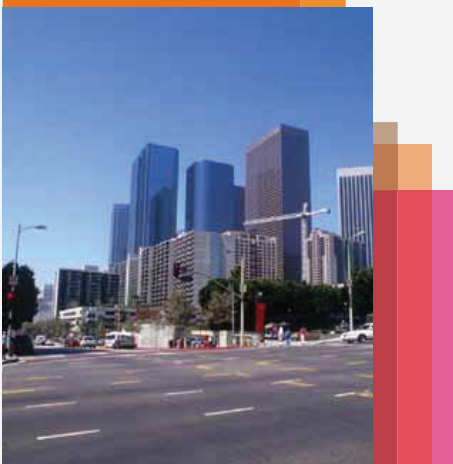
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Concepts and principles of Ind AS in a nutshell



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