

### **Approval of SEBI (Infrastructure Investment Trusts) Regulations, 2014**

SEBI, in its board meeting dated August 10, 2014 has approved the draft regulations called SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") released on July 17, 2014 following the 2014-15 budget announcement made by Finance Minister advocating establishment of such trusts. This move will provide a framework for registration and regulation for setting up and listing of Infrastructure Investment Trusts ("**InvITs**") in India.

The key features of the InvIT Regulations as approved are as follows:

- a) **Definition of "Infrastructure"**: The term "Infrastructure" is as defined by Ministry of Finance vide its notification dated October 07, 2013 and the updated master list of Infrastructure sub-sectors is divided into five broad categories namely, transport, energy, water and sanitation, communication including telecom network, tower and other services and social and commercial infrastructure.
- b) **Registration**: InvITs shall be set up as a trust under the Indian Trust Act, 1882 and shall be registered with SEBI under the InvIT Regulations.
- c) **Parties to InvIT**: The team shall comprise of parties such as Trustee, Sponsor(s), Investment Manager and Project Manager. The Trustee needs to be independent and shall be none other than a SEBI registered debenture trustee who is not an associate of the Sponsor/Manager.
- d) **Investment conditions**:
  - (i) InvITs shall invest in infrastructure projects, either directly or through Special Purpose Vehicle ("**SPV**") except in case of Public-Private Partnership ("**PPP**") projects, where investments shall only be through SPV.
  - (ii) An InvIT shall hold controlling interest and more than 50% of the equity share capital or interest in the SPV, except where the same is not feasible because of a regulatory requirement or requirement emanating from the concession agreement. In such cases the Sponsor shall enter into an agreement with the InvIT, to ensure that no decision taken by the Sponsor, including voting decisions with respect to the SPV, are against the interest of InvIT/ its unit holders.

e) **Offer of units of InvIT and Listing:**

- (i) Post registration with SEBI, InvITs can raise capital from both domestic and foreign investors. However, foreign investment is subject to lock-in of three years though trading among foreign investors within lock-in period is permitted. Such lock-in requirement is post registration with SEBI in case of raising capital from foreign investor pursuant to initial offer of units or follow-on offer as the case may be.
- (ii) The Sponsor(s) of an InvIT shall, collectively, hold not less than 25% of the total units of the InvIT on post issue basis for a period of at least 3 years, except for the cases where a regulatory requirement/concession agreement requires the Sponsor to hold a certain minimum percent in the SPV. In such cases the consolidated value of such Sponsor holding in the underlying SPV and in the InvIT shall not be less than the value of 25% of the value of units of InvIT on post-issue basis.
- (iii) Listing shall be mandatory for both publicly offered and privately placed InvITs and InvIT shall make continuous disclosures in terms of the listing agreement.
- (iv) The proposed holding of an InvIT in the underlying assets shall be not less than Rs 500 crore and the offer size shall not be less than Rs 250 crore at the time of initial offer of units.
- (v) The detailed provisions for related party transactions valuation of assets, disclosure requirements, rights of unit holders, etc. are provided in the Regulations. However, for any issue requiring unit holders' approval, the voting by any person who is a related party in such transaction as well as its associates shall not be considered.

f) **Income distribution:**

- (i) The aggregate consolidated borrowing of the InvIT and the SPVs shall never exceed 49% of the value of InvIT assets. Further, for any borrowing exceeding 25% of the value of InvIT assets, credit rating and unit holders' approval is required.
- (ii) An InvIT which proposes to invest at least 80% of the value of the assets in the completed and revenue generating Infrastructure assets, shall:
  - a) raise funds only through public issue of units.
  - b) have a minimum 25% public float and at least 20 investors.
  - c) have minimum subscription size and trading lot of Rs 10,00,000 and Rs 5,00,000 respectively.
  - d) distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, at least on a half yearly basis.
  - e) through a valuer, undertake a full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.
- (iii) A publicly offered InvIT may invest the remaining 20% of the value of the assets in under construction infrastructure projects and other permissible investments, as defined in the InvIT Regulations. However, please note that the investments in

under construction infrastructure projects is further subject to a maximum permissible limit of 10% of the value of the assets with the remaining 10% available for investment in other permissible investments.

- (iv) An InvIT which proposes to invest more than 10% of the value of their assets in under construction infrastructure projects shall:
- a) raise funds only through private placement from Qualified Institutional Buyers and body corporates.
  - b) have minimum investment and trading lot of Rs. 1 crore.
  - c) have minimum of 5 investors with each holding not more than 25% of the units.
  - d) distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, at least on a yearly basis.
  - e) undertake full valuation on yearly basis and declare NAV within 15 days from the date of such valuation.
- (v) Investments by InvITs in under construction projects for PPP project(s) is subject to completion of at least 50% of the construction of the infrastructure project as certified by an independent engineer or the project having expended not less than 50% of the total capital cost set forth in the financial package of the relevant project agreement. For Non-PPP project(s), the condition is that the Infrastructure Project has received all the requisite approvals and certifications for commencing construction of the project.

### **IndusLaw Quick View:**

*InvITs will enable infrastructure developers to monetize the infrastructure assets, helping them use proceeds for completing projects which is more often than not stalled for want of funds. Investments in InvITs will provide liquidity to the investors as these trusts would be listed and traded on a stock exchange. Further, the tax amendments as contemplated to be effective October 1, 2014 still stipulate the final incidence of taxation of interest income in the hands of the unit holders. While the budget 2014 promises that InvITs will enjoy tax pass through status except in cases of capital gains on disposal of assets of such InvITs, the regime is likely to be effective only from October 1, 2014. We hope the amendments are installed in the most expeditious manner without any further delay thereby attracting more investments to carry out the mired infrastructure projects in the country.*



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