



Consultation paper for amendments to the SEBI (Infrastructure Investment Trusts) Regulations, 2014

Objective:

1. To solicit the comments/views from public on suggestions pertaining to making amendments/providing clarifications to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (hereinafter "InvIT Regulations").

Background:

2. SEBI InvIT Regulations were notified on 26th September, 2014, thereby providing a regulatory framework for registration and regulation of InvITs in India. The Regulations, inter alia, provide for conditions for making a public offer and private placement, initial and continuous disclosures, investment conditions, unit-holder approval requirements, related party disclosures, etc.
3. Government of India, in the Budget for FY 2014-15 introduced a separate chapter on the Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) (collectively referred in the budget as "Business Trusts") in the Income Tax Act, 1961, thereby introducing various measures for Business trusts in the tax law. Further, in the Budget for FY 2015-16, government provided clarity on certain other tax aspects such as clarity on capital gains, MAT, etc. for Business Trusts.
4. SEBI, in its discussions with the industry and in various representations, has received suggestions for making amendments/providing clarifications with respect to the InvIT Regulations. Based on the suggestions, certain amendments/clarifications are proposed to the InvIT Regulations as under:

Proposals:

5. Allowing two level SPVs for InvITs

5.1. Regulation 2(1)(zy) of InvIT regulations define a SPV as
"SPV" or "special purpose vehicle" means any company or LLP,-

(i) in which the InvIT holds or proposes to hold controlling interest and not less than fifty per cent. of the equity share capital or interest:

Provided that in case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions under proviso to sub-regulation (3) of regulation 12;

(ii) which holds not less than ninety per cent. of its assets directly in infrastructure projects and does not invest in other SPVs; and

(iii) which is not be engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects;

Therefore, as per the current regulations InvITs can either hold infrastructure assets either directly or through an SPV, which InvIT holds control in.

5.2. It has been represented that infrastructure assets in India are usually held through different Special Purpose Vehicles (SPVs), where the promoters of such SPVs create separate holding companies (Holdcos) which in turn hold stake in the underlying SPVs. Thus, the sponsors may have separate Holding Companies (“Holdcos”) which hold multiple SPVs which have projects of a particular category. For instance, some companies hold under construction projects in SPVs below a Holdco but have a separate Holdco for SPVs with operational projects/ Assets. Thus it has been requested that InvITs be allowed to invest in infrastructure projects through SPVs which in turn hold stake in other SPVs which ultimately hold the infrastructure assets.

5.3. The rationale given by industry for necessitating such change are as under:

- a) In Infrastructure sector, specifically for PPP projects, certain concession agreements do not allow for direct change in control in SPV which holds the assets, thereby making it possible to transfer shares at holding company level only.
- b) Certain contracts for example power purchase agreements in power sector require consents for direct change of control which may be time consuming and not efficient.
- c) A large proportion of the infrastructure projects in India are financed by Indian financial institutions on a project finance basis where lenders require a pledge on the shares of the SPV. In such cases, if the SPV is held directly

by the InvIT, the lenders would want pledge of SPV shares held by the InvIT. This might not be attractive for InvIT investors.

- d) There are also concerns of tax inefficiencies, lender considerations, difficulties in exit for financial investors, etc. if investment in the HoldCo is not allowed.

5.4. Based on the above, it is proposed to allow InvIT to invest in a Holdco, investing in other SPV(s) (“Underlying SPV”) subject to the following:

- a) the InvIT shall hold controlling interest and not less than fifty per cent of the equity share capital or interest in the HoldCo and the Holdco shall in turn hold controlling interest and not less than fifty per cent of the equity share capital or interest in Underlying SPV(s);
- b) No other shareholder or partner of the Underlying SPV(s) shall have any rights that prevent the InvIT and Holdco from complying with the provisions of these regulations;
- c) The investment manager, in consultation with the trustee, shall ensure that not less than one authorized representative of the HoldCo or the InvIT is appointed on the Board of directors or governing board of the Underlying SPV(s);
- d) The investment manager shall ensure that in every meeting including annual general meeting of the Underlying SPV(s), the voting of the HoldCo is exercised.
- e) All corporate governance norms shall be applicable at the Underlying SPV level in addition to the HoldCo.
- f) All responsibilities of the investment manager with respect to the SPVs shall apply at both the levels.
- g) All investment conditions and leverage requirements will apply at a consolidated level.
- h) The requirement of mandatory distribution of at least 90% of the distributable cash flows shall apply to the Underlying SPV(s). 100% of the net distributable cash flows of the HoldCo shall be distributed to the InvIT.
- i) All financial statements of the InvIT shall be consolidated with both the SPVs.

- j) The Holdco shall not be engaged in any other activity other than holding of the Underlying SPV(s).
- k) Any other conditions as the Board may deem necessary.

5.5. It is therefore proposed that express provisions may be provided in the InvIT regulations for allowing investments by InvIT in two level SPV structures and to amend the regulation 2(1)(zy) of InvIT Regulations and any other Regulation as may be necessary for the purpose.

6. Reducing sponsor commitment in InvIT

6.1. Regulation 12(3) of InvIT regulations states that

With respect to holding of units in the InvIT, the sponsor(s) together shall hold not less than twenty five per cent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units:

Provided that in case of PPP projects, in case such acquiring or holding is disallowed by government or under any provisions of the concession agreement or any other such agreement,—

(i) the sponsor may continue to maintain such holding at the SPV level;

(ii) the consolidated value of all such holdings at the SPV level and the value of the units of InvIT held by the sponsor shall not be less than the value of twenty five per cent. of the total units of the InvIT after initial issue of units on a post-issue basis;

(iii) such units of the InvIT and shares or interest in the SPV shall be held for a period of not less than three years from the date of the listing of units of the InvIT;

(iv) in case such holding of sponsor in the SPV results in the InvIT not having controlling interest and not having more than fifty per cent. shareholding or interest in the SPV, the sponsor shall enter into a binding agreement with the InvIT to ensure that decisions taken by the sponsor including voting with respect to the SPV are in compliance with these regulations and not against the interest of the InvITs or the unit holders and shall be subject to further guidelines as may be specified by the Board.

6.2. The present guidelines requires the sponsor(s) of the InvIT to hold, on a collective basis, not less than twenty five per cent of the total units of the InvIT

on a post-issue basis for a period of not less than 3 years from the date of the listing of such units.

6.3. In this regard, industry has represented following:

- a) Infrastructure assets are usually financed through debt, where the capital structure of the SPVs, executing such infrastructure projects, is generally debt heavy (as high as 75-80% of the total capital employed is debt) and the value of sponsors stake in the total capital structure in such SPVs (value of equity) is in minority value.
- b) High leverage at the Asset level leads to substantial cash flows being utilized towards servicing of the existing project finance debt. Since, InvITs are considered to be investment vehicles which provide stable cash flows to the investors, a capital structure with no or low leverage would ensure that interest which would have otherwise been paid to lenders is available for payment of yield to investors.
- c) Therefore, for such cash flows to be made available to the investors at InvIT level a significant portion of the existing debt at the Assets has to be retired. Therefore, in a scenario where a substantial portion of the existing debt at the Assets is replaced through primary issuance at InvIT, the value of the InvIT units on a post-issue basis would reflect a value equivalent to the sum of the market value of the equity capital of the Assets and the retired debt at the assets.
- d) Thus, the requirement for Sponsor to hold 25% of units at InvIT on a post-issue basis, may limit the monetization for sponsors and reduce release of capital for such sponsors and may not be lucrative for the existing set of sponsors. Further, in certain circumstances this may lead to sponsor putting money, out of its own pocket, in the InvIT so as to maintain the required 25% stake. This would be very onerous at the part of the sponsor.
- e) Thus, the minimum sponsor holding in the InvIT may be reduced to 10% so as to make it attractive for the sponsors to float such vehicles.

6.4. Therefore, it is proposed that Regulation 12(3) of the InvIT Regulations may be amended to allow following:

- a) sponsor(s) of the InvIT to hold not less than 10% of the total units of the InvIT on a post-issue basis.

- b) in case of PPP projects, where acquiring or holding of the stake at SPV level is disallowed by government or under any provisions of the concession agreement or any other such agreement, the consolidated value of sponsor holdings at the SPV level and the value of the units of InvIT held by the sponsor shall not be less than the value of 10% of the total units of the InvIT after initial issue of units on a post-issue basis;

Rest all other conditions, as have been specified in the regulations, shall remain unchanged.

Public Comments:

7. In order to take into consideration views of various stakeholders, public comments are solicited on the following issues:

7.1. Allowing InvITs to invest in two level SPV structure.

7.2. Relaxing the sponsor commitment in InvIT from 25% to 10%

8. Comments/ suggestions may be provided in the format given below:

Name of entity / person / intermediary/ Organization			
Sr. No.	Issue	Suggestions	Rationale

Public comments are invited on the consultative paper on the aforesaid proposals. Comments may be forwarded by email to Ms. Nila Salil Khanolkar, Assistant General Manager (nila@sebi.gov.in) or Mr. Naveen Gupta, Manager (naveeng@sebi.gov.in) **latest by September 06, 2015.**

Issued on: August 20, 2015