



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/DDHS/DDHS/CIR/P/2019/143

November 27, 2019

To,

All Infrastructure Investment Trusts (“InvITs”)

All Parties to InvITs

All Recognised Stock Exchanges

All Merchant Bankers

Dear Sir/ Madam,

Sub: Guidelines for preferential issue of units and institutional placement of units by a listed Infrastructure Investment Trust (InvIT)

Regulation 2(1) (zo) of Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”), defines a “preferential issue” as an issue of units to a select persons on a private placement basis.

This circular details the guidelines in respect of a preferential issue of units and institutional placement of units by a listed InvIT.

GUIDELINES

1. “Institutional Placement” shall mean a preferential issue of units by a listed InvIT only to Institutional Investors, as defined under InvIT Regulations.



Conditions for issuance

2. A listed InvIT may make a preferential issue of units or institutional placement of units under these guidelines, if it satisfies the following conditions:
 - 2.1. A resolution of the existing unitholders approving the issue of units, in accordance with Regulation 22(5) of the InvIT Regulations has been passed.
 - 2.2. Units of the same class, which are proposed to be allotted have been listed on a stock exchange for a period of at least six months prior to the date of issuance of notice to its unit holders for convening the meeting to pass the resolution in terms of clause 2.1 above:
Provided in case of issuance of units through “institutional placement” the minimum listing period required shall be 12 months.
 - 2.3. The InvIT has obtained in principle approval of the stock exchange(s) for listing of the units proposed to be issued under these guidelines.
 - 2.4. The InvIT is in compliance with all the conditions for continuous listing and disclosure obligations under the InvIT Regulations and circulars issued thereunder.
 - 2.5. None of the respective promoters or partners or directors of the sponsor(s) or investment manager or trustee of the InvIT is a fugitive economic offender declared under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018).
 - 2.6. The InvIT shall not make any subsequent institutional placement until the expiry of six months from the date of the prior institutional placement made pursuant to one or more special resolutions.

Manner of issuance of units

3. Any issuance of units under these guidelines shall be done in the following manner:



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- 3.1. The units shall be allotted in the dematerialized form only and shall be listed on the stock exchange(s) where the units of the InvIT are listed.
- 3.2. Any offer or allotment through private placement shall not be made to more than 200 investors (excluding institutional investors) in a financial year.
- 3.3. Other than to the extent of the issue of units that is proposed to be made for consideration other than cash, full consideration for the units issued shall be paid by the prospective allottees prior to the allotment of the units, through banking channels. All such monies shall be kept by the Trustee in a separate bank account in the name of the InvIT and shall only be utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.
- 3.4. The minimum allotment and trading lot for units issued shall be equivalent to the minimum allotment and trading lot as applicable to the units of the same class, under the extant provisions of the InvIT Regulations or circulars issued thereunder.
- 3.5. Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within seven working days from the date of allotment:
Provided that where the InvIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means within twenty days from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT and the investment manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.
- 3.6. The InvIT shall file an allotment report with SEBI within seven days of allotment of the units, providing details of the allottees and allotment made. Placement document, if applicable, shall also be filed with the Board along with the allotment report.



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- 3.7. The issue of units shall comply with the conditions and manner of allotment for preferential issue and institutional placement as provided in Annexure – I and Annexure – II & III, respectively.
4. The earlier circular no. SEBI/HO/DDHS/CIR/P/2018/89 dated June 5, 2018 stands repealed.
 5. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the InvIT Regulations.
 6. This Circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the sub-category “Circulars” under the category “Legal”.

Yours faithfully,

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Manner of preferential issue of units by a listed InvIT

1. Unit holders' approval

1.1. The issuer shall, in an explanatory statement to the notice for the general meeting proposed for passing the resolution in terms of guideline 2.1 above, make appropriate disclosures including the following:

1.1.1. Objects of the preferential issue;

1.1.2. NAV of the InvIT;

1.1.3. Maximum number of units to be issued;

1.1.4. Intent of the parties to the InvIT, their directors or key managerial personnel to subscribe to the issue;

1.1.5. Unitholding pattern of the InvIT before and after the preferential issue;

1.1.6. Time frame within which the preferential issue shall be completed;

1.1.7. Identity of the natural persons who are the ultimate beneficial owners of the units proposed to be allotted and/or who ultimately control the proposed allottees:

Provided that if there is any listed company, mutual fund, scheduled commercial bank, insurance company registered with the Insurance Regulatory and Development Authority of India in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

Explanation: For the purpose of identification of the ultimate beneficial owners of the allottees, where the allottees are institutions/entities, the identification of such ultimate beneficial owners, shall be in accordance with the guidelines prescribed by the Board, if any.



2. Pricing of Units

A. Pricing of frequently traded units

2.1. Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:

2.1.1. the average of the weekly high and low of the volume weighted average price of the related units quoted on the relevant stock exchange during the twenty six weeks preceding the relevant date; or

2.1.2. the average of the weekly high and low of the volume weighted average prices of the related units quoted on the relevant stock exchange during the two weeks preceding the relevant date.

2.2. A preferential issue of units to institutional investors, not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the volume weighted average prices of the related units quoted on a recognised stock exchange during the two weeks preceding the relevant date.

Explanation:

- a) "Relevant date" for the purpose of clauses related to preferential issue of units shall be the date thirty days prior to the date on which the meeting of unitholders is held to consider the preferential issue. Where the relevant date falls on a weekend or a holiday, the day preceding the weekend or the holiday will be reckoned to be the relevant date.
- b) "Relevant stock exchange" shall mean the recognised stock exchange in which the units of the InvIT are listed, and in which the highest trading volume in respect of the units of the InvIT has been recorded during the preceding twenty-six weeks prior to the relevant date.
- c) "Frequently traded units" for the purpose of this circular shall mean the units of the InvIT, in which the traded turnover on any recognised stock exchange during



the twelve calendar months preceding the relevant date, is at least ten percent of the total number of issued and outstanding units of such class of units of the InvIT: Provided that where the number of issued and outstanding units of a particular class of units of the InvIT is not identical throughout such period, the weighted average number of total units of such class of the issuer shall represent the total number of units.

B. Pricing of infrequently traded units

2.3. Where the units of an InvIT are not frequently traded, the price determined by the InvIT shall take into account the NAV of the InvIT based on a full valuation of all existing InvIT assets conducted in terms of InvIT Regulations.

3. Lock-in

3.1. The units allotted to sponsor(s) shall be locked-in for a period of three years from the date of trading approval granted for the units:

Provided that units not more than that required to be held in terms of Regulation 12(3) of the InvIT Regulations shall be locked-in for three years from the date of trading approval:

Provided further that units allotted in excess of the units required to be held in terms of Regulation 12(3) of the InvIT Regulations shall be locked-in for one year from the date of trading approval.

Explanation: For the computation of the lock-in requirement, the units held by the sponsor(s) and locked-in in the past in terms of Regulation 12(3) of the InvIT Regulations or these guidelines shall be taken into account.

The units locked-in pursuant to Regulation 12(3) of the InvIT Regulations shall not be put under fresh lock-in again, even though they are considered for computing the lock-in requirement, in case the said units are free of lock-in at the time of the preferential issue.



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- 3.2. The units allotted to persons other than the sponsor(s) shall be locked-in for a period of one year from the date of trading approval for such units.
- 3.3. The entire pre-preferential issue unitholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval.

4. Allotment

4.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date.

4.2. Allotment pursuant to the unit holders' resolution shall be completed within a period of fifteen days from the date of passing of such resolution:

Provided that in case the approval of any regulatory, governmental or statutory body / agency is required, then in such cases the period of fifteen days will commence from the date of approval from such regulatory, governmental or statutory body/agency:

Provided further that where the InvIT fails to allot the units within the specified time, the monies received shall be refunded through verifiable means within twenty days from the date of the resolution, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT and the investment manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.



Manner of institutional placement of units by a listed InvIT

1. Placement document

- 1.1. The issuer shall appoint one or more merchant bankers, which are registered with the Board, as lead manager(s) to the issue.
- 1.2. The lead manager(s) shall, while seeking in-principle listing approval for the units, furnish to each stock exchange on which the same class of units of the issuer are listed, a due diligence certificate stating that the units are being issued under institutional placement and that the issuer complies with requirements of these guidelines, and also furnish a copy of the preliminary placement document along with any other document required by the stock exchange.
- 1.3. The lead manager(s) shall exercise due diligence and shall satisfy themselves with all aspects of the Issue including the veracity and adequacy of disclosures in the offer document.
- 1.4. The institutional placement shall be made on the basis of a placement document which shall contain all material information, including disclosures as specified in Annexure - III.
- 1.5. The preliminary placement document and the placement document shall be serially numbered and copies of the same shall be circulated only to select investors.
- 1.6. The preliminary placement document and the placement document shall be placed on the websites of the relevant stock exchange(s) and of the issuer with a disclaimer to the effect that it is in connection with an institutional placement and that no offer is being made to the public or to any other category of investors.



2. Pricing of Units

A. Pricing of frequently traded units

2.1. Where the units of the InvIT are frequently traded, the institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

Provided that the InvIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in guideline 2.1.

Explanation: "relevant date" for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the investment manager decides to open the proposed issue.

B. Pricing of infrequently traded units

2.2. Where the units of the InvIT are not frequently traded, the price determined by the InvIT shall take into account the NAV of the InvIT based on a full valuation of all existing InvIT assets conducted in terms of InvIT Regulations.

3. Transferability

3.1. The units allotted through the institutional placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

4. Allotment

4.1. Allotment pursuant to the unit holders' resolution shall be completed within a period of 365 days from the date of passing of such resolution:

Provided that where the InvIT fails to allot the units within the specified time, the monies received shall be refunded through verifiable means within twenty days



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from the date of the closure of the issue, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT and the investment manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

4.2. No allotment shall be made, either directly or indirectly, to any institutional investor who is a sponsor(s) or investment manager, or is a person related to, or related party or associate of, the sponsor(s) or the investment manager



Disclosures to be made by the issuer

1. Disclaimer to the effect that the preliminary placement document and placement document relates to an issue being made to institutional investors under the InvIT Regulations and these guidelines and that no issue is being made to the public or any other class of investors.
2. Market Price Information
 - 2.1. Disclose particulars of:
 - i. high, low and average market prices of units of the InvIT during the preceding three years or since the date of listing, as applicable, until the date of the preliminary placement document and placement document;
 - ii. monthly high and low prices for the six months preceding the date of filing of the preliminary placement document and placement document, as applicable;
 - iii. number of units traded on the days when high and low prices were recorded in the relevant stock exchange during period of (a) and (b) above, and total volume traded on those dates;
 - 2.2. The stock market data specified in paragraph 2.1 above shall be shown separately for periods marked by a change in capital structure, with such period commencing from the date the concerned stock exchange recognizes the change in the capital structure
 - 2.3. The market price immediately after the date on which the resolution of the board of directors of the investment manager of the issuer approving the institutional placement was passed.
 - 2.4. Valuation report which forms the basis for calculation of issue price for infrequently traded units.(if applicable)
3. The preliminary placement document and placement document shall contain the disclosures as specified under schedule III of the InvIT Regulations in the following manner:



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- a) The disclosures as per clauses 1, 2, 3, 5, 6, 7(a), 8, 12, 13, 14, 15, 16, 17 and 19 shall be made in the preliminary placement document and placement document.
- b) The disclosures in clause (a) above may be incorporated by reference to disclosures made in any previous offer document or placement memorandum or placement document or annual report duly published by the InvIT:

Provided that the link(s) to such document wherever available, including on the website of the issuer, stock exchanges or SEBI, shall also be provided.

Provided further that any modification/update in the information provided in such documents shall be suitably incorporated in the disclosure document.

4. Terms of the issue:

- a) Objects of the issue.
- b) If the objects of the issue involve financing of any new asset(s), description of such asset(s) as per disclosures required under clause 6 of the Schedule III of the InvIT Regulations.
- c) If the objects are not being financed solely through the issue proceeds, the details of other financing arrangements for fulfilling the objects of the issue.

5. Related Party Transactions:

- a) Disclosure as per clause 9 of the Schedule III of the InvIT Regulations, which may be incorporated by reference to disclosures made in any previous offer document or placement memorandum or placement document.
- b) Any disclosures made regarding related party transactions shall also be incorporated by reference to such disclosures.
- c) Link(s) to document(s) at (a) and (b) above wherever available, including on the website of the InvIT, stock exchanges, shall be provided.

6. Valuation:

- a) Summary of valuation of the assets proposed to be financed through proceeds of the issue



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- b) Valuation methodology.
 - c) Frequency of valuation and declaration of NAV.
 - d) Any disclosures made regarding valuation since the initial offer shall also be incorporated by reference to such disclosures.
 - e) Link(s) to document(s) at (d) above wherever available, including on the website of the InvIT, stock exchanges, shall be provided.
 - f) The valuation report of the asset to be financed through proceeds of the issue, if any, shall be provided along with the preliminary placement document and placement document.
7. Financials:
- a) Disclosure as per clauses 11(a) to 11(c) and 11(e) to 11(f) of the Schedule III of the InvIT Regulations:

Provided if the InvIT is undertaking/ has undertaken any acquisition of any material asset(s), the disclosures as per clause 11(b) should be prepared on a pro forma basis certified by statutory auditors of the InvIT, taking into account the financials of the asset(s) being acquired/already acquired.
 - b) Disclosure as per clause (a) above may be incorporated by reference to any public disclosures of financials made under the InvIT Regulations or any circular issued thereunder, along with link(s) to such disclosure(s) wherever available, including on the website of the InvIT, stock exchanges.
8. Distribution including the manner of calculation of the net distributable cash flows, history of distributions made in the last three financial years or from the date of listing of the InvIT and the policy, if any.
9. Other disclosures:
- a) Unit holding pattern
 - b) Review of Credit Rating
 - c) Grievance redressal mechanism
 - d) The disclosures in clause (a), (b) and (c) above may be incorporated by reference to any public disclosures made under the InvIT Regulations or any circular issued thereunder, along with link(s) to such disclosure(s) wherever available, including on the website of the InvIT, stock exchanges.
10. Declarations (to be signed by the board of directors of the investment manager and the trustee)