

# Analysis

## SEBI released draft regulations for Infrastructure Investment Trusts

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Propelling the development of the infrastructure sector is key to the growth of any economy and is one of the critical agenda items in our 5 year plans. The estimated fund requirement for the infrastructure development is Rs. 65 lakh crores according to the 12<sup>th</sup> five year plan. The importance of the sector is well sensed with the regulatory relaxations and special focus that the sector gets. Time and again regulators have tried to incentives the sector and channelize funds whether it has been through setting up Infrastructure debt funds – Mutual Funds or Cat I AIF or relaxation in the public offer and listing requirements, financial institutions increased concentration limits, tax incentives and more.

The infrastructure sector in India for last couple of years has been going through a rough patch and has been fund starved. Several of the projects are either delayed or stressed for myriad reasons. The intent of setting up the infrastructure investment trusts (InvIT) was to provide additional structures for financing the needs of the sector, refinancing the existing infrastructure projects, free up the held up case in the projects or facilitate take-out financing for the lenders. In this regard SEBI had released a consultation paper<sup>1</sup> on InvITs on 20<sup>th</sup> December, 2013.

Thereafter the Union Budget for 2014-15 catering to the needs of the infrastructure sector announced for a pass-through status to Infrastructure Investment Trusts (InvITs). The tax incentives were provided to InvITs to be able to attract long term investments from various sources of funds other than banks. Within a week from the budget recommendations, SEBI has released the draft SEBI (Infrastructure Investment Trusts) Regulations, 2014<sup>2</sup> on 18<sup>th</sup> July, 2014.

Some of the salient features of the draft regulation are as below:

- a. InvITs shall be making investment in infrastructure projects either directly or through SPVs. In case of PPP projects the investment will only be through the SPV mode.
- b. In case the InvITs intend to invest atleast 80% of the value of the assets in completed or income generating projects, such InvITs shall raise funds only through public issue of units with minimum subscription size and trading lot being Rs. 5 lacs. The remaining 20% may be invested in under construction projects and the other permissible investments with a cap of 10% investment in under construction projects.
- c. Any InvITs intending to raise more than 10% of its value of assets in under construction projects the InvITs will have to raise funds necessarily on private placement basis from QIBs and body corporates with minimum subscription size and trading lot being Rs. 1 crore. However such InvITs shall necessarily invest in

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<sup>1</sup> [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1387543144855.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1387543144855.pdf)

<sup>2</sup> [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1405596795567.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1405596795567.pdf)



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- one completed and revenue generating project and also not less than one pre-COD project.
- d. The proposed holding of an InvIT in the underlying assets should not be less than Rs. 500 crores.
  - e. The InvITs may have strategic investors such as banks, international multilateral institutions or FPIs, even before making offer of units, either through public issue or through private placement, provided that total of such investment should not exceed 5% of the size of the InvIT.
  - f. Mandatory listing of the units of InvIT, offered both publicly or through private placement.
  - g. Initial offer of units shall not be less than Rs. 250 crores.
  - h. InvIT to have one strategic investor investing not less than 5% of the size of InvIT.
  - i. Parties to the InvIT shall be:
    - a. **Sponsors** –
      - i. shall mean any company, LLP or body corporate who sets the InvIT and is also the lead member of the concessionaire SPV.
      - ii. Networth of the sponsor shall not be less than Rs. 10 crores. In case of PPP projects the eligibility criteria is defined as per the project documents.
      - iii. The sponsor should also have sound track record of development of infrastructure or fund management in the infrastructure sector.
    - b. Investors
    - c. **Trustees** –
      - i. Any person holding the assets of the InvIT in benefit for the unit holders. A trustee to an InvIT cannot be trustee to any other the InvIT or AIF engaged in infrastructure sector.
      - ii. The following can be trustees:
        - a. Any debenture trustee registered with SEBI and not an associate of the sponsor/ investment manager; or



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- b. An associate of the sponsor, investment manager having not less than 50% of its directors as independent and not related parties to InvIT.
- d. **Project Manager** – person responsible for achieving the project milestones or executing the project in accordance with the concession agreements or any other project documents.
- e. **Investment manager** –
  - i. any company, LLP or body corporate that manages the assets of the InvIT shall be the investment manager
  - ii. Should have networth of Rs 5 crores
  - iii. Not less than 5 years of experience in fund management in infrastructure sector
  - iv. Not less than 2 employees each with 5 years of infrastructure investment
  - v. Not less than 1 employee with atleast 5 years of experience in the sub-sector in which InvIT proposes to invest
  - vi. An office in India for carrying out operations of InvIT
- j. The aggregate borrowing of the InvIT and the underlying SPV shall not exceed 49% of the value of the InvIT assets. However this limit shall exclude any debt provided by the InvIT to the SPV.
- k. The related party transactions of the InvITs should be subject to the following conditions –
  - i. The transactions should be on arm's length basis and in accordance with the relevant accounting standards.
  - ii. Prior approval of the unit holders will be required if –
    - a. the total value of all the related party transactions, in a financial year, pertaining to acquisition/sale of assets or investments into securities exceeds 5% of the value of InvIT; or
    - b. the value of the funds borrowed from related parties, in a financial year, exceeds 5% of the total consolidated borrowings of the InvIT.
  - iii. Necessary disclosures shall have to be made.

The following shall be considered as related parties to the InvIT –



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- i. Parties to the InvIT;
- ii. Any unit holder holding, directly or indirectly, more than 20% of the units of the InvIT;
- iii. Associates, promoters, directors and partners of the persons mentioned at (i) and (ii) above.