



Consultation paper on Infrastructure Investment Trusts

1. Infrastructure is the cornerstone of development of any country. According to the 12th Five Year Plan, India requires an investment in Infrastructure sector of around Rs. 65 lakh crores over the duration of 2012-2017. A significant boost is required to the infrastructure sector in the country to help India achieve its target for the 12th Five Year Plan.
2. As the capital market regulator, SEBI actively encourages setting of varied frameworks for investment in infrastructure sector so that lack of structures for financing of infrastructure is not an impediment for the development of the sector. Steps taken by SEBI in the recent past towards this end include providing framework for various structures such as Infrastructure Debt Fund (IDF-MF) under SEBI (Mutual Funds) Regulations, 1996, Category I AIF – Infrastructure Fund under SEBI (Alternative Investment Funds) Regulations, 2012, etc.
3. In addition, SEBI has provided special concessions for companies in infrastructure sector for the purpose of issue and listing of securities under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. SEBI has also simplified the procedure for public issue of bonds which has facilitated bond offerings of several infrastructure companies. Additionally, SEBI also has a framework for public offer and listing of securitised debt instruments under SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008.
4. SEBI has received various suggestions for coming out with a framework for 'Infrastructure Investment Trusts'(InvITs) in the country. Based on suggestions received, SEBI is examining a structure which would provide an additional framework for investment in infrastructure in the country.
5. Globally as well, it has been observed that several financing/refinancing structures exist which have provided a boost to infrastructure sector/ specific sub-sectors including business trust model in Singapore and Hong Kong, Master Limited Partnerships in the USA, various securitisation structures, etc.
6. The structure for InvITs is broadly proposed to address one or more of the following concerns:
 - a. Given the challenging phase of infrastructure in the country today, InvITs are proposed to provide a suitable structure for financing/refinancing of infrastructure projects in the country.
 - b. Several existing infrastructure projects which are under development in India are delayed and 'stressed' on account of varied reasons including increasing debt finance costs, lack of/locked up equity of private investors in projects precludes them from an interest in undertaking new projects, lack of international finance flowing to Indian infrastructure projects, project implementation delays caused by various factors like global economic

slowdown, cost overruns, inability of concessionaire to meet funding requirements on time, etc. InvITs, as an investment vehicle, may aid:

- i. To provide wider and long-term re-finance for existing infrastructure projects
 - ii. To free up current developer capital for reinvestment into new infrastructure projects
 - iii. To refinance/takeout existing high cost debt with long-term low-cost capital and help banks free up/reduce loan exposure, and thereby create bank headroom for new funding requirements
 - c. There are several infrastructure companies whose funds are locked up in completed/substantially completed infrastructure projects which can otherwise be used for furthering infrastructure development in the country. InvITs may be an enabling vehicle for refinancing such assets as well as creating an investment option which may otherwise not be possible for smaller investors.
 - d. InvITs are proposed to be vehicles allowing for adding of projects in future in the same vehicle so that investors can benefit from diversification as well as growth in their portfolio.
 - e. InvITs are proposed to be suitable vehicles for attracting international finance into Indian infrastructure sector.
 - f. InvITs are proposed to enable the investors to hold a diversified portfolio of infrastructure assets.
 - g. InvITs are also proposed to bring higher standards of governance into infrastructure development and management and distribution of income from assets so as to attract investor interest
7. In line with the above, SEBI is exploring appropriate frameworks for introducing InvITs in the country. SEBI has received various proposals for such InvITs including bringing InvITs as a Mutual Fund, having a separate set of Regulations for InvIT, bringing InvITs under REIT framework, etc.
8. With respect to REITs, SEBI had earlier explored frameworks such as Real Estate Mutual Funds (REMF), guidelines for which were issued in 2008. However, no REMF scheme has been launched till now. Subsequently, SEBI had placed a consultative paper along with draft REIT Regulations on SEBI website for public comments on October 10, 2013. Several comments were received on the consultative paper that Infrastructure assets may be included as a part of the REIT framework. However, bringing Infrastructure Investment Trusts under REIT framework may not be entirely suitable since:
- a. The inherent nature of infrastructure assets is different from real estate assets. Further, every sub-sector has its own unique characteristics. Infrastructure assets, unlike real estate assets, have unique characteristics such as finite life in some cases (*At the end of concession period, assets may get transferred back to government*), only right to receive cash flows and no

asset ownership (*E.g. in cases of roads, the ownership of the road stays with the government and the developer only has right to receive cash flows*), involvement of various regulatory authorities, various aspects of concession agreement in case of PPP projects, etc.

- b. Infrastructure sector requires different types of disclosures, different restrictions on underlying assets, different leverage levels, etc. as compared to REITs considering the difference between underlying nature of the infrastructure assets and real estate assets for which a separate framework may be more desirable.
 - c. REIT is essentially a framework for completed and revenue generating assets. Including InvITs under REIT framework shall mean excluding other types of assets that may be added to the framework.
 - d. The International Advisory Board of SEBI has also recommended that framework for Infrastructure Investment Trusts may be kept separate from REITs.
9. Therefore, it is proposed that the InvITs may be treated as a separate framework as compared to REITs. The other proposals are enumerated as under, including their pros and cons for better comprehension of the proposals.

A. InvITs as Mutual Funds

The proposal suggests that Mutual Fund structure being an already established structure in India may be a suitable route for InvITs in the country. Framework for such InvITs may be through insertion of a separate chapter in the SEBI (Mutual Funds) Regulations, 1996 or through separate Regulations called SEBI (InvIT Mutual Funds) Regulations.

Salient features of the proposal are as under:

- a. Structure and registration of the InvIT**
 - (i) As any other Mutual Fund, an InvIT shall be set up as a Trust under the Indian Trusts Act, 1882. It shall have parties including Trustee, sponsor, project managers, independent engineers, etc.
 - (ii) The Trust shall initially apply for registration with SEBI as an InvIT and be required to fulfill eligibility criteria as specified in the proposed Regulations.
 - (iii) InvITs would acquire shares of SPVs in infrastructure projects mainly being PPP projects between government and private sector. The structure may also be expanded to include non-PPP projects.
- b. Parties to the InvIT**
 - (i) Sponsor – The Sponsor of an InvIT will be an Infrastructure Developer or a special purpose vehicle (SPV) holding a concession agreement. The Sponsor shall settle an InvIT Trust and transfer the majority shareholding of the SPV into the InvIT. The Sponsor will be required to maintain its commitment in an InvIT

structure, i.e. a 'skin-in-the-game', either through holding a minimum percentage of units in the trust or with a minimum shareholding in the SPV *plus* units in the Trust.

- (ii) Project Manager – The original concessionaire of an infrastructure project acquired by an InvIT will be appointed as a Project Manager by the InvIT with continuing responsibilities for achieving project milestones as originally envisaged in the concession documents. Proposed Regulations shall have a provision for replacing project managers for non performance.
- (iii) Independent Engineer – An Independent Engineer shall be retained as laid down in the existing Concession Agreements. It is advisable that parties to the concession agreement be retained as far as possible. In case of change, the procedure laid down in the concession agreement or, where applicable, guidelines of the authority would need to be followed.
- (iv) Advisory Board – The InvIT Trustee will be guided by an Independent Advisory Board comprising sector experts and other professionals to advise the Trustee in technical aspects, oversight of project managers and in other decision making.
- (v) Authority – as relevant for the specific infrastructure sector, (e.g. NHAI for roads) will be party to the new concession agreement between Sponsor Concessionaire, Trust, Project Manager and Authority

c. Investment Conditions and Pay-out Policy

- (i) Each InvIT shall mandatorily bundle a portfolio of infrastructure projects, a mix of pre-Commercial Operations Date ('COD') projects (at least 50% developed) and post-COD projects (already generating cash flows). It is advisable to have a minimum 2 or 3 such projects in an InvIT at the start.
- (ii) An InvIT set up by one developer can invest in projects not only from its own group companies but also from other project developers. Two or more developers can also jointly sponsor the creation of an InvIT.
- (iii) To start with, an InvIT shall initially be sector/sub-sector- specific (*E.g. can invest only in road projects*) and thus only infrastructure projects under one sector can be bundled together.
- (iv) The InvIT shall hold not less than 76% of the equity shares of the SPV. A second approach to creating an InvIT, through transfer of 100% of assets from an SPV to the InvIT Trust vehicle and dissolution of the SPV, could also be considered for non-PPP projects of the private sector subject to investible-grade ratings by RBI-notified Rating Agencies and further discussions with the relevant authorities.
- (v) InvITs shall invest at least 65% of net assets of the scheme in equity shares of companies in line with Equity Oriented Mutual Fund schemes.

- (vi) InvIT shall be required to distribute at least 90% of its net distributable income after tax to its investors.
- (vii) The InvIT shall be an active role in development of the underlying projects.

d. Offer of units of the InvIT and listing of units

- (i) After registration with SEBI, an InvIT shall raise funds by issuing units to investors through an initial offer and may subsequently raise further funds through follow-on offers. InvITs shall be allowed to raise funds from both domestic and foreign investors. All non-resident investment in the InvIT units would, however, be subject to a lock in period of three years. However, all non-resident investors can trade amongst themselves within this lock in period of three years.
- (ii) Part of the funds raised by an InvIT will be deployed for buying out minimum 76% equity shares in the SPV, with the balance funds to be utilised for refinancing SPV debt. An InvIT will earn interest income from the SPV on the loan provided by the InvIT which will form part of the InvIT's net distributable income to be paid out to investors. Timelines for share transfer post closure of fund raising process to be specified in the proposed regulations.
- (iii) General procedure for initial/follow-on offer, filing of offer document/follow-on offer document, allotment and listing of units (if required) will be specified in the proposed regulations to be drafted by SEBI. Detailed disclosures required in the offer document / follow-on offer document shall also be specified in the regulations.
- (iv) Units of an InvIT may be listed on the stock exchange. While listing is not mandatory, listing of MF units will allow certain taxation benefits. Once units of the InvIT are listed, it shall continue to be listed on the exchange unless delisted in accordance with the provisions for delisting to be specified in the proposed SEBI regulations.

e. Valuation

- (i) For acquisition of shares of the SPV, valuation would be based on the Discounted Cash Flow (DCF) method. An InvIT would acquire a post-COD project from a developer at a discount and a pre-COD project from a developer at a deeper discount rate, subject to negotiations and a shadow book-building exercise with potential investors.
- (ii) Post acquisition of Infrastructure Assets – To ensure an accurate valuation of underlying InvIT assets, a full valuation will be required to be undertaken, including physical inspection, at least once a year. Further, a six monthly valuation update capturing key changes in the previous 6 months would also be required. Consequently, the net asset value (NAV) shall be declared at least once a year. Provisions to be specified for valuation in case of any material developments.

f. Disclosure and other requirements

- (i) To ensure transparency and governance in an InvIT structure, detailed disclosure requirements shall be specified in the proposed regulations, which will be not be inferior to those required under the current contractual and statutory requirements stipulated in the contractual documents (model bidding documents).
- (ii) A prospectus / offer document will mandatorily be developed by the InvIT, with disclosure requirements to be as specified by SEBI in the proposed regulations. Further, minimum disclosures have also been specified for the annual and half-yearly reports to be sent to investors.
- (iii) The trust agreement will include the class of beneficiaries. The investors to the InvIT would be the beneficiaries to the Trust. The Agreement would also include detailed provisions setting forth the purposes of the InvIT and the authority conferred to the trustees.
- (iv) The Concessionaire (the originator), also appointed as Project Manager shall carry out development and operations of the Trust assets as also provide management and collection services with respect to the receivables transferred to the Trust, with these services provided under service agreements. InvIT would enter into all financing agreements and other documents. If the financing is to be obtained through the issuance of securities, a prospectus would need to be prepared and approved by SEBI.
- (v) Safeguards will be built in to ensure that the entity acting as the Trustee accounts for the rights transferred and maintains them separate from other assets it may hold. It will also be ensured that the assets that the InvIT holds by virtue of a trust agreement are dedicated exclusively to the specific purposes of the trust, and that they are not available to satisfy other liabilities of the entity acting as trustee
- (vi) Certain event-based disclosures shall also be specified. Further, the InvIT shall additionally be bound by periodical disclosure requirements required under the listing agreement with the exchanges
- (vii) There will be no limits on gearing of an InvIT. However, for qualification as an equity-oriented mutual fund, the deployment of funds raised by the InvIT shall, overall on an annual basis, necessarily have to ensure that at least 65% is deployed in the equity of the underlying assets.

Advantages of the proposal:

- (i) The proposal is expected to provide a boost to refinancing of stressed and delayed projects in the country as well as providing exit to developers/lenders of existing completed projects thereby freeing up developer capital/bank loan exposure for financing and developing new projects.
- (ii) The proposal is expected to attract international finance in the infrastructure sector in India. Further, the proposal, by mandating bundling of completed and

under-construction projects, shall also provide a risk-diversified portfolio for the investors.

- (iii) Mutual fund is an established structure and including InvITs as Mutual Funds would enable easy association of the investors with the vehicle.
- (iv) With other enabling frameworks pertaining to Mutual Funds already in place including framework for foreign investments, taxation framework, frameworks allowing institutional investors such as Banks, insurance companies and pension funds to invest in Mutual Funds, etc., further amendments required in such other laws would be marginal.
- (v) InvITs as Equity Oriented Mutual Funds will have tax efficiencies built-in for the benefit of the investors.

Possible impediments in the proposal:

- (i) The nature of InvIT, being different from general nature of mutual funds, conditions applicable to general mutual funds may not be suitable for InvITs considering different objectives, structure, nature of assets, investments, parties involved, disclosures, etc.
- (ii) The proposed InvIT framework differs from mutual funds in terms that it is essentially a refinancing vehicle for existing identified infrastructure assets and will be set up primarily to buy out stakes in sponsor assets. Further, InvITs also differ from general mutual funds in aspects such as investment primarily in unlisted SPVs, perpetual nature of vehicle, requirement of less frequent valuation and NAV declaration, limited structural and financial flexibility due to categorisation as an Equity Oriented Mutual Fund, etc.
- (iii) Mutual Funds are essentially financial investors. Allowing InvITs structured as Mutual Funds to undertake operational and developmental aspects of the projects as well as becoming a party to the concession agreement may not be in line with the general nature of Mutual Funds.
- (iv) The proposed structure mandates bundling of completed and under construction projects and does not allow for investments only in completed and revenue generating assets. This may be an impediment for a class of investors who would like to take exposure only to completed and regular revenue generating infrastructure assets.

B. InvITs under a separate framework

This proposal envisages that infrastructure is a unique sector requiring special structures and concessions keeping in mind the nature of assets and importance of the sector to the economy. The proposal envisages a separate framework called SEBI (Infrastructure Investment Trusts) Regulations (“InvIT Regulations”), with a broad structure with various categories depending on the nature of underlying projects, stage of construction, type of investors, etc. The proposal envisages that any pooling vehicle formed for the purpose of investment in infrastructure sector may be included in the Regulations.

Salient features of the proposal are as under:

a. Structure of the InvIT

- (i) The InvIT shall be set up as a Trust under the provisions of the Indian Trusts Act, 1882. InvITs shall raise funds by way of public issue/private placement, as may be applicable. The Trust shall not launch schemes.
- (ii) The InvIT shall have parties such as trustee, sponsor and manager. Apart from the manager at the InvIT level, the SPVs may have separate project managers for every project (especially for PPP projects). Further, there would be a sponsor for every project, together acting as co-sponsors at the InvIT level.
- (iii) Other parties which may be required under the concession agreement such as independent engineer, etc. may also be appointed/ the existing person may continue. A revised concession agreement, if required, may be entered into between the InvIT, the concessionaire (SPV), project manager (if different from SPV) and any regulatory authority (E.g. NHAI for roads) as may be relevant to the sector/ sub-sector.
- (iv) If the underlying projects are non-PPP projects, appropriate conditions would accordingly be applicable.

b. Registration of InvIT

- (i) The Trust shall initially apply for registration with SEBI as an InvIT in the specified format. SEBI, on being satisfied that the eligibility conditions are satisfied, shall grant the InvIT certificate of registration.
- (ii) The InvIT may apply for registration under either of the following 2 categories:
 - 1. Category I InvIT- where the InvIT may invest in multiple infrastructure projects, whether pre or post-COD.
 - 2. Category II InvIT- where the InvIT shall invest only in 1 year post-COD revenue generating projects

(SEBI may notify any other categories as it may deem fit in future)

c. Raising of funds by the InvIT and listing of units

- (i) After registration, the InvIT shall raise funds as under:
 - 1. In case of Category I InvIT:
 - a. It shall raise funds only from institutional investors (domestic or foreign). This is keeping in mind that the underlying under-construction projects shall be risky in nature.
 - b. Subscription amount by each investor shall be not less than Rs. 5 crore.
 - c. The funds shall be raised by way of private placement.
 - d. Category I InvIT may list its units on the recognized stock exchange, if it so desires, subject to trading lot of Rs. 1 crore.

2. In case of Category II InvIT:

- a. It may raise funds from any investor (domestic or foreign).
 - b. Subscription amount by each investor shall be not less than Rs. 10 lakhs.
 - c. The funds shall be raised by way of initial offer to the public. Further issues may be by way of follow-on offers, right issues, bonus issues, preferential allotments or any other route as may be prescribed by SEBI.
 - d. Units of Category II InvITs shall be listed on a recognized stock exchange with a trading lot of Rs. 5 lakhs.
 - e. Any further issue shall be subject to the minimum subscription size of Rs. 10 lakhs.
- (ii) If listed, the units of the InvIT shall continue to be listed on the exchange unless delisted under the Regulations. Provisions for delisting shall be specified in the Regulations and detailed guidelines may be specified by separate guidelines/circulars, etc.
- (iii) For any listed InvIT, if at any point, the InvIT reaches the end of the concession period for the last project under the InvIT and proposes to invest in no projects in future, it shall be required to be delisted, to be wound up and to surrender its certificate of registration. Application for such delisting shall be required to be made at least 6 months prior to expiry of such concession period. For any unlisted InvIT, in the aforesaid case, the InvIT shall be wound up within 3 months from the last date of expiry of the concession period of the last project and would be required to surrender its certificate of registration.
- (iv) For the initial offering of any InvIT, the size of the proposed projects under the InvIT shall not be less than Rs. 1000 crore (*which is expected to ensure that initially only large projects and established players enter the market*). The size may be relaxed in future as the market develops. Further, the minimum issue size for such InvITs (Initial issue) shall be Rs. 250 crore.
- (v) In case of Category II InvITs, the minimum public float post listing shall be 25% (on post-issue basis) to ensure adequate public participation and float in the units.
- (vi) General procedure for initial/follow-on offer/private placement, filing of offer document/follow-on offer document/placement memorandum, allotment and listing of units, if any shall be specified in the Regulations. Detailed minimum disclosures required in the offer document/follow-on offer document/placement memorandum shall also be specified in the Regulations.

d. Responsibilities of various parties to the InvIT

(i) Responsibilities of the Trustee

1. The Trustee shall be independent of sponsor and manager and hold the InvIT assets for the benefit of the investors in accordance with the Trust Deed and the proposed Regulations. The Trustee is primarily an overseeing entity.

2. Certain minimum number of independent directors may be required for the Trustee for achieving its independent nature.

(ii) **Responsibilities of the manager**

1. In InvITs, there would typically be 2 sets of managers:
 - a. One at the InvIT level who would assume all the operational responsibilities with respect to the activity of the InvIT (*hereinafter referred to as 'Manager'*).
 - b. Several project managers at each project level (*hereinafter referred to as 'Project Managers'*). This may be the concessionaire SPV itself or any other project manager as may be appointed in accordance with the concession agreement. Role of such project managers shall be restricted to the specific project.
2. Roles and responsibilities of the manager shall be specified in the agreement entered into between the trustee and the manager. Role of the project managers shall typically be provided in the concession agreement/any other agreement entered for the purpose.
3. Certain requirements with respect to experience, minimum networth, manpower with sufficient relevant experience, etc. may be specified for the manager in the Regulations.
4. The manager may have an Advisory Board which may consist of independent experts from the industry, representatives from regulatory authorities, representatives of major stakeholders in the projects, representatives of major investors, etc. The Advisory Board would play an advisory role in managing activities of the InvIT.
5. Responsibilities of manager shall range throughout the life of the InvIT right from the application for registration to any other procedural activities till delisting/winding up of the InvIT. Manager shall be responsible for various operational aspects including application for registration, issue and listing, if any, of units of the InvIT, appointment of any parties/agents, overseeing of activities of the project managers, investment decisions of the InvIT, disclosures and reporting, distributions to unit holders, etc.

(iii) **Responsibilities of sponsor**

1. In case of a project, the primary promoter of the SPV (*typically lead member of the consortium which had bid for the project*) would be the sponsor of the InvIT. In case of multiple projects, the respective promoters would be co-sponsors.
2. The sponsor would be mandated to flip all its shares in the SPV in exchange of units to the InvIT prior to listing so that the sponsor is at par with other investors in the InvIT. The sponsor shall hold, at all times, at least 24% of the number of units of the InvIT. In case of multiple sponsors, the aforesaid limit shall apply to the combined holding of all the sponsors. This is expected to

ensure a 'skin-in-the-game' for the sponsor and ensure commitment of the sponsor to the project and the InvIT.

3. Net worth and experience criteria may also be laid down for the sponsor in the proposed Regulations.

e. Investment conditions and distribution policy

- (i) All InvIT can invest only in infrastructure projects. Un-invested portion may, however, be invested in liquid instruments, cash equivalents, government securities, etc.
- (ii) Any InvIT shall invest in infrastructure projects belonging to only one sector/sub-sector. This condition may be relaxed in future as the market develops.
- (iii) Specifically for Category I and II InvITs, investment conditions shall apply as under:
 1. Category I InvITs:
 - a. may invest in pre-COD/post-COD projects.
 - b. shall invest in a minimum of at least 2 projects.
 - c. May have additional conditions for investment as may be specified in its offer document/placement memorandum.
 2. Category II InvITs:
 - a. Shall invest only in 1 year post-COD revenue generating projects.
 - b. Shall invest in a minimum of at least 4 projects.
- (iv) To ensure regular income to the investors, the InvITs shall distribute at least 90% of the net distributable income after tax of the InvIT to its investors. If the concession agreement does not provide for such distribution, the same may have to be modified to that extent. An agreement may be entered into by the InvIT with other shareholders in the SPV to effect such distribution. This may, however, be relaxed for Category I InvIT, if required, especially if all the underlying projects are incomplete.
- (v) InvITs may invest in the projects either directly or through special purpose vehicles (SPVs). Such SPVs shall not undertake any other activity other than as specified in the concession agreement or in accordance with these Regulations or in accordance with any other relevant laws/regulations/Acts and any acts which are incidental to such activity.
- (vi) In case of SPV route, The InvIT shall have control over the SPV and hold not less than 51% of the shares of the SPV so that the interest of the investors of the InvIT are not jeopardised. If the concession agreement does not provide for such holding, then the same may have to be modified to that extent.
- (vii) The InvIT shall invest only in projects based in India.
- (viii) Other detailed investment conditions may be provided in the proposed Regulations.

f. Related party transactions

- (i) All related party transactions shall be on an arms-length basis, in the best interest of the investors, consistent with the strategy & investment objectives of the InvIT and shall be disclosed to the investors (and exchanges if listed) periodically in accordance with the proposed Regulations (and the listing agreement, if listed).
- (ii) Detailed disclosures, valuation requirements, approval from majority of investors, related party abstaining from voting, etc. may be required for related party transactions. However, if any of the aforesaid transactions are required under the concession agreements, copy of which is provided to all the investors, then the conditions may not apply. Investors' approval may be required for the related party transactions wherein the value is above a threshold.

g. Borrowings and deferred payments

- (i) In case of Category I InvITs, there shall be no restrictions on borrowings/deferred payments (consolidated) of the InvIT.
- (ii) However, for Category II InvITs, keeping in mind the nature of investors and the projects, the aggregate consolidated borrowings and deferred payments of the InvIT shall be capped at 50% of the value of the InvIT assets. If the same exceeds 25%, requirement of credit rating from a credit rating agency and approval of majority of investors shall be required.

h. Valuation of assets

- (i) To ensure that the underlying projects of InvIT are valued accurately, requirement of a full valuation including a physical inspection of the project shall be specified at least once a year. Further, a six monthly updation in the valuation capturing key changes in the last six months shall be specified for Category II InvIT. Consequently, the NAV shall be declared at least once/twice in a year as may be applicable. Provisions may also be specified for valuation in case of any material development.
- (ii) The valuer shall be required to have a minimum specific experience in valuation in the field/ have minimum number of people with adequate experience in valuation in the field or both.

i. Rights of investors

- (i) In order to ensure safeguarding of interests of the investors, certain rights shall be provided to the investors in order to empower them. The investors shall have right to remove the manager, auditor, valuer, seek delisting of units, apply to SEBI for change in trustee, etc. Approval of investors may be made mandatory in special cases.
- (ii) For Category II InvITs, an annual meeting of all investors shall be mandatory wherein matters such as latest annual accounts, valuation reports, performance of the InvIT, approval of auditors & their fees, appointment of valuer, etc. may be discussed.

- (iii) In order to ensure that a related party does not influence the decision, any person who is a party to any transaction as well as associates of such person(s) shall not participate in voting on the specific issue.

j. Disclosures

- (i) Specific minimum disclosure requirements shall be required under the Regulations. The disclosure requirements shall be higher for Category II InvITs. Further, for Category I InvITs which are listed on the stock exchanges, disclosure requirements would be higher as compared to unlisted Category I InvITs.
- (ii) Minimum disclosure requirements in the offer document/follow-on offer document/placement memorandum shall be specified in the proposed Regulations. Further, minimum disclosures shall also be specified for the annual and half-yearly reports to be sent to the investors.
- (iii) Certain event-based disclosures may also be specified. Further, the InvIT shall additionally be bound by periodical disclosure requirements required under the listing agreement with the exchanges, if its units are listed.
- (iv) The InvIT shall continue to be subject to any other disclosures required under the concession agreement or any other regulatory/statutory requirements, as may be applicable.
- (v) Detailed disclosures may also be required pertaining to the concession agreement, completion status and any supporting documents for the same, Credit enhancement (if any), credit rating (if any), etc. as also any other disclosures that may be specific to the sub-sector.

Advantages of the proposal

- (i) The proposal allows for a broad framework encompassing multiple possible types of structures for investment in infrastructure sector. The framework also allows for adding of future new and innovative structures as may be required.
- (ii) The proposal allows for targeting of specific incentives by government/regulators for the infrastructure sector in general or any sector/sub-sector in particular.
- (iii) The proposal envisages different nature of investments/projects and allows for streamlining of the investment conditions, types of investors, conditions for issue of units, listing, borrowings, disclosures, etc. accordingly by segregating such structures into various categories.
- (iv) The proposal allows refinancing of existing under-construction projects as well as refinancing of completed revenue generating projects thereby freeing up developer capital/ bank loan exposure for investment in development of new projects. The structure may also be used in future, if required, for bidding for new infrastructure projects after gaining sufficient experience.

Possible impediments to the proposal

- (i) The proposed InvIT, not being an established framework, may require the investors to develop a deep understanding of it.
- (ii) For InvITs to take off, amendments would be required in taxation laws as well as foreign investment guidelines to allow foreign investments in InvITs. Issues with respect to taxation of InvIT including clarity in taxation aspects, pass through status in line with global best practices, etc. would be crucial for the success of InvITs in India. Sectoral Regulators may also need to issue/modify guidelines in order to allow insurance companies, pension funds, banks, etc. to invest in InvITs.
- (iii) The separate InvIT Regulations added to IDF-MF and Category I AIF-Infrastructure Fund may result in confusion in minds of investor in terms of overlapping aspects among the frameworks.
- (iv) Having multiple categories with different investors, structures, fund raising modes, investment conditions, etc. may be confusing.

Draft InvIT framework for Public Comments

1. 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, Assistant Manager (naveeng@sebi.gov.in) **latest by January 20, 2014.**
2. Comments should be given in the following format:
 - a. Name of entity/ person/ intermediary
 - b. Comments/ suggestions on the above proposals
 - c. Any other suggestions/comments

Issued on: December 20, 2013