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**“COMPLIANCES MANDATED BY SEBI FOR RIGHTS ISSUE
UNDER INVIT AND REIT.”**

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I. INTRODUCTION:

Infrastructure Investment Trust (“INVIT”) and Real Estate Investment Trust (“REIT”) are devised by Securities Exchange Board of India (“SEBI”) in 2014 based on the Public-Private Partnership model. These instruments, like mutual funds, are an asset diversifier, which accumulates money and invests in various infrastructural projects/commercial real estate projects and distributes the returns in the form of ‘dividends. It is pertinent to note that the planning of introduction of INVIT and REIT in India has been under consideration since 2008, SEBI enacted the SEBI (INVIT) Regulations, 2014¹ (“INVIT Regulation”) and SEBI (REIT) Regulations, 2014² (“REIT Regulation”), separately.

SEBI designed INVIT and REIT in a manner wherein both can only be set up as a trust under the Indian *Trust Act, 1882* and their units are traded on the stock exchanges and registered with SEBI. The distribution of investment is similar in nature, except that it is in their respective fields (as their names suggest). Both INVIT and REIT are incorporated by a sponsor who holds 25% of the assets of the trust for an initial lock-in of 3 years and thereafter holds 15% of the assets of the trust. Sponsor finds a SEBI registered debenture trustee, in

¹ https://www.sebi.gov.in/legal/regulations/mar-2020/sebi-infrastructure-investment-trusts-regulations-2014-last-amended-on-march-02-2020-_43181.html

² https://www.sebi.gov.in/legal/regulations/mar-2020/sebi-real-estate-investment-trusts-regulations-2014-last-amended-on-march-02-2020-_38449.html

whose name the assets of the trust is held, and compliances are undertaken, and they are two separate entities. However, the difference between the two arises wherein incase of INVIT, the sponsor appoints an Investment Manager (“IM”), who overlooks and manages the investments, makes investment decision and acts on behalf of the INVIT. The IM appoints the Project Manager who handles the operations and management of the infrastructures in which INVIT invests and is overlooked by the IM. Whereas, in REIT, the sponsor appoints a Manager, who makes investment decisions as well as handle the operations and management of the commercial real estate projects. Further, the minimum subscription amount for an investor in INVIT is Rs. 10 lakhs whereas, in REIT, it is RS. 2 lakhs per applicant. The minimum number of subscribers in INVIT is 20 and in REIT, it is 200.

This article focuses on the amendments enforced by SEBI in REIT Regulations and INVIT Regulations regarding issuance of the rights issue and the compliances thereby. ‘Rights issue’, fundamentally, means an offer to issue units by listed INVIT/REIT to its existing unit-holders, commonly at a lower price defined in Regulation 2(1) (zw) of the INVIT Regulation and Regulation 2(1) (zq) in the REIT Regulation. The INVIT Regulations and REIT Regulation had the existing following clauses relating to rights issue until the amendment in 2020:

II. EXISTING CLAUSES RELATING TO ‘RIGHTS ISSUE’ IN INVIT

REGULATION AND REIT REGULATION:

- (i) Regulation- 14(4)(b) of INVIT Regulation and Regulation- 14(3) of REIT Regulation states that any subsequent issuance of units by INVIT after the initial public offering may be by way of rights issue, preferential allotments, bonus shares etc.
- (ii) Regulation 14(4)(l) of INVIT Regulation and Regulation 14(11) of REIT Regulation states that any public offer (be it initial public offering/ follow-up offer/rights issue) shall be issued within 6 months of the issuance of the

observations of the Board of Directors of the INVIT/REIT. In the event, the INVIT/REIT fails to do the same, a fresh draft offer shall be filed.

- (iii) Clause-3(a)(ii) of Schedule – III of INVIT Regulation and Clause-3(a)(ii) of Schedule – II of REIT Regulation states that INVIT shall be required to pay non-refundable filing fees of 0.005% of the amount of the rights issue to be SEBI.

II.I UNDER INVIT REGULATION:

On January 17, 2020³, SEBI issued a circular bearing SEBI/HO/DDHS/DDHS/CIR/P/2020/10 which laid down the guidelines for rights issue of units by listed INVITs. The noteworthy clauses of the circular are listed below:

<u>SL. NO.</u>	<u>PARTICULARS</u>	<u>DETAILS</u>
1.	<i>Pre-requisite</i>	<p>(1) Board resolution of the investment manager (“IM”) must be passed, wherein it shall approve the rights issue and determine the record date.</p> <p>(2) INVIT shall possess an in-principal approval from the stock exchanges for listing of the units of the same class, which are already listed in the stock exchange.</p> <p>(3) INVIT shall comply with all the disclosure and obligations under the relevant regulations and circulars.</p> <p><i>However, it has been made clear that imposition of any fines/penalties by stock exchanges on INVITs, for failing to</i></p>

³ https://www.sebi.gov.in/legal/circulars/jan-2020/guidelines-for-rights-issue-of-units-by-a-listed-infrastructure-investment-trust-InvIT-_45713.html

		<p><i>comply with its obligations shall make the INVIT, ineligible for rights issue of units.</i></p> <p>(4) No promoter/partner/director of the sponsor(s) company or IM shall be the following:</p> <ul style="list-style-type: none">(a) Fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018);(b) debarred from accessing the securities market by SEBI;(c) is a person of authority in any other INVIT, which is debarred from accessing the securities market by any order or by SEBI.
2.	<i>Responsibilities of IM in rights issue</i>	<p>(1) The IM, on behalf of INVIT, shall appoint 1 or more merchant bankers, a lead merchant banker among the appointed merchant bankers and other intermediaries</p> <p>(2) The IM shall also draft the LO and file it to SEBI and the stock exchange/s along with filing fees.</p> <p>(3) Further, the IM is responsible to advertise the rights issue (along with units to be listed and its contents) on the website of the INVIT, lead merchant banker, sponsor and also on its own website along with an</p>

		<p>advertisement on any newspaper, with the same contents as the ones submitted in the LO to SEBI and stock exchanges.</p> <p>(4) The IM shall also, in consultation with the lead merchant banker, decide upon the issue price prior to determining the record date. The issue price should also be disclosed in the LO submitted to SEBI and the stock exchange/s.</p> <p>(5) Post determination of issue price, the IM has the duty to provide the record date to SEBI, minimum of 3 working days, prior to the record date and cannot be withdrawn after this announcement.</p> <p><i>In the event, the INVIT withdraws the rights issue after announcing the record date, the INVIT shall not be eligible to make an application for listing of any units for 12 months from the declared record date, on any stock exchange.</i></p>
3.	<i>Draft Letter of Offer (“DLO”)/ Letter of Offer (“LO”)</i>	<p>(a) The DLO will be drafted by IM in consultation with SEBI, through the lead merchant banker.</p> <p>(b) The DLO shall contain the following:</p> <ul style="list-style-type: none">• the website address of the INVIT, IM and the merchant bankers• shall be accompanied with the

		<p>below-mentioned documents while submission:</p> <ul style="list-style-type: none">(i) certificate confirming the agreement between merchant banks and IM;(ii) a due diligence certificate along the lines of Form A of Annexure I of SEBI Circular CIR/IMD/DF/55/2016 dated May 11, 2016;(iii) and all other disclosures specifically mentioned in Annexure-I of the circular including the issue price and the details of the units to be listed under rights issue <p>(c) The completed DLO shall be submitted to SEBI in soft copy and stock exchange(s) in which units will be listed.</p> <p>(d) SEBI shall provide its observation within 15 days of receipt of the DLO/ on receipt of response about any additional information (if required) from the IM or lead merchant banker/ on receipt of in-principle approval from stock exchanges etc, whichever is later.</p>
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		<p>(e) If SEBI provides any observations, the IM/lead merchant banker, on behalf of the INVIT shall make the relevant changes, highlight the modifications and submit it to SEBI before providing it to the stock exchanges.</p> <p>(f) Once, SEBI approves the DLO post revisions based on its observations, the DLO shall be known as 'LO'</p> <p>(g) In case of an allotment must be made to the underwriters, the same should be disclosed in DLO/ LO.</p>
4.	<i>Process of Issuance of rights issue</i>	<p>1) The preparation and circulation of application forms for rights issue shall be undertaken by the appointed merchant banks.</p> <p>2) After IM provides the record date to SEBI, rights issue shall open for public within 3 months from the record date.</p> <p>3) The rights issue shall be kept open for a minimum of 3 working days but maximum of 15 working days.</p>
5.	<i>Manner of issuance</i>	<p>1) The entitlement of units on rights issue basis, shall be credited to the demat account of the existing unit holders before the date of opening of the issue. The units credited on rights issue, shall have option to exercise the right or renounce it. The IM shall send a notice to the above effect to the entitled</p>

		<p>unit holders along with DLO and LO.</p> <p>2) The rights issue shall only be undertaken in dematerialized form. All unit holders who wish to exercise the right or renounce it, shall compulsorily use Application Supported by Blocked Amount (ASBA), and follow procedures as specified by SEBI.</p> <p>3) The INVIT should receive minimum subscription amount of 90% of the issue size on the issue closing date and if doesn't receive the same, the INVIT shall be required to refund the application monies forthwith within 15 days of the issue closing date.</p> <p>4) The sponsor and its associates may opt to subscribe to additional units along with being existing unit-holders on the record date, subject to such subscription following the minimum public unitholding requirements.</p>
6.	<i>Allotment</i>	<p>(i) Regulations relating to minimum allotment and trading lot for units shall remain the same as the existing INVIT Regulations and circulars of the specific class.</p> <p>(ii) The INVIT shall make any additional allotment than declared in LO, except in case of oversubscription. However, in case of oversubscription, too, the INVIT</p>

		<p>is not allowed to accept allotment of more than 1% of the total issue size to round off to make allotment in minimum even lots, and should be done in consultation with the stock exchange/s.</p> <p>(iii) full allotment of units shall be made to those eligible unitholders, who have applied for their rights entitlement either in full or in part and also to the renouncee(s), who has/have applied for the units renounced in their favour, in full or in part, as adjusted for fractional entitlement.</p> <p>(iv) allotment will be done to eligible unitholders who have also applied for additional units, as far as possible on an equitable basis, having due regard to the number of units held by them on the record date,</p> <p><i>Provided there is an under-subscribed portion after making allotment in the above provision.</i></p> <p>(v) allotment to the renounees, who having renounced their units but later has applied for additional units,</p> <p><i>Provided there is an under-subscribed portion after making full allotment specified in above two clauses. The allotment of such additional units may be made on a proportionate basis.</i></p>
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		<p>(vi) Allotment to sponsor(s) and their associates, who were unitholders on the record date and who have disclosed their intent to subscribe to additional units, if there is an unsubscribed portion after making full allotment as per clauses above.</p> <p>(vii) Allotment to the underwriter appointed for the issue, if any, at the discretion of the board of directors of the IM, subject to disclosure in the DLO and / or LO as applicable.</p> <p>(viii) The units allotted in the above manner, shall be listed within 6 working days of the issue closing date.</p> <p>(ix) An allotment report shall be filed within 15 days of the issue closing date with SEBI, providing the details of the allottees and the allotments made, by the INVIT</p>
7.	<i>Constraint on further capital issues</i>	<p>The INVIT is barred from making any further issue of units, be it any way, otherwise permitted by law, during the period between the date of filing of DLO with SEBI and listing of units offered through the LO or refund of application monies.</p>

**II.II CIRCULAR DATED 13.03.2020: COMPLIANCES FOR ISSUE
OF UNITS UNDER FAST TRACK RIGHTS ISSUE:**

Subsequent amendment dated March 13, 2020⁴ to the circular dated January 17, 2020 (in Clauses-11 and 12), in which SEBI has laid down provision for issue of units under fast track rights issue. The amendment circular dated March 13, 2020 states that the INVIT interested in issuing units under fast track rights issue shall follow the guidelines under circular dated January 17, 2020 [detailed above] except clause-3.1, 3.2, 3.7 and 3.8⁵. The circular thereafter proceeded to state specific regulation for issuance of units under fast track rights issue, which details hereunder:

- 1) The units to be issued under fast track rights issue shall be listed in any stock exchange for a minimum of 3 years immediately before the record date and they are held by INVIT in dematerialized form on the record date;
- 2) The average market capitalization of unitholding of the public in the INVIT must be at least Rs. 250 crores.
- 3) The INVIT should follow the listing and disclosure requirement of the INVIT Regulation and shall redress minimum of 95% of the complaints received from the investors till the end of the quarter immediately prior the month of the record date;

⁴ https://www.sebi.gov.in/legal/circulars/mar-2020/amendments-to-guidelines-for-rights-issue-preferential-issue-and-institutional-placement-of-units-by-a-listed-InvIT_46311.html

⁵ "3.1. The investment manager, on behalf of the InvIT shall file a DLO with the Board through the lead merchant banker along with filing fees as specified in Schedule II of InvIT Regulations.

3.2. The lead merchant banker shall submit the following to the Board along with the DLO:

(a) a certificate, confirming that an agreement has been entered into between the investment manager on behalf of the InvIT and the merchant bankers;

(b) a due diligence certificate along the lines of Form A of Annexure I of SEBI Circular CIR/IMD/DF/55/2016 dated May 11, 2016.

3.7. The Board may specify changes or issue observations, if any, on the DLO within fifteen days from the later of the following dates:

a) the date of receipt of the DLO, filed under sub-clause 3.1; or

b) the date of receipt of satisfactory reply from the lead merchant banker(s), where the Board has sought any clarification or additional information from them; or

c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

d) the date of receipt of a copy of in-principle approval letter issued by the stock exchanges.

3.8. If the Board specifies any changes or issues observations on the DLO, the investment manager on behalf of the InvIT and lead merchant banker(s) shall carry out such changes in the DLO and shall submit to the Board an updated DLO complying with the observations issued by the Board and highlighting all changes made in the DLO before filing the LO with the stock exchanges."

- 4) Within the last 3 years immediately preceding to the record date, the following conditions needs to be fulfilled by the INVIT:
- (a) No notices/prosecution proceedings have been issued/are pending against the INVIT/its promoters/sponsors/IM/directors/ partners by SEBI and the concerned person or any other person like the INVIT/its promoters/sponsors/IM/directors/ partners has not settled any alleged violated with SEVI through the consent/settlement mechanism, within;
 - (b) Units of the INVIT should not be suspended from trading as a disciplinary measure
 - (c) No regulatory actions have been initiated on the INVIT
However, it has been made clear that imposition of any fines/penalties by stock exchanges on INVITs, for failing to comply with its obligations shall make the INVIT, ineligible for rights issue of units.
 - (d) No conflict of interests should be prevailing between the lead merchant banker and the INVIT in accordance with the INVIT Regulation;
- 5) The sponsor of the INVIT shall mandatorily subscribe to their rights issue and shall not renounce their rights, except for complying with minimum public shareholding norms under INVIT Regulation;
- 6) There should not be any audit qualifications (those disclosed under applicable accounting standard relating to modification to the opinion in the independent auditor's report) on the audited accounts of the INVIT for the financial years which have been disclosed in the LO;
- 7) The INVIT shall file , the LO with SEBI and the stock exchange(s), furnish to SEBI, a due diligence certificate along the lines of Form B of Annexure I of SEBI Circular CIR/IMD/DF/55/2016 dated May 11, 2016 and submit filing fees in accordance with the INVIT Regulation.

Further, the amendment circular modifies the Clause-7(a) of the Annexure -I of the circular dated January 17, 2020 which is regarding Financial Disclosures and states that the INVIT has to make disclosure under Clause- 11(a) to 11(c) and 11(e) to

11(f)⁶, however if the INVIT has acquired or disposed any material assets after the latest disclosed financial period in the LO but before the date of filing of LO, the financial information shall be required to be prepared on pro-forma basis, certified by statutory auditors of the INVIT. The Circular dated March 13, 2020 further adds on that the financial information shall be required to be prepared on pro-forma basis, certified by statutory auditors of the INVIT ‘for the last completed financial year and the stub period (if any)’.

II.III UNDER REIT REGULATION:

Similar circulars as that of INVIT (detailed above) were issued in case of rights issue under REIT by the SEBI on January 17, 2020 bearing no. SEBI/HO/DDHS/DDHS/CIR/P/2020/09⁷ and amendment circular dated March 13, 2020 bearing no. SEBI/HO/DDHS/DDHS/CIR/P/2020/3⁸.

The sole point of distinction between INVIT and REIT in case of compliances related to rights issue is, instead of IM (as is in INVIT), the REIT is overlooked by Manager. All the responsibilities for compliances in rights issue to be performed by the Manager in REIT, in place of an IM in INVIT. As we notice, both INVIT and REIT are essentially similar but architecturally, slightly dissimilar and in order to avoid misunderstanding, SEBI has imposed separate regulations and subsequent distinct amendments thereafter, for each of the trust.

⁶“Financials

- a. *Operating cash flow from the projects (project-wise) under the InvIT for the previous 3 years*
- b. *Summary of the financial statements of the InvIT, Investment Manager and sponsor for the previous 3 years, as applicable*
- c. *Management’s Discussion and Analysis of factors by directors of the Investment Manager affecting financial condition and results of operations*
- d. *Projections of revenue and operating cash flows by InvIT, project-wise over next three years including assumptions details as certified by the auditor*
- e. *Details on payment history and working capital*
- f. *Contingent liabilities [as on the date of the latest financial information disclosed in the offer document/ placement memorandum]*

⁷ https://www.sebi.gov.in/legal/circulars/jan-2020/guidelines-for-rights-issue-of-units-by-a-listed-real-estate-investment-trust-reit-_45712.html

⁸ https://www.sebi.gov.in/legal/circulars/mar-2020/amendments-to-guidelines-for-rights-issue-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit_46310.html

III. CONCLUSION:

SEBI has streamlined the process and the compliances required for issuance of units under rights issue and fast track rights issue under the above-stated circulars. The primary motive of SEBI in these compliances is that the investors remain protected and secured as, both INVIT and REIT are novel and alluring routes of investment.

The process for rights issue has been reorganized, in order to make it more efficient, effective and transparent. While the abidance procedure for issuance of rights issue is vivid, with omission of requirement to file DLO for issuance of fast track rights issue with SEBI, the timelines have been reduced substantially. These amendments have provided a better and finer view on issue of rights issue by INVITs and REITs and the market regulator (i.e. SEBI) attempts to keep the investors as protected as it can.