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Master Circular for Infrastructure Investment Trusts (InvITs)

May 15, 2024

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BEACON RESEARCH
www.beacontrustee.co.in | research@beacontrustee.co.in | +91 84518 44276

Background

For effective regulation of Infrastructure Investment Trusts, Securities and Exchange Board of India (SEBI) has been issuing various circulars from time to time. In order to enable the stakeholders to have access to all the applicable circulars at one place, the provisions of the circulars issued till May 15, 2024, are incorporated in this Master Circular for Infrastructure Investment Trusts.

This Master Circular shall come into force from the date of its issuance. The circulars mentioned in the Appendix to this Master Circular shall stand superseded with the issuance of the Master Circular. With respect to the directions or other guidance issued by SEBI, as specifically applicable to Infrastructure Investment Trusts, the same shall continue to remain in force in addition to the provisions of any other law for the time being in force. Terms not defined in this Master Circular shall have the same meaning as provided under the relevant Regulations.

Key chapters highlights of the master Circular.

Chapter 1. Online Filing System for InvITs

- SEBI has introduced an online system for registration, reporting, and compliance under the SEBI (Infrastructure Investment Trusts) Regulations, 2014. All applications for InvIT registration must now be submitted online through the SEBI Intermediary Portal at https://siportal.sebi.gov.in. Registered InvITs must also use this portal for all filings and requests as per SEBI regulations and circulars.

- The portal link is available on the SEBI website (www.sebi.gov.in). For queries, users can refer to the manual on the portal or contact the Portal Helpline.

Chapter 2: Guidelines for public issue of units of InvITs

- The investment manager, on behalf of the InvIT, must appoint one or more SEBI-registered merchant bankers as lead managers to the issue. The lead manager is responsible for ensuring the correctness, adequacy, and disclosure of all information in the offer document. Obligations of the lead manager include ensuring compliance with SEBI regulations, coordinating with various intermediaries, and managing the issue process efficiently.

- The draft offer document must be filed with SEBI for review and with the designated stock exchanges for obtaining in-principal approval. The offer document must include all material disclosures to help investors make informed decisions. SEBI may issue observations on the draft offer document, which the InvIT must incorporate before filing the final offer document.

- The sponsor(s) must hold a minimum of 15% of the total units of the InvIT on a post-issue basis for at least three years from the date of listing. This holding is subject to a lock-in period to ensure the sponsor's continued interest in the InvIT's performance

- The issue price of units may be determined through book building or any other method as specified by SEBI. The price at which units are allotted to investors must be disclosed in the offer document.

- The public issue process must adhere to the timelines specified by SEBI. Timely completion of various steps such as filing, SEBI observations, and listing is essential.

- The InvIT must ensure that at least 90% of the issue size is subscribed. If the minimum subscription is not achieved, the InvIT must refund the application money to the subscribers within the prescribed time frame.

- The issue may be underwritten by one or more SEBI-registered underwriters. The underwriters must fulfill their underwriting obligations if the issue is not fully subscribed

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Chapter 3: Financial information to be disclosed in offer document/placement memorandum

- InvITs are required to disclose financial information for the last three completed financial years preceding the offer document date. In cases where the last completed financial year's data is more than six months old, interim financial information up to a maximum of six months old must also be provided to ensure that investors have access to the most recent financial data.

- The type of financial information disclosed depends on the existence period of the InvIT. If the InvIT has existed for more than three years, historical financial statements should be provided. If the InvIT has been in existence for less than three years, combined financial statements should be disclosed to give a comprehensive view of its financial performance.

- All financial statements must be prepared in accordance with Indian Accounting Standards (Ind AS). The financial information should include balance sheets, statements of profit and loss, statements of changes in unitholders' equity, statements of cash flows, statements of net assets at fair value, and statements of total returns at fair value. This comprehensive set of financial documents ensures that all aspects of InvIT's financial health are transparent to potential investors.

- The financial statements disclosed in the offer document must be audited by a qualified auditor to ensure accuracy and reliability. Additionally, any interim financial information provided should be reviewed by the auditor to maintain consistency and credibility in financial reporting.

Chapter 4: Continuous Disclosures and Compliances by Invits

- InvITs must disclose their quarterly and annual financial results, along with any significant events that could impact the performance or value of the units. Regular updates on the valuation of the underlying assets, as well as any changes in the investment strategy or policy, must be provided. This ensures that investors are continuously informed about the financial health and strategic direction of the InvIT.

- Adherence to the SEBI (Listing Obligations and Disclosure Requirements) Regulations is mandatory for InvITs. They must regularly report to the stock exchanges and follow corporate governance norms. This compliance ensures transparency, accountability, and integrity in the operations and reporting of the InvIT.

- Any material events, such as the acquisition or disposal of assets, significant changes in business operations, and legal proceedings, must be disclosed promptly. Additionally, changes in key management personnel or the investment manager must also be reported. These disclosures are crucial for maintaining investor confidence and ensuring that all significant developments are communicated in a timely manner

- InvITs must ensure transparent and timely communication with unitholders regarding their performance, distributions, and any changes affecting their investment. Annual reports and notices for meetings must be made accessible to all unitholders.

Chapter 5. Participation by Strategic Investor(s) in REITs

- An InvIT, if it chooses to invite subscriptions from strategic investors, must do so by having the strategic investor(s) invest between 5% and 25% of the total offer size. The investment manager, acting on behalf of the InvIT, is required to enter into a binding unit subscription agreement with the strategic investor(s).

- The subscription price per unit, as agreed upon in this unit subscription agreement, must be deposited into a special escrow account before the public issue opens. If the public issue price is higher than the agreed subscription price, the strategic investor(s) must pay the difference within two working days.

- Conversely, if the public issue price is lower, the strategic investor(s) will not receive a refund but will obtain units at the initially agreed price. The draft or final offer document must disclose the details of the unit subscription agreement, including the names of strategic investors, the number of units they propose to subscribe, the investment amount, and the subscription price per unit.

- This unit subscription agreement can only be terminated if the issue fails to collect the minimum subscription.

- Units subscribed by strategic investors through the unit subscription agreement will be locked in for a period of 180 days from the date of listing in the public issue.

Chapter 6. Guidelines for issuance of debt securities by InvITs

- For the issuance of debt securities, InvITs must adhere to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("NCS Regulations") as follows: Regulation 25(4) and Regulation 16 of NCS Regulations are not applicable to InvITs for issuing debt securities.

- Compliance requirements under the Companies Act, 2013, or filings to the Registrar of Companies as per NCS Regulations, do not apply to InvITs unless specified otherwise. InvITs must comply with all other provisions of NCS Regulations, unless in conflict with InvIT Regulations or circulars, where the latter shall prevail

- For debt securities issuance, InvITs must appoint one or more debenture trustees registered with SEBI under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. However, a trustee to the InvIT cannot serve as a debenture trustee for such debt securities issues. Additionally, any secured debt securities issued by InvITs must be backed by a charge on the assets of the InvIT, holdco, or SPV, ensuring sufficient value for repayment of the debt securities and accrued interest.

Chapter 7: Guidelines for preferential issue and institutional placement of units by listed InvITs

- InvITs can issue units on a preferential basis to a select group of investors, provided they obtain approval from the unitholders and adhere to the pricing guidelines. The units issued must be fully paid up and listed on a recognized stock exchange. This allows InvITs to raise capital from strategic investors under favorable terms while ensuring compliance with regulatory requirements.

- InvITs can place units with qualified institutional buyers through a book-building process. This method ensures that pricing, allocation, and listing requirements are met in accordance with SEBI regulations. It allows InvITs to efficiently raise funds from institutional investors who typically have a longer-term investment horizon.

- Both preferential issues and institutional placements require approval from the board of directors and the unitholders. The process must comply with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, ensuring that all regulatory conditions are met. This dual-layer of approval helps maintain investor protection and regulatory oversight.

- Units issued through preferential allotment have a specified lock-in period to ensure a long-term commitment from the investors. The guidelines detail exceptions and conditions for the lock-in period, ensuring flexibility while maintaining the stability of the investor base. This lock-in period helps align the interests of the investors with the long-term goals of the InvIT.

Chapter 8:Guidelines for filing of placement memorandum by InvITs proposed to be listed

- InvITs planning to list must file a draft placement memorandum with the Board and relevant stock exchange(s) via a registered merchant banker at least thirty days before the issue opens.

- This memorandum must include disclosures outlined in Schedule III of InvIT Regulations, accompanied by a due diligence certificate (Form A of Annexure - 1) from the merchant banker

- Within fifteen working days of receiving the draft placement memorandum or satisfactory responses to queries, clarifications, or additional information, the Board may issue observations.

- The merchant banker must ensure all comments are incorporated into the draft placement memorandum before filing (as per Regulation 14(2)(e) of InvIT Regulations) and provide a due diligence certificate (Form B of Annexure 1).

Chapter 10. Encumbrance on units of InvITs

- Encumbrance on units in accordance with Regulation 12(5) of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, mandates that units required to be held per sub-regulations (3) and (3A) must be locked in and not encumbered.

- However, any encumbrance existing on units held to meet the minimum unit holding requirement before the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023, may continue if it existed on that date, provided it's not invoked during the prescribed holding period per Regulation 12 of the InvIT Regulations.

- Sponsors creating encumbrances must promptly inform the investment manager of the InvIT within two working days of creation, using the specified format (Annexure - 8), and any subsequent changes due to release or invocation of encumbrances. The InvIT, upon receiving such information, must disclose it within two working days to all stock exchanges where its units are listed.

Chapter 14: Framework for conversion of Private Listed InvIT into Public InvIT

- A Private Listed InvIT, as defined, may convert into a Public InvIT by conducting a public issue of units through a fresh issue and/or offer for sale. Following the public issue, the Private Listed InvIT will be regarded as a Public InvIT and must adhere to all regulations applicable to such entities.

- Conditions for issuance include meeting specified requirements under Regulation 18(5) of the InvIT Regulations, compliance with listing and disclosure obligations for the past three years, absence of defaults in distributions since listing, adherence to certain regulations, and obtaining approval from 75% of unitholders by value for the public issue.

- Furthermore, conditions for offer for sale necessitate that units offered be free from encumbrance or lock-in, and only certain unitholders, excluding sponsors, related parties, and associates, can participate.

- The process for the public issue must comply with the InvIT Regulations and guidelines provided in Chapter 2. Additionally, sponsors must contribute a minimum of 15% of the public issue units or 15% of the post-issue capital.

Chapter 16. Issue and listing of Commercial Paper by listed InvITs

- InvITs may issue listed commercial papers subject to the following conditions

a) Compliance with Reserve Bank of India guidelines for commercial paper issuance.

b) Adherence to SEBI listing norms under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and related circulars

c) Issuance must be within the overall debt limit permitted under the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

Chapter 18:Dematerialization of securities of Hold Cos and SPVs held by Infrastructure Investment Trusts (InvITs)

- Regulation 14(4)(r) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") provides that the units of InvIT shall be issued only in dematerialized form to all the applicants

- In order to promote dematerialization of securities, encourage ease of doing business, improve transparency in the dealings of securities of Hold Cos/ SPVs, InvITs shall hold the securities of Hold Cos and SPVs in dematerialized form only. The Investment manager of the InvIT shall ensure the same.

Chapter 20. Format of Compliance Report on Governance for InvITs

- Regulation 26K of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 mandates the investment manager to submit a quarterly compliance report on governance to recognized stock exchanges within twenty-one days from the end of each quarter. This report, to be signed by either the compliance officer or the chief executive officer, follows specific formats outlined in Annexure - 15.

- Part A of Annexure - 15 is due within twenty-one days from each quarter's end, while Part B is submitted within the same timeline but on an annual basis. Part C is filed within three months from the financial year-end.

- The investment manager must ensure timely submission of these reports to the stock exchanges, and they become part of the InvIT's annual report. Stock exchanges are responsible for monitoring compliance and taking necessary actions as directed by the Board.

Chapter 23. Procedural framework for dealing with unclaimed amounts lying InvITs and manner of claiming such amounts by unitholders

- Regulation 18(6)(b) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 mandates that at least 90% of Net Distributable Cash Flows (NDCFs) must be distributed to unitholders. Regulation 18(6)(c) requires these distributions to occur at least twice a year for publicly offered InvITs and annually for privately placed InvITs, within fifteen days of declaration. However, distributions often remain unclaimed due to issues like outdated account details.

- To address this, Regulation 18(6)(e) stipulates that unclaimed distribution amounts must be transferred to the Investor Protection and Education Fund (IPEF). Regulation 18(6)(f) allows for these amounts to be reclaimed from the IPEF as specified by the Board. Amendments to SEBI's IPEF Regulations define procedures for handling unclaimed amounts, their transfer to the IPEF, and the reclaim process. Regulation 5(3)(ii) of the IPEF Regulations allows the IPEF to refund amounts to entities that have paid eligible investors and made a claim.

- A framework for transferring unclaimed amounts to an Escrow Account and then to the IPEF, along with the reclaim procedure, is provided in Annexure - 16. InvITs with unclaimed amounts less than 7 years old as of February 29, 2024, must start computing interest from March 1, 2024, per Annexure - 16. InvITs with unclaimed amounts older than 7 years as of the same date must transfer these amounts to the IPEF by March 31, 2024, according to Annexure - 16.

APPENDIX: LIST OF SUPERSEDED CIRCULARS

Date	Circular No.	Subject
06/07/2023	SEBI/HO/DDHS-PoD-2/P/CIR/2023/115	Master Circular for Infrastructure Investment Trusts (InvITs)
11/09/2023	SEBI/HO/DDHS-PoD-2/P/CIR/2023/153	Board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs)
31/10/2023	SEBI/HO/DDHS-PoD-2/P/CIR/2023/174	Revision in manner of achieving minimum public unitholding requirement–Infrastructure Investment Trusts (InvITs)
08/11/2023	SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/178	Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders.
06/12/2023	SEBI/HO/DDHS/DDHS-PoD/P/CIR/2023/184	Revised framework for computation of Net Distributable Cash Flow (NDCF) by Infrastructure Investment Trusts (InvITs)
08/02/2024	SEBI/HO/DDHS/DDHS-PoD/P/CIR/2024/10	Revised Pricing Methodology for Institutional Placements of Privately Placed Infrastructure Investment Trust (InvIT)

Note (Other Chapters of the Master Circular)

- **Chapter 9 Guidelines for rights issue of units by a listed InvIT**: This chapter provides detailed instructions and requirements for listed Infrastructure Investment Trusts (InvITs) conducting rights issues to offer new units to existing unitholders.

- **Chapter 11 Manner and mechanism of providing exit option to dissenting unit holders**: This chapter outlines the process and procedures for offering an exit option to unit holders who dissent from specific resolutions or changes proposed by the InvIT.

- **Chapter 12 Investor Charter and Disclosure of Investor Complaints by Merchant Bankers for public offers by InvITs**: This chapter details the investor charter and the obligation of merchant bankers to disclose investor complaints in the context of public offers by InvITs.

- **Chapter 13 Investor Charter and Disclosure of Investor Complaints by Merchant Bankers for private placement of units**: This chapter sets forth the investor charter and mandates the disclosure of investor complaints by merchant bankers during private placement of units by InvITs.

- **Chapter 15 Reduction of timelines for listing of units of privately placed Infrastructure Investment Trust (InvIT):** This chapter aims to shorten the timeframes involved in listing units of privately placed InvITs, streamlining the overall process.

- **Chapter 17 Facility of conducting meetings of unit holders of InvITs through Video Conferencing or Other Audio-Visual means:** This chapter allows and regulates the use of video conferencing or other audiovisual means to conduct meetings of InvIT unit holders.

- **Chapter 19 Format for Annual Secretarial Compliance Report for InvIT:** This chapter provides a standardized format for the annual secretarial compliance report that InvITs must submit.

- **Chapter 21 Manner of achieving minimum public unitholding** - InvITs: This chapter describes the methods and requirements for InvITs to achieve and maintain the mandatory minimum level of public unitholding.

- **Chapter 22 Board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs):** This chapter outlines the conditions under which unitholders can nominate members to the board of an InvIT, ensuring their representation in governance.