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SEBI INTRODUCES GUIDELINES FOR RIGHTS ISSUES BY UNLISTED INFRASTRUCTURE INVESTMENT TRUSTS

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The Securities and Exchange Board of India (SEBI) has issued *Guidelines for rights issues of units by unlisted Infrastructure Investment Trusts* (InvIT) (Guidelines) through its circular dated 4 November 2020. SEBI introduced the framework for private unlisted InvITs in April 2019, however, the mechanism for further issues of units by unlisted InvITs under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) remained restricted to private placements through the issuance of a placement memorandum. The Guidelines are expected to ease the fund-raising process for unlisted InvITs and supplement the increasing market interest in unlisted InvITs.

Key Features of the Guidelines

Conditions for Issuance:

- **Resolution of Investment Manager:** A resolution of the board of directors of the investment manager approving the rights issue of the units and determining the record date should have been passed;
- **Eligibility conditions:** The promoters, partners or directors of the sponsor(s) or investment manager or trustee of the InvIT should not (i) be declared a 'fugitive economic offender'; (ii) debarred from accessing the securities market by SEBI; and (iii) be a promoter, director or person in control of any other company or a sponsor, investment manager or trustee of any other InvIT which is debarred from accessing the capital market; and
- **Other Conditions:** The units proposed to be issued must be of the same class as those already issued by the InvIT.

Pricing of Units: The investment manager shall decide the issue price before determining the record date and shall be disclosed in the letter of offer.

Timeline:

- The rights issue shall open within three months from the record date; and

- The subscription period shall be minimum of three working days and maximum of 15 working days.

Filing of the Letter of Offer: The letter of offer (LOF) shall be filed by the investment manager with SEBI at least five days prior to the opening of the rights issue.

Underwriting: The InvIT may choose to have the issue underwritten by appointing underwrites in accordance with SEBI (Underwriters) Regulations, 1993.

Manner of issuance and rights entitlement: The units shall only be issued in dematerialised form. The rights entitlement shall be credited to the demat account of the unitholders before the date of opening of the issue. The unitholders shall have the right to renounce the units offered in favour of any other person. No minimum subscription threshold has been prescribed.

Waterfall mechanism for allotment:

(i) full allotment to eligible unitholders who have applied for their rights entitlement either in full or part and the renouncee(s) who have applied for the units renounced in their favour in full or part, as adjusted for fractional entitlement;

(ii) in case there is an under-subscribed portion after allotment under (a), allotment to eligible unitholders who have applied for additional units post full application for their rights entitlement, shall be made on an equitable basis, having regard to the number of units held by them on the record date;

(iii) allotment to renouncees who have applied for additional units post full application for the rights entitlement renounced in their favour, provided there is an under-subscribed portion after allotment under (i) and (ii); and

(iv) allotment to underwriters appointed for the issue, at the discretion of the investment manager.

Disclosures in the LOF: The disclosure requirements prescribed under the Guidelines are similar to those required in an offer document filed for a private placement of units by an unlisted InvIT. The financial statements being included in the LOF are required to be not more than 6 months old from the issue opening date. Further, InvITs which are in compliance with the InvIT Regulations, may include unaudited financials with limited review for the stub period. Additionally, history of the distributions made in the last 3 years, and the manner of calculation are also required to be disclosed. The LOF may incorporate disclosures by including references to weblinks in cases where information is already available in the public domain (including links to previous offer documents, the InvIT website etc.).

Restriction on further capital issue: The InvIT is restricted from making any further issue of units from the date of filing of the LOF until the allotment of units pursuant to the rights issue.

Comment

In an anticipated yet welcome move, the regulator has brought about much needed changes to the fund-raising framework for unlisted InvITs. The Guidelines are a welcome step towards bringing capital raising options for unlisted InvITs at par with the framework in place for listed InvITs. Further, the Guidelines also do not necessitate the appointment of a merchant banker or filing of a due diligence certificate. Overall, the introduction of rights issues for unlisted InvITs is a clear signal of SEBI's intent to assist

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in developing a market for unlisted InvITs in India, and towards its commitment to facilitate 'ease of doing business' in the country.

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