Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme, Alignment of timelines for making distribution by InvITs and Format of Quarterly Report and Compliance Certificate – Infrastructure Investment Trusts (InvITs)

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Background on the Circular

- The SEBI (Infrastructure Investment Trusts) Regulations, 2014, were amended on July 13, 2024, to establish a structured framework for Unit-Based Employee Benefit (UBEB) schemes. This framework allows the issuance of units to employee benefit trusts, adhering to preferential issue guidelines, including pricing criteria set by SEBI. The objective is to facilitate employee benefit schemes within InvIT structures while ensuring compliance with regulatory standards.

- Chapter 7 of the Master Circular for Infrastructure Investment Trusts (InvITs), dated May 15, 2024, outlines the guidelines for preferential issues and institutional placements of units by InvITs. These guidelines include specific provisions related to lock-in periods and allotment restrictions to ensure proper governance and maintain market discipline in unit issuance.

- The provisions specify that units allotted to non-sponsor entities through preferential issues are subject to a one-year lock-in period from the date of trading approval. Additionally, any pre-preferential issue holdings by such allottees are locked in for six months from the trading approval date. These measures are designed to prevent speculative trading and promote long-term investment in InvITs

- Preferential issues are not permitted for individuals or entities who have sold or transferred units of the issuer during the 90 trading days preceding the relevant date. Moreover, if any sponsor or sponsor group member has transferred units during this period, all members of the sponsor group are disqualified from receiving preferential allotments. This ensures the prevention of insider trading and promotes fair market practices.

- However, an exemption is provided for situations where the InvIT acquires assets from a sponsor or sponsor group member. If units are issued as full consideration for such acquisitions, the restriction on preferential allotments does not apply, allowing for flexibility in asset transactions within InvIT structures while maintaining transparency and fairness.

Additions in the Circular

Paragraph 7.6.4. is inserted as under

The lock-in requirement mentioned at paragraph 7.6.2. and 7.6.3. above shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations.

Following Proviso is inserted under paragraph 7.7.1

Provided further that this restriction on preferential issue of units shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations."

Quarterly Report and Compliance Certificate Requirements under InvIT Regulations

Regulation 9(3) Overview

As per Regulation 9(3) of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations), the trustee is responsible for overseeing the activities of the investment manager in the best interest of unit holders. The trustee must ensure the investment manager's compliance with Regulation 10 and obtain a compliance certificate from the investment manager on a quarterly basis.

Regulation 10(18)(a) Overview

Regulation 10(18)(a) mandates that the investment manager submits quarterly reports to the trustee. These reports must include details such as receipts for all funds received, payments made, compliance with regulations 18, 19, and 20, performance reports, and the status of under-construction projects. These reports must be submitted within 30 days after the end of each quarter.

Standardized Format for Reports and Compliance Certificate

To ensure uniformity, the Bharat InvITs Association (BIA), in consultation with SEBI, will specify the format for the quarterly report and compliance certificate to be submitted by the investment manager to the trustee under Regulation 10(18)(a) and Regulation 9(3). This format will be published on BIA's website. Any future changes to this format will be made by BIA in consultation with SEBI prior to implementation.

Compliance Requirement

All InvITs are required to follow the format specified by BIA to ensure compliance with the relevant regulations under the InvIT Regulations.

Alignment of timelines for making distribution by InvITs

- The InvIT Regulations were amended on September 27, 2024, to revise the timelines for distributions by InvITs, effective from November 27, 2024. The Master Circular for InvITs, dated May 15, 2024, which outlines procedural guidelines for handling unclaimed amounts, has also been updated to align with these revised timelines.

- Para 23.2 of Chapter 23 in the Master Circular for InvITs has been updated to reflect the revised distribution timelines as per Regulation 18(6)(c) of the InvIT Regulations. This revision recognizes that distribution amounts may remain unclaimed or unpaid due to reasons such as unitholders failing to update their account details.

- Clause A(1) in Part I of Annexure 16 has been modified to specify that if a distribution has been made within the timelines set by Regulation 18(6)(c) but remains unpaid or unclaimed, the Investment Manager must transfer the unclaimed amount to an Escrow Account. This transfer should be made within seven working days after the expiration of the specified distribution timeline. The Escrow Account, named the "Unpaid Distribution Account," must be opened by the Investment Manager on behalf of the InvIT at a scheduled bank.

Impact of the Circular

To enhance ease of doing business and facilitate seamless implementation of Unit-Based Employee Benefit (UBEB) schemes within Infrastructure Investment Trusts (InvITs), it has been proposed that the lock-in and allotment-related restrictions typically applicable to preferential issues will not apply to units issued to employee benefit trusts. This initiative aims to simplify the process for employee benefit trusts to acquire units and subsequently transfer them to eligible employees in accordance with the terms of the UBEB scheme. By exempting such trusts from these restrictions, the framework ensures a smoother execution of employee-focused incentive programs while maintaining compliance with regulatory provisions.

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