



SEBI provides mechanism for
(1) Raising funds via rights issue by unlisted
Infrastructure Investment Trust (InvIT)
(2) Creation of security in issuance of listed debt
securities and 'due diligence' by debenture trustee

INSIGHTS

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In order to enable unlisted Infrastructure Investment Trust (**InvIT**) to raise further funds and to facilitate investment in the infrastructure sector, SEBI has formulated a mechanism for raising of funds by unlisted InvITs through rights issue of units. In furtherance thereof, SEBI has issued detailed guidelines (**InvIT Guidelines**) for right issue of units by an unlisted InvITs. Also, SEBI had vide its notifications dated October 8, 2020 (available [here](#) and [here](#)) introduced various amendments in relation to issuance of debt securities and exercise of due diligence by debenture trustees (**Trustee**). In continuation of the same, SEBI has now issued detailed guidelines (**DT Guidelines**).

Following are some of the relevant factors provided in the aforementioned guidelines issued by SEBI:

A. InvIT Guidelines for right issue of units by unlisted InvITs

- **Allotment Size:** The minimum allotment to any investor shall be INR 1 crore and the allotment shall be made in the manner as prescribed in the InvIT Guidelines.
- **Pricing of Units:** The investment manager shall decide the issue price before determining the record date, on behalf of the InvIT and the issue price shall be disclosed in the letter of offer.
- **Conditions for issuance:** No InvIT can make a rights issue of units, unless the following conditions are satisfied:
 - a resolution of the board of directors of the investment manager approving the right issue and determining the record date is passed;
 - units of the same class are already issued by InvIT, which are proposed to be allotted;
 - none of the respective promoters or partners or directors of the sponsor or the investment manager or trustee of the InvIT is a fugitive economic offender under Fugitive Economic Offenders Act, 2018;
 - none of the respective promoters or partners or directors of the sponsor or the investment manager or trustee of the InvIT is debarred by SEBI, from accessing the securities market or is 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 under any order or directions of SEBI.
- **Underwriting:** InvIT may appoint the underwriters in accordance with the SEBI (Underwriters) Regulations, 1993, if it desires to have the issue underwritten.
- **Letter of Offer:**
 - The investment manager, on behalf of InvIT should: (a) file a letter of offer with SEBI, at least 5 days prior to issue opening; and (b) carry out the obligations relating to the issue;
 - The investment manager shall ensure that the disclosures made in the letter of offer contain material, true, correct and adequate disclosures, as per SEBI (Infrastructure Investment Trusts) Regulations, 2014 and guidelines, circulars issued thereunder;
 - Letter of offer to contain disclosures as per Annexure I of the InvIT Guidelines and such letter of offer is to be furnished to SEBI in soft copy. The disclosures include object of the issue, related party transactions, valuation, distribution.
- **Application:** The application form shall be prepared by the investment manager and such investment manager shall make arrangement for distribution of application form along with letter of offer to all the unit holders as on the record date, at least 5 days prior to the issue opening.
- **Timelines:** The right issue shall open within 3 months from the record date and shall be kept open for at least 3 working days but not more than 15 days.
- **Manner of issuance of Units:** The units shall be issued in dematerialized form and the right entitlements shall be credited to the dematerialized account of the unitholders before the date of issue opening. The right entitlements shall include a right to renounce such units in favor of any other person and the letter of offer or notice sent to the unit holders shall contain a statement to this effect.
- **Restriction on further capital issue:** InvIT shall not make further issue of units during the period between the date of filing of letter of offer with SEBI and the allotment of such units offered under the letter of offer. The InvIT shall also file an allotment report with SEBI, providing details of the allottees and the allotment made, within 15 days of issue closing date.

The InvIT Guidelines have been issued vide SEBI Circular dated November 4, 2020 ([available here](#)).

B. DT Guidelines for creation of security in issuance of listed debt securities and 'due diligence' by debenture trustee

▪ Trustee to be provided with certain information to enable it to exercise due diligence with respect to creation of security

In order to enable the Trustee to exercise due diligence with respect to creation of security, the issuer at the time of entering into debenture trustee agreement shall provide the certain information/ documents to the Trustee, including the following:

- Details of assets, movable property and immovable property on which charge is proposed to be created, including title deeds/ title reports/MOU/evidence of registration, etc.;
- Certain prescribed information/ documents for unencumbered assets and encumbered assets, in case of personal guarantee or corporate guarantee;
- In case securities (equity shares etc.) are being offered as security then a holding statement from the depository participant along-with an undertaking that these securities shall be pledged in favour of Trustee in the depository system;
- Details of any other form of security being offered viz. Debt Service Reserve Account etc.;
- Any other information, documents or records required by Trustee with regard to creation of security and perfection of security.

▪ Due diligence actions by Trustee for creation of security

Trustee by itself or through its advisers or experts are required to carry out independent due diligence before creating a charge on the security for the debentures and the terms and conditions with respect to exercising due diligence to be included in the debenture trustee agreement. Following are certain actions points:

- Verification of assets to ascertain if they are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders. In case of personal guarantee/ corporate guarantee/ any other guarantee or form of security, verification of filings made with statutory authorities to be carried out, and obtain necessary certifications;
- Trustee by itself or through its appointed agencies viz. chartered accountant firm, registered valuer, legal counsel etc., are required to prepare report(s) and independently assess if the assets for creation of security are adequate for the proposed issue of debt securities;
- Trustee to issue a due diligence certificate in the prescribed format;
- Trustee to maintain records and documents pertaining to due diligence exercised for a minimum period of five years from redemption of the debt securities.

▪ Disclosures to be made by the issuer in the offer document (OD) or private placement memorandum/ information memorandum (PPM/IM)

The issuer to additionally disclose in the OD/ PPM/ IM, the following information:

- Debt securities shall be considered as secured only if the charged asset is registered with Sub-registrar and Registrar of Companies or CERSAI or Depository etc., as applicable, or is independently verifiable by the Trustee;
- Terms and conditions of debenture trustee agreement including fees charged by Trustee, details of security to be created and process of due diligence carried out by the Trustee;
- Due diligence certificate issued by the Trustee as per the prescribed format.

Further, an issuer proposing to file draft OD or PPM/IM for offering securities through electronic book mechanism or serially printing PPM/IM as per Section 42 of Companies Act, 2013 and rules made thereunder shall submit the due diligence certificate received from Trustee in the prescribed format to the stock exchange.

▪ Creation and registration of charge of security by issuer

- Before making the application for listing of debt securities, the issuer shall create charge as specified in the OD or PPM/IM, in favor of the Trustee and also execute debenture trust deed with the Trustee;
- The charge created by issuer shall be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently verifiable, then the same shall be considered a breach of covenants/terms of the issue by the issuer;
- The stock exchanges will list the debt securities only upon receipt of a due diligence certificate as per the prescribed format from Trustee confirming creation of charge and execution of the debenture trust deed.

The detailed DT Guidelines have been provided under SEBI Circular dated November 3, 2020 ([available here](#)) effective from January 1, 2021, that is, for new issues proposed to be listed on or after January 01, 2021.

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