ARALAW ADVOCATES & SOLICITORS

SEBI Gives Nod for Infrastructure Investment Trusts Regulations

Pursuant to the proposals outlined in the Union Budget 2014-15 (**"Union Budget**"), SEBI approved the regulations for setting up and listing of Infrastructure Investment Trusts **("InvITs")** at their board meeting on 10th August, 2014. Earlier, SEBI had released the draft Infrastructure Investment Trusts Regulations, 2014 on 17th July, 2014.

Set out below are some of the salient features of InvITs as outlined in the board meeting minutes:

1. Infrastructure: The definition of infrastructure will be the same as defined by the Ministry of Finance *vide* its notification dated 7th October, 2013.

2. Structure: An InvIT shall be in the form of a Trust and registered with SEBI with a Sponsor, Investment Manager, Trustee and Project Manager. The Trustee shall be SEBI registered Debenture Trustee who shall not be an associate of the Sponsor/Manager. The InvIT shall invest in infrastructure projects either directly or through an SPV. In case of public-private partnership projects such investment shall only be through SPV.

3. Ownership of SPV: An InvIT shall hold or propose to hold controlling interest and more than 50% of the equity share capital or interest in the underlying SPV, except where the same is not possible because of a regulatory requirement/ requirement emanating from the concession agreement. In such cases, Sponsor shall enter into an agreement with the InvIT, to ensure that no decisions are taken by the Sponsor, including voting decisions with respect to the SPV, which are against the interest of the InvIT/ its unit holders.

4. Ownership by Sponsor(s): Sponsors of an InvIT shall, collectively, hold not less than 25% of the total units of the InvIT on post issue basis for a period of at least 3 years, except for the cases where a regulatory requirement/concession agreement requires the sponsor to hold a certain minimum percent in the underlying SPV. In such cases the consolidated value of such sponsor holding in the underlying SPV and in the InvIT shall not be less than the 25% of the value of units of InvIT on post-issue basis.

5. Public Offer and listing of units - In order to come out with an initial offer, the value of the assets under the InvIT or proposed under the InvIT shall not be less than Rs 500 crores with a minimum initial offer size of Rs 250 crores. An InvIT which proposes to invest at least 80% of the value of the assets in the completed and revenue generating Infrastructure assets, shall:
    i. raise funds only through public issue of units;
    ii. have a minimum 25% public float and at least 20 investors;
    iii. have minimum subscription size and trading lot of Rs 10 lakhs and Rs 5 lakhs respectively;
    iv. distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, at least on a half yearly basis; and
    v. through a valuer, undertake a full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.

6. Investment Conditions: At least 80% of the corpus of InvITs must be invested in completed or revenue generating assets and a publicly traded InvIT may invest the remaining 20% in 'under construction' infrastructure projects (subject to maximum 10%) and other permissible investments. In case it is proposed to invest more than 10% on under construction projects, funds would necessarily

be raised through QIBs and body corporates with a minimum investment and trading lot of Rs. 1 crore and have minimum 5 investors with each not holding more than 25% of the units.

7. Offer and Listing of Units: Listing would be mandatory for publicly offered and privately placed units of InvITs.

8. Borrowings: The aggregate consolidated borrowings of the InvIT and the underlying SPV would be capped at 49% of the value of the assets. For borrowings exceeding 25% of the value of the assets, mandatory approval of the unit holders and appropriate credit rating are required.

ARA LAW's View –

1. Tax – The tax benefits provided in the Finance Act, 2014 may prove to be a significant incentive to shift towards the InvITs structure. The Finance Act, 2014 provides tax incentives such as partial tax pass through status for the InvIT and certain benefits for the promoter of the SPV.

2. Foreign Investments – The norms approved by SEBI provide that InvITs may raise funds from any investors, resident or foreign. However, participation of foreign direct investment and foreign portfolio investors in InvITs will depend on necessary clarifications in the FDI policy and also consultations with the RBI.

Infrastructure and construction sectors have a significant role in the economy and the government is following up its electoral promises with concrete measures to promote investment in these vital sectors. The norms approved by SEBI along with the tax incentives provided are a major step in the direction.

The new norms would enable listing and trading of InvITs as any other security on the stock exchange platforms and also help create new platforms for raising of funds by infrastructure companies. However, since the final regulations are yet to be notified by SEBI, it would be interesting to note if there are any other changes in the fine print which could have an adverse impact on the InvIT structure.

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