



CIRCULAR

F. No. 41/IFSCA/SEBI/REITs-InvITs/2020-21

October 21, 2020

To,
All Stock Exchanges in the International Financial Services Centre

Dear Sir/Madam,

Sub: Infrastructure Investment Trusts (InvITs) in International Financial Services Centres (IFSCs)

1. The framework for listing and trading of Infrastructure Investment Trusts (InvITs) on a recognised stock exchange in International Financial Services Centres (IFSCs) has been provided by Securities and Exchange Board of India (SEBI) vide circular SEBI/HO/DDHS/DDHS/CIR/P/2020/174 dated September 16, 2020.
2. Based on the representations received from market participants, it has been decided to prescribe the following regulatory framework for InvITs in IFSCs:

A. InvITs in IFSCs

(a) Any person/entity from India (IFSC or outside IFSC) or a foreign jurisdiction (as defined in **Annexure - I**) desirous to operate as an InvIT in the IFSCs shall obtain registration with International Financial Services Centres Authority (IFSCA).

(b) An InvIT is permitted to raise funds through:

- i. Public issue with units listed on a recognised stock exchange in IFSC;
or
- ii. Private placement with units listed on a recognised stock exchange in IFSC; or
- iii. Private placement whose units are not proposed to be listed on any recognised stock exchange.

in accordance with the requirements prescribed at **Annexure - I** of this circular.

(c) The recognised stock exchange(s) in IFSC shall specify the detailed framework including on initial disclosure requirements in the offer document, continuous obligations and disclosure requirements, rights of unit holders, trading, clearing and settlement etc. for InvITs listed or proposed to be listed on a recognised stock exchange(s) in IFSC. The InvITs shall comply with the requirements prescribed by the recognised stock exchange(s).

B. Listing of an InvIT listed in India or Permissible Jurisdiction

(a) An InvIT may be allowed to list and trade on a recognised stock exchange in IFSC provided:

- i. The InvIT is listed in India (outside IFSC) or in a permissible jurisdiction as notified or may be notified by the Government of India from time to time pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005; and
- ii. The InvIT is in compliance with the law of its home jurisdiction.

(b) The application for listing of such InvITs shall be filed with the recognised stock exchange(s) in the format and manner prescribed by the stock exchange(s).

(c) The recognised stock exchange(s) in IFSC may exempt the continuous obligations and disclosure requirements for InvITs (under clause B) listed on the recognised stock exchange(s) in IFSC, provided that the InvIT releases all information and documents in English to the recognised stock exchange(s) in IFSC at the same time as they are released to the home exchange where it has a primary listing.

3. The detailed framework for listing of InvITs in IFSC shall be prescribed by the recognised stock exchanges in IFSC, pursuant to approval by IFSCA.
4. This circular is issued in exercise of powers conferred by section 12 of the International Financial Services Centres Authority Act, 2019 to develop and regulate the financial products, financial services and financial institutions in the International Financial Services Centres.
5. A copy of this circular is available on the website of International Financial Services Centres Authority at www.ifsc.gov.in.

Yours faithfully,

Arjun Prasad
Deputy General Manager
arjun.pd@ifsc.gov.in

Annexure - I

Infrastructure Investment Trusts (InvITs)

Chapter I: Preliminary

Definitions

1. The terms defined herein shall have the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—

a. "change in control" means,-

(i) in case of a company or body corporate, change in control where 'control' shall have the meaning as provided in sub-section (27) of section 2 of the Companies Act, 2013;

(ii) in any other case, change in the controlling interest;

Explanation.— For the purpose of sub-clause (ii), the expression “controlling interest” means an interest, whether direct or indirect, to the extent of not less than fifty percent of voting rights or interest;

b. "eligible infrastructure project" means an infrastructure project which, prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions,—

(i) For PPP projects,—

(a) the Infrastructure Project is a completed and revenue generating project, or

(b) the Infrastructure Project, which has achieved commercial operations date and does not have the track record of revenue from operations for a period of not less than one year, or

(c) the Infrastructure Project is a pre-COD project;

(ii) In non-PPP projects, the infrastructure project has received all the requisite approvals and certifications for commencing construction of the project;

c. "foreign jurisdiction" means a country, other than India, whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (IOSCO's MMOU) (Appendix A signatories) or a signatory to bilateral Memorandum of Understanding with the IFSCA, and which is not identified in the public statement of Financial Action Task Force as:

i. a jurisdiction having a strategic Anti-Money Laundering or Combating

- the Financing of Terrorism deficiencies to which counter measures apply; or
- ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
- d. “holdco” or “holding company” means a company or LLP,-
- (i) in which InvIT holds or proposes to hold controlling interest and not less than fifty one per cent of the equity share capital or interest and which in turn has made investments in other SPV(s), which ultimately hold the infrastructure assets;
- (ii) which is not engaged in any other activity other than holding of the underlying SPV(s), holding of infrastructure projects and any other activities pertaining to and incidental to such holdings;
- e. “IFSC” or “International Financial Services Centre” shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005;
- f. “IFSCA” means the International Financial Service Centres Authority established under the International Financial Services Centres Authority Act, 2019 (50 of 2019);
- g. “investment management agreement” means an agreement between the trustee and the investment manager which lays down the roles and responsibilities of the investment manager towards the InvIT;
- h. “investment manager” means a company or LLP or body corporate which manages assets and investments of the InvIT and undertakes activities of the InvIT;
- i. “InvIT” or 'Infrastructure Investment Trust' shall mean the trust registered as such under these provisions;
- j. "InvIT assets" means assets owned by the InvIT, whether directly or through a holdco and/ or SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets;
- k. “parties to the InvIT” shall include the sponsor(s), investment manager, project manager(s) and the trustee;
- l. “PPP project” means an infrastructure project undertaken on a Public- Private Partnership basis;
- m. “pre-COD project” means an infrastructure project which,-

- i. has not achieved commercial operation date as defined under the relevant project agreements including the concession agreement, power purchase agreement or any other agreement of a similar nature entered into in relation to the operation of a project or any agreement entered into with the lenders; and
- ii. has,—
 - a. achieved completion of at least fifty percent of the construction of the infrastructure project as certified by an independent engineer of such project; or
 - b. expended not less than fifty percent of the total capital cost set forth in the financial package of the relevant project agreement;
- n. "project implementation agreement" or "project management agreement" means an agreement between the project manager, the concessionaire SPV and the trustee which sets out obligations of the project manager with respect to execution of the project and/or management:

Provided that in case of PPP projects, such obligations shall be in addition to the responsibilities as under the concession agreement or any such agreement entered into with the concessioning authority;

- o. "project manager" means a company or LLP or a body corporate designated as the project manager by the InvIT, responsible for achieving execution /management of the project and in case of PPP projects, shall mean the entity responsible for such execution and achievement of project milestones in accordance with the concession agreement or any other relevant project document;
- p. "SEBI" means the Securities and Exchange Board of India;
- q. "special purpose vehicle " or "SPV " means any company or LLP, -

(i) in which either the InvIT or the holdco holds or proposes to hold controlling interest and not less than fifty one percent of the equity share capital or interest:

Provided that in case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions under proviso to clause 12(3);

(ii) which holds not less than ninety percent of its assets directly in infrastructure projects and does not invest in other SPVs; and

(iii) which is not engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects.

- r. “sponsor” means any company or LLP or body corporate which sets up the InvIT and is designated as such at the time of application made;
- s. “stock exchange” means a recognised stock exchange in IFSC; and
- t. “valuer” means a person who is authorised to practise as a valuer under the law of the state or country where the valuation takes place.

Chapter II: Registration and Eligibility Criteria

Registration

2. (1) An application for grant of certificate of registration as an InvIT shall be made, by the sponsor on behalf of the trust in the format specified by the stock exchange(s) to IFSCA, and shall be accompanied by a non-refundable fee amounting to 0.05% of the offer / issue size and shall be payable to IFSCA.

(2) The IFSCA may, in order to protect the interests of investors, appoint any person to take charge of records, documents of the trust and for this purpose, also determine the terms and conditions of such an appointment.

Eligibility

Trust

3. The following are the eligibility conditions for the trust:

- a) The trust has been incorporated under the laws of India (IFSC or outside IFSC) or foreign jurisdiction;
- b) the trust deed has its main objective as undertaking activity of InvIT and includes responsibilities of the Trustee in accordance with the requirements prescribed in this circular;
- c) persons have been designated as sponsor(s), investment manager and trustee and all such persons are separate entities.

Sponsor

4. The following are the eligibility conditions for a sponsor of an InvIT:

- a) Each sponsor has a net worth of not less than USD 15 million if it is a body corporate or a company or net tangible assets of value not less than USD 15 million in case it is a limited liability partnership;
- b) The sponsor or its associate shall have a sound track record in development of infrastructure or fund management in the infrastructure sector.

Explanation.- For the purpose of this clause, 'sound track record' means experience of at least 5 years and where the sponsor is a developer, at least two projects of the sponsor have been completed;

Investment Manager

5. The following are the eligibility conditions for an investment manager of an InvIT:

- a) the investment manager should be incorporated in IFSC and have a physical office in IFSC;
- b) The investment manager shall have a net worth of not less than USD 1.5 million if the investment manager is a body corporate or a company or net tangible assets of value not less than USD 1.5 million in case the investment manager is a limited liability partnership;
- c) the investment manager has not less than five years experience in fund management or advisory services or development in the infrastructure sector;
- d) the investment manager has not less than two employees who have at least five years experience each, in fund management or advisory services or development in the infrastructure sector;
- e) the investment manager has not less than one employee who has at least five years experience in the relevant sub-sector(s) in which the InvIT has invested or proposes to invest;
- f) the investment manager has not less than half of its directors in case of a company or members of the governing board in case of an LLP as independent and not directors or members of the governing board of an Investment Manager of another InvIT.

Trustee

6. The following are the eligibility conditions for a trustee of an InvIT:

- a) The trustee is registered as a trustee with SEBI or IFSCA or any other securities regulator and shall not be an associate of the sponsor(s) or investment manager; and
- b) The trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the IFSCA and the stock exchange(s) in IFSC.

Fit and Proper

7. The registration shall be granted only if the InvIT and parties to the InvIT are fit and proper persons after taking into account any consideration as it deems fit by the IFSCA, including but not limited to the following criteria:

- a) integrity, reputation and character;
- b) absence of convictions and restraint orders;
- c) competence including financial solvency and networth; and
- d) absence of categorization as a wilful defaulter.

Currency

8. The units of the InvITs shall be in a currency other than Indian Rupee.

Chapter III: Rights and responsibilities

Trustee

9. (1) The trustee shall hold the InvIT assets in trust for the benefit of the unit holders in accordance with the trust deed and the requirements prescribed in this circular.

(2) The trustee shall enter into an investment management agreement with the investment manager on behalf of the InvIT.

(3) The trustee shall oversee activities of the investment manager in the interest of the unit holders and ensure that the investment manager complies with the responsibilities and shall obtain compliance certificate from the investment manager on a quarterly basis.

(4) The trustee shall oversee activities of the project manager with respect to compliance with this circular and the project implementation agreement/ project management agreement and shall obtain compliance certificate from the project manager on a quarterly basis.

(5) The trustee shall make distributions and ensure that investment manager makes timely declaration of distributions to the unit holders.

(6) The trustee shall ensure that subscription amount is kept in a separate bank account with IFSC banking unit in name of the InvIT and is only utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.

(7) The trustee shall ensure that the remuneration of the valuer is not linked to or based on the value of the asset being valued.

(8) The trustee shall ensure that the investment manager convenes meetings of the unit holders and oversee the voting by unitholders and declare outcome of the voting.

(9) In case of any change in investment manager due to removal or otherwise,-

- a) prior to such change, the trustee shall obtain approval from unit holders and approval from the IFSCA;

Provided that the approval from IFSCA shall not be required in respect of an InvIT that is privately placed whose units are not listed on any stock exchange.

- b) the trustee shall appoint the new investment manager within three months from the date of termination of the earlier investment management agreement;
- c) the previous investment manager shall continue to act as such at the discretion of trustee till such time as new investment manager is appointed;
- d) the trustee shall ensure that the new investment manager shall stand substituted as a party in all the documents to which the earlier investment manager was a party;
- e) the trustee shall ensure that the earlier investment manager continues to be liable for all its acts of omissions and commissions notwithstanding such termination.

(10) In case of any change in the project manager due to removal or otherwise,—

- a) the trustee shall appoint the new project manager within three months from the date of termination of the earlier project implementation agreement/ project management agreement;
- b) the trustee may, either *suo motu* or based on the advice of the concessioning authority appoint an administrator in connection with a infrastructure project(s);
- c) the previous project manager shall continue to act as such at the discretion of trustee till such time as new project manager is appointed;
- d) all costs and expenses in this regard will be borne by the new project manager;
- e) the trustee shall ensure that the new project manager shall stand substituted as a party in all the documents to which the earlier project manager was a party;
- f) the trustee shall ensure that the earlier project manager continues to be liable for all its acts of omissions and commissions for the period during which it served as the project manager, notwithstanding such termination.

(11) Prior approval of unitholders and IFSCA shall be necessary for effecting any change in control in investment manager. The Trustee shall obtain the prior approvals including convening and handling the meeting of the unit holders.

Provided that the approval from IFSCA shall not be required in respect of an InvIT that is privately placed whose units are not listed on any stock exchange.

(12) In case of change in control of the project manager in a PPP project, the trustee shall ensure that written consent of the concessioning authority is obtained in terms of the concession agreement prior to such change, where applicable.

(13) The trustee of an InvIT shall not invest in units of the InvIT in which it is designated as the trustee.

Investment Manager

10. (1) The investment manager shall make the investment decisions with respect to the underlying assets or projects of the InvIT including any further investment or divestment of the assets.

(2) The investment manager shall oversee activities of the project manager with respect to compliance with this circular and the project implementation agreement/ project management agreement and shall obtain compliance certificate from the project manager on a quarterly basis.

(3) The investment manager shall ensure that the infrastructure assets of the InvIT or holdco or SPV have proper legal titles, if applicable, and that all the material contracts entered into on behalf of InvIT or SPV are legal, valid, binding and enforceable by and on behalf of the InvIT or SPV.

(4) The investment manager shall ensure that the investments made by the InvIT are in accordance with the investment conditions and in accordance with the investment strategy of the InvIT.

(5) The investment manager, in consultation with trustee, shall appoint an auditor for a period of not more than five consecutive years:

Provided that the auditor, not being an individual, may be reappointed for a period of another five consecutive years, subject to approval of unit-holders in the annual meeting.

(6) The investment manager shall ensure that the InvIT assets are adequately insured.

(7) The investment manager shall ensure that it has adequate infrastructure and sufficient key personnel with adequate experience and qualification to undertake management of the InvIT at all times.

(8) The investment manager and the merchant banker(s) shall be responsible for all activities pertaining to issue and listing of units of the InvITs in respect of InvITs listed on a stock exchange.

(9) The investment manager shall be responsible for all activities pertaining to the issue of units of InvITs in respect of privately placed InvITs whose units are not listed on a stock exchange.

(10) The investment manager and the merchant bankers(s), shall ensure that disclosures made in the offer document or placement memorandum contains material, true, correct and adequate disclosures and are in accordance with the requirements

prescribed by IFSCA or the stock exchange(s), in respect of InvITs listed on a stock exchange.

(11) The investment manager shall ensure that disclosures made in the placement memorandum contains material, true, correct and adequate disclosures and are in accordance with the requirements prescribed by IFSCA in respect of privately placed InvITs whose units are not listed on a stock exchange.

(12) The investment manager shall declare distributions to the unit holders in accordance with the distribution policy as provided in this circular.

(13) The investment manager shall submit to the trustee, -

- a) quarterly reports on the activities of the InvIT;
- b) valuation reports within fifteen days of the receipt of the valuation report from the valuer;

(14) The investment manager shall ensure that the audit of accounts of the InvIT by the auditor is done not less than once in a year and such report is:

- (a) submitted to the stock exchange(s) within sixty days of end of such financial year ending March 31st, in respect of InvITs listed on a stock exchange; or
- (b) submitted to the trustee and unitholders, either electronically or through physical copies, in respect of privately placed InvITs whose units are not listed on a stock exchange.

(15) The investment manager may appoint a custodian in order to provide such custodial services as may be authorised by the trustees.

(16) The investment manager shall place, before its board of directors in the case of a company or the governing board in case of an LLP, a report on activity and performance of the InvIT every three months.

Project Manager

11. (1) The project manager shall undertake operations and management of the InvIT assets including making arrangements for the appropriate maintenance, as may be applicable, either directly or through the appointment and supervision of appropriate agents and as required under any project agreement including a concession agreement in the case of a PPP project.

(2) If the InvIT invests in under construction projects, the project manager shall,–

- a) undertake the operations and management of the projects, either directly or through appropriate agents;

- b) oversee the progress of development, approval status and other aspects of the project upto its completion, in case of appointment of agents for the purpose of execution.

(3) The project manager shall discharge all obligations in respect of achieving timely completion of the project implementation agreement/ infrastructure project, wherever applicable, implementation, operation, maintenance and management of such infrastructure project in terms of the project management agreement.

Sponsor

12. (1) The sponsor(s) shall set up the InvIT and appoint the trustee(s) of the InvIT.

(2) The sponsor(s) shall transfer or undertake to transfer to the InvIT, its entire shareholding or interest and rights in the holdco and/ or SPV or ownership of the infrastructure projects, subject to a binding agreement and adequate disclosures in the offer document or placement memorandum, prior to allotment of units of the InvIT:

Provided that this shall not apply to the extent of any mandatory holding of shares or interest and rights in the holdco and/ or SPV by the sponsor(s) as per any Act or regulations or circulars or guidelines of government or any regulatory authority or concession agreement.

(3) With respect to holding of units in the InvIT, the sponsor(s) together shall hold not less than fifteen percent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units, subject to the following:

- i. sponsor(s) would be responsible for all acts, omissions and representations/ covenants of the InvIT related to formation of InvIT, sale/ transfer of assets/holdco/SPV to the InvIT.
- ii. the InvIT/the trustee of the InvIT shall also have recourse against the sponsor for any breach in this regard.
- iii. project manager of the InvIT shall be the sponsor or an associate of the sponsor and shall continue to act in such capacity for a period of minimum three years from the date of listing of InvIT units unless suitable replacement is appointed by the unit-holders through the Trustee:

Provided that the condition as specified at sub clause (iii) above shall not be applicable where the sponsor(s) together hold not less than twenty five percent of the total units of the InvIT after initial offer of units, on a post-issue basis for a period of not less than 3 years from the date of the listing of such units.

Provided further that in case of PPP projects where the InvIT is investing in infrastructure assets through SPV(s), in case such acquiring or holding is disallowed by

government or under any provisions of the concession agreement or any other such agreement,—

- i. the sponsor may continue to maintain such holding at the SPV level;
- ii. the consolidated value of all such holdings at the SPV level and the value of the units of InvIT held by the sponsor shall not be less than the value of fifteen percent of the total units of the InvIT after initial issue of units on a post-issue basis;
- iii. such units of the InvIT and shares or interest in the SPV shall be held for a period of not less than three years from the date of the listing of units of the InvIT;
- iv. in case such holding of sponsor in the SPV results in the InvIT not having controlling interest and not having more than fifty one percent shareholding or interest in the SPV, the sponsor shall enter into a binding agreement with the InvIT to ensure that decisions taken by the sponsor including voting with respect to the SPV are in compliance with the requirements in this circular and not against the interest of the InvITs or the unit holders and shall be subject to further guidelines as may be specified by the IFSCA.

(4) Any holding by sponsor in InvIT, exceeding fifteen percent on a post issue basis, shall be held for a period of not less than one year from the date of listing of such units.

Valuer

13. (1) The valuer(s) shall ensure that the valuation of the InvIT assets is impartial, true and fair and is in accordance with chapter X of this circular.

(2) The valuer(s) shall ensure that it has sufficient and adequate financial, human and other resources to enable it to perform valuations.

(3) The valuer(s) and any of its employees involved in valuing of the assets of the InvIT, shall not,—

(i) invest in units of the InvIT or in the assets being valued; and

(ii) sell the assets or units of InvITs held prior to being appointed as the valuer,

till the time such person is designated as valuer of such InvIT and not less than six months after ceasing to be valuer of the InvIT.

(4) The valuer(s) shall conduct the valuation of the InvIT assets with transparency and fairness and shall render, at all times, high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.

(5) The valuer(s) shall act with independence, objectivity and impartiality in performing the valuation.

(6) The valuer(s) shall not accept remuneration, in any form, for performing a valuation of the InvIT assets from any person other than the InvIT or its authorized representative.

(7) The valuer(s) shall before accepting any assignment, from any related party to the InvIT, shall disclose to the InvIT any direct or indirect consideration which the valuer may have in respect of such assignment.

Auditor

14. (1) The auditor shall conduct audit of the accounts of the InvIT and prepare the audit report based on the accounts examined by him and after taking into account the relevant accounting and auditing standards.

(2) The auditor shall, to the best of his information and knowledge, ensure that the accounts and financial statements, including profit or loss and cash flow for the period and such other matters as may be specified, give a true and fair view of the state of the affairs.

(3) The auditor shall have a right of access at all times to the books of accounts and vouchers pertaining to activities of the InvIT.

(4) The auditor shall have a right to require such information and explanation pertaining to activities of the InvIT as he may consider necessary for the performance of his duties as auditor from the employees of InvIT or parties to the InvIT or holdco or SPV or any other person in possession of such information.

Chapter IV: Offer of units of InvITs

15. (1) No initial offer of units by an InvIT shall be made unless,—

(a) the InvIT is registered with the IFSCA;

(b) the value of InvIT assets is not less than USD 75 million; and

(c) the offer size is not less than USD 37.5 million;

(2) The minimum offer and allotment to public through an offer document / placement memorandum in respect of InvITs listed on a stock exchange shall be as per the below table:

<i>Post Issue Capital</i>	<i>Minimum no./ value of units to be offered</i>
Less than USD 240 million	Atleast 25% of the total outstanding units of the InvIT
USD 240 million or more and less than USD 600 million	Atleast USD 60 million
Equal to or more than USD 600 million	Atleast 10% of the total outstanding units of the InvIT

Provided that any units offered to sponsor or the investment manager or the project manager or their related parties or their associates shall not be counted towards units offered to the public.

Private Placement

(3) The fund raising by an InvIT by way of private placement shall be subject to compliance with the following:

<i>Private placement of InvITs whose units are proposed to be listed</i>	<i>Private placement of InvITs whose units are not proposed to be listed</i>
The InvIT is required to obtain in-principle approval from the stock exchange(s)	-
The InvIT, through the merchant banker, shall file a placement memorandum with the IFSCA alongwith the fee atleast 5 days prior to opening of the issue. Provided that such opening of the issue shall not be at a date later than 3 months from the receipt of in-principle approval for listing, from exchange(s)	The InvIT shall file a placement memorandum with the IFSCA along with the fee atleast 5 days prior to opening of the issue
The InvIT shall raise funds from institutional investor(s) and body corporate(s) in IFSC (whether from India or foreign jurisdiction), with minimum investment from any investor of USD 150,000 Notwithstanding the above, if a privately placed InvIT invests or proposes to invest not less than eighty per cent of the value of the InvIT assets in completed and revenue generating assets, the minimum investment from an investor shall be USD 3.75 million.	The InvIT shall raise funds from institutional investor(s) and body corporates in IFSC (whether from India or foreign jurisdiction), with minimum investment from any investor of USD 150,000
The InvIT shall raise funds from not less than five and not more than one thousand investors	The InvIT shall raise funds from not more than twenty investors
The InvIT, through the merchant banker, shall file the final placement memorandum with the IFSCA within a period of ten working days from the date of listing of the units issued therein	The InvIT shall file the final placement memorandum with the IFSCA within a period of ten working days from the date of allotment of the units to the investors.

Public Issues

(4) The fund raising by an InvIT by way of public issue shall be subject to compliance with the following:

(a) The InvIT shall raise funds by way of initial public offer and any subsequent issue of units after initial public offer may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by the IFSCA.

(b) The InvIT, through the merchant banker, shall file a draft offer document along with the fee, with the stock exchange(s) and the IFSCA, not less than thirty working days before filing the offer document with the stock exchange and the IFSCA.

(c) The draft offer document filed with the IFSCA shall be made public, for comments, if any, by hosting it on the websites of the IFSCA, stock exchange(s) and merchant bankers associated with the issue, for a period of not less than fourteen days.

(d) The draft offer document and/ or offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker.

(e) The IFSCA may communicate its comments to the lead merchant banker within twenty one working days from the date of receipt of satisfactory reply from the lead merchant bankers or investment manager.

(f) The lead merchant banker shall ensure that all comments received from the IFSCA on the draft offer document are suitably taken into account prior to the filing of the offer document with the designated stock exchanges.

(g) The offer document shall be filed with the stock exchange(s) and the IFSCA not less than five working days before opening of the offer.

(h) The initial offer or follow-on offer or rights issue shall be made by the InvIT within a period of not more than one year from the date of issuance of observations by the IFSCA.

Provided that if the initial offer or follow-on offer or rights issue is not made within the specified time period, a fresh draft offer document shall be filed.

(i) The InvIT may invite for subscriptions and allot units to any person in IFSC (whether from India or foreign jurisdiction), subject to the applicable investment guidelines and permissions issued by regulators at home jurisdiction, if any.

(j) The minimum subscription from any investor in initial and follow-on offer shall be USD 1400.

(k) The initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days.

(l) In case of over-subscriptions, the InvIT shall allot units to the applicants on a proportionate basis rounded off to the nearest integer subject to minimum subscription amount per subscriber.

(m) The InvIT shall allot units or refund application money, as the case may be, within twelve working days from the date of closing of the issue.

(n) The InvIT shall issue units only in dematerialized form to all the applicants.

(o) The price of InvIT units issued by way of public issue shall be determined through the book building process or any other process in accordance with the circulars or guidelines issued by the IFSCA or the stock exchange(s).

(p) The InvIT shall refund money, -

- i. to all applicants in case it fails to collect subscription amount of exceeding ninety percent of the fresh issue size as specified in the offer document;
- ii. to applicants to the extent of oversubscription in case the money received is in excess of the extent of over-subscription as specified in the offer document:

Provided that right to retain such over subscription cannot exceed twenty five percent of the issue size;

Provided further, that the offer document shall contain adequate disclosures towards the utilisation of such oversubscription proceeds, if any, and such proceeds retained on account of oversubscription shall not be utilised towards general purposes.

(q) Units may be offered for sale to public if such units have been held by the existing unitholders for a period of at least one year prior to the filing of draft offer document with the IFSCA:

Provided that the holding period for the equity shares, compulsorily convertible securities (from the date such securities are fully paid-up) or partnership interest in the holdco and/or SPV against which such units have been received shall be considered for the purpose of calculation of one year period referred in this clause:

Provided further that the compulsorily convertible securities, whose holding period has been included for the purpose of calculation for offer for sale, shall be converted to equity shares of the holdco or SPV, prior to filing of offer document.

(r) The amount for general purposes, as mentioned in objects of the issue in the draft offer document filed with the IFSCA, shall not exceed ten per cent of the amount raised by the InvIT by issuance of units.

Offer Document or Placement Memorandum

16. (1) The offer document or the placement memorandum of an InvIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision.

(2) The offer document or placement memorandum shall include all information as prescribed by the stock exchange(s) and in the format prescribed by the stock exchange(s), including:

- a) Introduction
- b) Details of sponsor(s), Investment Manager, Project Manager, Trustee and other parties
- c) Brief background of the InvIT
- d) Description of the assets under the InvIT
- e) Business Details and Strategy
- f) Leverage
- g) Related party transactions
- h) Valuation
- i) Financials
- j) Rights of Unit Holders
- k) Title disclosures, litigations and regulatory actions
- l) Risk Factors
- m) Taxation

(3) The following documents shall be submitted to the IFSCA:

- a) Full valuation report along with the offer document/ placement memorandum
- b) Project implementation/management agreement, alongwith draft offer document or the placement memorandum
- c) Due diligence certificate along with the draft offer document and offer document/ placement memorandum; and
- d) In principle approval from the stock exchange(s).

(4) The placement memorandum of an InvIT whose units are not proposed to be listed on a stock exchange shall contain all information, to the extent applicable, as specified for an InvIT whose units are proposed to be listed on a stock exchange.

Chapter V: Listing and Trading

17. (1) The provisions of this chapter shall not apply to private placement of InvITs whose units are neither listed nor proposed to be listed on a stock exchange.

(2) The units of InvITs shall be listed on a stock exchange within the timeline mentioned in the below table:

<i>Public Offer</i>	<i>Private Placement</i>
Within 12 working days from the date of closure of the initial public offer	Within 30 working days from the date of allotment

Provided that this clause shall not apply if the initial offer does not satisfy the minimum subscription amount prescribed in this circular.

(3) The listing of the units of the InvIT shall be in accordance with the listing agreement entered into between the InvIT and the stock exchange.

(4) The units of the InvIT listed in the stock exchange(s) shall be traded, cleared and settled in accordance with the requirements specified by the stock exchange(s) and such conditions as may be specified by the IFSCA.

(5) Any person other than the sponsor(s) holding units of the InvIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units.

(6) An InvIT whose units are not listed on a stock exchange may list such units on a stock exchange, subject to it complying with the requirements specified for privately placed and listed InvIT under this circular and in the manner specified by the IFSCA from time to time.

Chapter VI: Continuous obligations and Disclosure Requirements

18. (1) The InvIT listed on a stock exchange shall comply with the continuous obligations and disclosure requirements specified by the stock exchange(s).

(2) The following disclosure requirements shall be applicable on an InvIT whose units are not listed on a stock exchange:

(a) The investment manager of the InvIT shall submit annual report, half-yearly report and valuation report to the trustee and unit holders of the InvIT, either electronically or through physical copies.

(b) The annual and half yearly reports shall contain disclosures as specified for a privately placed InvITs listed on a stock exchange.

(c) The investment manager shall disclose to the trustee and unit holders any information having bearing on the operation or performance of the InvIT which includes but is not restricted to the following—

- i. acquisition or disposal of any projects, directly or through holdco or SPV, value of which exceeds five percent of value of the InvIT assets;
- ii. additional issue of units by the InvIT;
- iii. details of any credit rating obtained by the InvIT and any change in such rating;
- iv. any issue which requires approval of the unit holders;
- v. any legal proceedings which may have significant bearing on the functioning of the InvIT;
- vi. notices and results of meetings of unit holders,

- vii. any instance of non-compliance with this circular including any breach of limits;
- viii. any material issue that in the opinion of the investment manager or trustee needs to be disclosed to the unit holders.

Chapter VII: Investment Conditions

19. (1) The investment by an InvIT shall only be in holdco and/ or SPVs or infrastructure projects or securities in accordance with the requirements prescribed in this circular and the investment strategy as detailed in the offer document.

Provided that in case of PPP projects, the InvIT shall mandatorily invest in the infrastructure projects through holdco and/ or SPV.

(2) The InvIT may invest in infrastructure through SPVs subject to the following -

- a) no other shareholder or partner of the SPV shall exercise any rights that prevents the InvIT from complying with the regulatory requirements specified by IFSCA and stock exchange(s) and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the SPV:

Provided that the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the SPV:

Provided further that the provisions specified by IFSCA and stock exchange(s) shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT by IFSCA and stock exchange.

- b) in case the SPV is a company/LLP, the investment manager, in consultation with the trustee, shall appoint majority of the board of directors or governing board of such SPVs as applicable;
- c) the investment manager shall ensure that the in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.

(3) The InvIT may invest in infrastructure projects through holdco subject to the following:

- a) the ultimate holding interest of the InvIT in the underlying SPV(s) is not less than twenty six per cent;
- b) no other shareholder or partner of the holdco or the SPV(s) shall exercise any rights that prevent the InvIT, the holdco or the SPV(s) from complying with the regulatory requirements prescribed by IFSCA and stock exchange(s) and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the holdco and/or SPVs:

Provided that the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the InvIT and the other shareholders or partners in the holdco and/or SPV;

Provided further that the provisions specified by IFSCA and stock exchange(s) shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon an InvIT by IFSCA and stock exchange.

- c) the investment manager, in consultation with the Trustee, shall appoint the majority of the Board of directors or governing board of the holdco and SPV(s);
- d) the investment manager shall ensure that in every meeting including annual general meeting of the Holdco and SPV(s), the voting of the InvIT is exercised.

(4) The investment can be in either India (IFSC or outside IFSC) or in foreign jurisdiction:

Provided that where an investment is made in a foreign infrastructure project, the investment manager should ensure that the investment complies with all the applicable laws and requirements in that foreign country.

(5) The investment by InvIT shall be in compliance with the following investment limits:

<i>Private Placement</i>	<i>Public Issues</i>
Atleast 80% of the value of the InvIT assets in eligible infrastructure projects either directly or through holdcos or through SPVs	Atleast 80% of the value of the InvIT assets shall be invested, proportionate to the holding of the InvITs, in completed and revenue generating infrastructure projects. Explanations: 1) If the investment has been made through a holdco and/ or SPV(s), only the portion of direct investments in completed and revenue generating projects by such holdco and/ or SPV(s) shall be considered under this clause and the remaining portion shall be included in the below clause. 2) If any project is implemented in stages, the part of the project which can be categorised as completed and revenue generating project shall be considered under this clause and the remaining portion shall be included under the below clause.
Un-invested funds may be invested in: a) listed or unlisted debt of companies or body corporate in	Not more than 20% of value of the InvIT assets shall be invested in: a) under-construction infrastructure projects, whether directly or through

<p>infrastructure sector</p> <p>Provided that this shall not include any investment made in debt of the holdco and/ or SPV(s).</p> <p>b) equity shares of listed companies which derive not less than eighty percent of their operating income from infrastructure sector;</p> <p>c) government securities;</p> <p>d) securities issued by a supranational agency; and</p> <p>e) money market instruments, liquid mutual funds or cash equivalents.</p>	<p>holdco and/ or SPVs:</p> <p>Provided that investment in such assets shall not exceed ten percent of the value of the InvIT assets;</p> <p>b) listed or unlisted debt of companies or body corporate in infrastructure sector;</p> <p>Provided that this shall not include any investment made in debt of the holdco and/ or SPV(s).</p> <p>c) equity shares of listed companies which derive not less than eighty percent of their operating income from infrastructure sector;</p> <p>d) government securities;</p> <p>e) securities issued by a supranational agency; and</p> <p>f) money market instruments, liquid mutual funds or cash equivalents.</p>
---	---

(6) In respect of InvITs raised funding through public issue, if the investment conditions are breached on account of market movements of the price of the underlying assets or securities, the investment manager shall inform the same to the trustee and ensure that the investment conditions as specified in this circular are satisfied within six months of such breach:

Provided that the period may be extended to one year subject to approval from investors.

(7) An InvIT shall hold an infrastructure asset for a period of not less than three years from the date of purchase of such asset by the InvIT, directly or through holdco and/or SPV:

Provided that this shall not apply to investment in securities of companies in infrastructure sector other than SPVs.

(8) An InvIT shall not invest in units of other InvITs.

(9) An InvIT shall not undertake lending to any person other than the holdco/special purpose vehicle(s) in which the InvIT has invested in:

Provided that investment in debt securities shall not be considered as lending.

Chapter VIII: Distribution policy

20. (1) With respect to distributions made by the InvIT and the holdco and/or SPV,-

(a) not less than ninety percent of net distributable cash flows of the SPV shall be distributed to the InvIT /holdco in proportion of its holding in the SPV

(b) not less than ninety percent of net distributable cash flows of the InvIT shall be distributed to the unit holders;

(c) with regard to distribution of net distributable cash flows by the holdco to the InvIT, the following shall be complied:

- i. with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the InvIT; and
- ii. with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the InvIT.

(d) such distributions shall be declared and made not less than once every six months in every financial year in case of publicly offered InvITs and shall be made not later than fifteen days from the date of such declaration.

(2) If any infrastructure asset is sold by the InvIT or holdco or SPV or if the equity shares or interest in the holdco/ SPV are sold by the InvIT,—

(a) if the InvIT proposes to re-invest the sale proceeds into another infrastructure asset, it shall not be required to distribute any sales proceeds to the InvIT or to the investors;

(b) If the InvIT proposes not to invest the sales proceeds into any other infrastructure asset within a period of one year, it shall be required to distribute the same in accordance with clause (1) above.

Chapter IX: Borrowings and deferred payments

InvIT listed on a stock exchange

21. The following provisions shall apply to an InvIT listed on a stock exchange:

(1) An InvIT whose units are listed on a stock exchange may issue debt securities in the manner specified by the IFSCA:

Provided that such debt securities shall be listed on recognized stock exchange(s).

(2) The aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents shall not exceed seventy percent of the value of the InvIT assets.

(3) If the aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents exceed twenty five percent of the value of the InvIT assets, for any further borrowing,—

a) upto forty nine percent, an InvIT shall -

(i) obtain credit rating from a credit rating agency; and

(ii) seek approval of unitholders.

b) above forty nine percent, an InvIT shall -

(i) obtain a credit rating of “AAA” or equivalent for its consolidated borrowing and the proposed borrowing, from a credit rating agency.

(ii) utilize the funds only for acquisition or development of infrastructure projects;

(iii) have a track record of atleast six distributions, on a continuous basis, post listing, in the years preceding the financial year in which the enhanced borrowings are proposed to be made; and

(iv) obtain the approval of unitholders.

(4) If the conditions specified in clauses (1) and (2) above are breached on account of market movements of the price of the underlying assets or securities, the investment manager shall inform the same to the trustee and ensure that the conditions are satisfied within six months of such breach.

InvIT whose units are not listed on a stock exchange

22. An InvIT whose units are not listed on a stock exchange may undertake borrowing to the extent permitted under the trust deed, after seeking approval from such number of investors as specified in the trust deed.

Chapter X: Valuation of assets

23. (1) A full valuation shall be conducted by the valuer atleast once in every financial year:

Provided that such full valuation shall be conducted at the end of the financial year ending March 31st within two months from the end of such year.

(2) A half yearly valuation of the InvIT assets shall be conducted by the valuer for the half-year ending on September 30 for incorporating any key changes in the previous six months and such half yearly valuation report shall be prepared within one month from the date of end of such half year.

Provided that in case the consolidated borrowings and deferred payments of an InvIT is above forty nine per cent, the valuation of the assets of such InvIT shall be conducted

by the valuer for quarter ending June, September and December, for incorporating any key changes in the previous quarter and such quarterly report shall be prepared within one month from the date of the end of such quarter.

(3) Valuation reports received by the investment manager shall be submitted to the stock exchange(s) within fifteen days from the receipt of such valuation reports, in respect of an InvIT whose units are listed on a stock exchange.

(4) Prior to any issue of units by publicly offered InvIT other than bonus issue, the valuer shall undertake full valuation of all the InvIT assets and include the same in the Offer Document:

Provided that such valuation report shall not be more than six months old at the time of such offer:

Provided further that this shall not apply in cases where full valuation has been undertaken not more than six months prior to such issue and no material changes have occurred thereafter.

(5) For any transaction of purchase or sale of infrastructure projects, whether directly or through holdco and/or SPVs, for publicly offered InvITs,—

a) a full valuation of the specific project shall be undertaken by the valuer;

b) if,—

a. in case of a purchase transaction, the asset is proposed to be purchased at a value greater than hundred ten per cent of the value of the asset as assessed by the valuer;

b. in case of a sale transaction, the asset is proposed to be sold at a value less than ninety percent of the value of the asset as assessed by the valuer,

approval of the unit holders shall be obtained.

(6) In case of any material development that may have an impact on the valuation of the InvIT assets, then investment manager shall require the valuer to undertake full valuation of the infrastructure project under consideration within not more than two months from the date of such event and disclose the same to the trustee and the stock exchange(s) within fifteen days of such valuation.

(7) The valuer shall not value any assets in which it has either been involved with the acquisition or disposal within the last twelve months other than such cases where valuer was engaged by the InvIT for such acquisition or disposal.

Chapter XI: Miscellaneous

Inspection

24. The IFSCA may suo motu or upon receipt of information or complaint appoint one or more persons as inspecting officers to undertake inspection of the books of accounts,

records and documents relating to activity of the InvIT or holdco or SPVs or parties to the InvITs to ascertain whether the regulatory provisions are being complied with.

Submission of reports

25. The IFSCA or the stock exchange may at any time call upon the InvIT or parties to the InvIT to file reports with respect to the activities relating to the InvIT.

Power to call for information

26. The IFSCA or the stock exchange(s) may at any time call for any information from the InvIT or holdco or SPV(s) or parties to the InvIT or any unit holder or any other person with respect to any matter relating to activity of the InvIT.

Power to relax

27. The IFSCA may, in the interest of investors or for the development of the financial market in IFSC, relax the strict enforcement of any requirement of the regulatory provisions relating to InvITs, if IFSCA is satisfied that

- a) requirement is procedural or technical in nature; or
- b) the requirement may cause undue hardship to investors; or
- c) the disclosure requirement is not relevant for a particular industry or class of listed entities; or
- d) the non-compliance was caused due to factors beyond the control of the InvIT or parties to the InvIT; or
- e) such relaxation will be in the interest of the financial market in IFSC; or
- f) any provision of Act(s), Rule(s), regulation(s) under which the listed entity is established or is governed by, is required to be given precedence to.

Suspension of Listing and Trading

28. (1) The IFSCA or the stock exchange may suspend the listing and trading of units of an InvIT if:

- i. The InvIT or parties to the InvIT is in non-compliance with the regulatory provisions prescribed by IFSCA or the stock exchange(s).
- ii. The InvIT is suspended in any other stock exchange.

(2) The Exchange may restore the listing and trading of any securities that have been suspended if it considers that the suspension is no longer required.

Delisting by stock exchange

29. The stock exchange may delist InvIT if it is satisfied that -

- (a) the InvIT is suspended for trading for more than six months without the InvIT or parties to InvIT taking adequate action to obtain restoration of listing and trading;

(b) the InvIT or parties to InvIT is no longer eligible for listing or trading; or

(c) it is directed to do so by the IFSCA or any other relevant authority or any court order of applicable jurisdiction

Voluntary Delisting

30. The stock exchange may delist InvITs, based on request received from the InvIT, in the manner prescribed by the stock exchange.

Surrender of certificate by an InvIT whose units are not listed

31. (1) An InvIT whose units are not listed on a stock exchange may choose to surrender its certificate of registration to the IFSCA and on acceptance of surrender of certificate of registration, it shall no longer undertake the activity of an InvIT.

(2) The InvIT and parties to the InvIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the InvIT notwithstanding surrender of registration to the IFSCA.