

INDIA INFRASTRUCTURE TRUST

(Principal place of Business: Unit no.804,A-Wing, One BKC, Bandra Kurla Complex, Bandra East, Mumbai 400051, India)

Date: January 16, 2020

To,

Securities and Exchange Board of India
Department of Debt and Hybrid Securities
SEBI Bhavan, Plot C4-A, G Block
Bandra Kurla Complex
Bandra (East)
Mumbai – 400 051, India

Dear Madam / Sir,

Subject: Request for an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 as amended from time to time, in relation to the provisions of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014.

This is a request for an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (“Scheme”)

1. **Background:**

- 1.1. The India Infrastructure Trust (“IIT”) is registered as an Infrastructure Investment Trust (“InvIT”) with the Securities and Exchange Board of India (“SEBI”) under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”). The certificate of registration was issued to the IIT on January 23, 2019 and bears the registration number IN/InvIT/18-19/0008.
- 1.2. PenBrook Capital Advisors Private Limited (“Previous Investment Manager”) was appointed as the investment manager of IIT. It is proposed that WIP (India) Private Limited (“Identified Investment Manager”) be appointed as the new investment manager of IIT, in place of the Previous Investment Manager. To that extent, a conditional approval of the SEBI has been obtained way of the approval letter dated January 14, 2020.
- 1.3. It is proposed that the Identified Investment Manager be nominated to act as the investment manager of other InvITs that may be set up and registered with the SEBI under the InvIT Regulations, from time to time (“Future InvITs”). In light of this, IIT and the Identified Investment Manager wishes to seek informal guidance on the queries set out in this application (“Application”).

2. **Queries:**

- 2.1. **Query 1:** Is an entity that acts as an investment manager (i.e. in the current case, the Identified Investment Manager) to an InvIT permitted to act as the investment manager to other InvITs set up and registered with the SEBI under the InvIT Regulations?

Our Contention:

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- 2.1.1. There is no restriction in the InvIT Regulations, that prohibits an entity to act as an investment manager to multiple InvITs. In fact, Regulation 19(4) of the InvIT Regulations provides as follows:

*“Transaction between two or more of the InvITs **with a common investment manager** or sponsor, shall be deemed to be related party transactions for each of the InvITs and provisions of regulation 19 shall apply:*

*Provided that this sub-regulation shall also apply if the investment managers or sponsors of the InvITs are different entities but are associates.” **(Emphasis Supplied)***

- 2.1.2. We therefore believe that an entity is freely permitted to act as the investment manager to multiple InvITs, so long as:

- (a) it is ensured that the provisions of the Regulation 19 of the InvIT Regulations are complied with, for all transactions entered into between the InvITs being managed by the common investment manager; and
- (b) consistent with principles enunciated in various regulations issued by the SEBI, there is a clear segregation of the management, operation and activities of each of the InvITs being managed by such common investment manager.

- 2.2. **Query 2:** If the answer to query 1 above is in the affirmative, would the common investment manager (i.e. in the current case, the Identified Investment Manager) comply with the requirement set out in Regulation 4(2)(e)(v) of the InvIT Regulations if the functions (i.e. the management and operation) of the InvITs are delegated to various sub-committees set up by such investment manager?

Our Contention:

- 2.2.1. Regulation 4(2)(e)(v) of the InvIT Regulations requires that the investment manager of an InvIT should have 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 who are not directors or members of the governing board of an investment manager of any other InvIT.
- 2.2.2. In line with the principles set out in para 2.1.2(b) above, we believe that the requirement of Regulation 4(2)(e)(v) of the InvIT Regulations would be met, if the Identified Investment Manager appointed separate committees for each of the InvITs that are being managed by the Identified Investment Manager, where each such committee would (i) be responsible for the management, operation and functioning of the relevant InvIT; and (ii) operate under the supervision of the board of directors of the Identified Investment Manager.
- 2.2.3. As far as the composition of each such committee is concerned, we believe any of the following approaches may be adopted by the Identified Investment Manager:
 - (a) **Option I:** Each committee (as opposed to the board of the Identified Investment Manager) would have not less than half of its members as independent members, and would therefore comply with the requirements of Regulation 4(2)(e)(v) of the InvIT Regulations. As the requirement of Regulation 4(2)(e)(v) is being met by each individual committee, the board of directors of the Identified Investment Manager will not comprise of independent

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directors (as required under Regulation 4(2)(e)(v) of the InvIT Regulations), and would only comprise of such members / directors as is required under the Companies Act, 2013.

- (b) **Option II:** The board of directors of the Identified Investment Manager would comply with the requirement of Regulation 4(2)(e)(v) of the InvIT Regulations, and would have not less than half of its directors as independent directors. As (i) the requirement of Regulation 4(2)(e)(v) is being met by the board of directors of the Identified Investment Manager; and (ii) each committees operates under the supervision of the board of directors of the Identified Investment Manager, each committee need not specifically appoint independent members to oversee the activities / management and operation of the InvIT being administered by such committee.

3. **Fees:**

As per the requirements prescribed under paragraph 6(ii) of the Scheme, we have enclosed a demand draft (bearing no. 064380) for Rs. 25,000 (Rupees Twenty Five Thousand) dated January 16, 2020 drawn in favour of the Securities and Exchange Board of India on The Hongkong and Shanghai Banking Corporation Limited, towards the fees payable for seeking an interpretive letter.

4. As per the provisions of paragraph 11 of the Scheme, we request that our application to you be treated confidentially for a period of 90 (Ninety) days from the date of the SEBI's response.
5. For any clarifications or further information, please do not hesitate to contact the following person:

Name: Mr. Sridhar Rengan

Designation: Director, PenBrook Capital Advisors Private Limited (Investment Manager)

Address: 804, 8th Floor. One BKC. A Wing. Bandra Kurla Complex. Bandra (East). Mumbai – 400 051

Thank you.

Yours faithfully,

For and behalf of **India Infrastructure Trust**

Name: Mr. Sridhar Rengan

Designation: Director - Investment Manager

Enclosure: As above.