

Amendments to SEBI (Infrastructure Investment Trusts) Regulations, 2014 in order to provide board nomination rights to unitholders of InvITs, provision for self-sponsored Investment manager and to align the interests of Sponsor and unitholders in InvITs

1. Objective

1.1. This Board Memorandum proposes amendments to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (hereinafter referred to as "InvIT Regulations") to provide right to unitholders to nominate director on the board of directors of the Investment Manager, provision for self-sponsored Investment manager and to align the interests of Sponsor and unitholders in InvITs and seeks approval of the Board for the same, with the objective of enhancing governance of InvITs.

2. Background

2.1. SEBI notified InvIT Regulations on September 26, 2014. SEBI constituted its Hybrid Securities Advisory Committee (hereinafter referred to as "HySAC") on June 16, 2022 in order to provide recommendations, inter-alia, on development and regulation of primary and secondary markets of Hybrid Securities (i.e. REIT, InvIT, etc.) in India, to facilitate greater retail participation in Hybrid Securities while ensuring protection of interest of investors.

2.2. The details of InvITs which are registered and raised funds through issuance of units as on April 30, 2023 are tabulated below:

S. No.	Table 1 : Name of InvIT	Sector	Funds raised (INR Cr.)
1	Data Infrastructure Trust	Telecommunication	26,115
2	Digital Fibre Infrastructure Trust	Telecommunication	19,495
3	Powergrid Infrastructure Investment Trust	Electricity	7,735
4	National Highways Infra Trust	Roads	7,340

5	Indinfravit Trust	Roads	6,069
6	India Grid Trust	Power	6,048
7	IRB INVIT Fund	Roads	5,033
8	IRB Infrastructure Trust	Roads	4,887
9	Indian Highway Concessions Trust	Roads	3,522
10	Oriental Infra Trust	Roads	2,306
11	India Infrastructure Trust	Gas pipeline	952
12	Anzen India Energy Yield Plus Trust	Electricity	750
13	SHREM InvIT	Roads	600
14	Virescent Renewable Energy Trust	Electricity	460
15	Highways Infrastructure Trust	Roads	416
	Total		91,727

3. This Board memorandum discusses the following topics:

3.1. Nomination Rights to unitholders of InvITs on the Board of the Investment Manager (IM)

3.2. Provision for Self-sponsored Investment Manager

3.3. Alignment of interests of Sponsor(s) of InvIT with that of the unitholders of InvIT

4. Nomination Rights to unitholders of InvITs on the Board of the Investment Manager (IM)

4.1. Background

4.1.1. SEBI is in receipt of representation from market participants that right to nominate directors on the board of Investment Manager is required by institutional investors to protect their investments in the InvIT. It has also been submitted by market participants that such right will enhance governance and ensure that the interest of the unitholders is safeguarded, as the unitholders will have more say on the investment decisions and activities undertaken by the Investment Manager of the InvIT.

4.1.2. However, InvIT Regulations requires that all unit holders shall have equal rights and no unitholder shall enjoy any superior rights over other unit holders, hence granting of any special/additional rights to any specific unitholder is not envisaged in InvIT Regulations.

4.1.3. During inspections of InvITs, it has been noted that certain InvITs have provided the right to nominate directors on the board of Investment Manager to unitholders based on holding certain percentage of units of InvIT and the percentage of units required for such nomination rights are not uniform. Such rights provided to the unit holders holding a certain percentage of units are not envisaged in the InvIT Regulations. Accordingly, such InvITs were directed to unwind such special rights considering there is no uniformity in granting such rights.

4.1.4. As per the provisions of the Companies Act 2013, the directors in the Investment Manager incorporated as a company are appointed by the shareholders of the Investment Manager. It has been noted that Investment Managers of InvIT are often wholly-owned / majority owned by the sponsors of the InvIT. It has also been noted that sponsors provide board nomination rights to large institutional investors in order to raise funds in InvITs while coming out with initial offer

4.1.5. Accordingly, considering the importance of such board nomination rights for attracting funds in InvITs and also to address the request of industry players, the proposal to provide uniform board nomination rights to unitholders holding at least ten percentage of units of InvIT is detailed in subsequent paras.

4.2. Extant Regulatory framework:

4.2.1. Regulation 4(2)(h) of InvIT Regulations requires as under:

“Without prejudice to the generality of the foregoing provisions, the Board shall consider the following, mandatory requirements namely, -

.....

(h) no unit holder of the InvIT enjoys superior voting or any other rights over another unit holder and there shall not be multiple classes of units of InvITs:”

4.2.2. The underlying principle of the above provision in InvIT Regulations is that the units of InvIT are equal in all respects and hence all unitholders should have equal rights and no special rights should exist with any unitholder based on the units held in InvIT.

4.3. Recommendation of the working group:

4.3.1. The working group on regulation revamp, constituted under the aegis of Hybrid Securities Advisory Committee submitted its report, wherein it inter-alia recommended that in relation to appointment of nominee directors, it can be considered to provide a carve-out under Regulation 4(2)(h) of the InvIT Regulations in order to provide an enabling framework that unitholders may have a right to nominate persons for appointment on the board of directors of the Investment Manager and such right would be subject to the approval of the majority of the public unitholders at the first unitholders meeting held after the initial offer.

4.3.2. One concern with the abovementioned proposal is that the rights granted to Sponsor and/or other unitholders immediately post initial offer could continue in perpetuity even after significant dilution of their stake in the units of the InvIT which is not desirable.

4.4. Consultation:

4.4.1. Based on the representation of market participants and recommendation of the working group on regulation revamp to allow board nomination rights to unitholders of InvIT, SEBI issued a consultation paper titled [“Consultation paper on Special Rights and Role of Sponsor in REITs and InvITs”](#) on May 16, 2023. The said consultation paper inter-alia proposed the following in order to allow uniform rights to unitholders to nominate representatives on either the Board of Directors of Investment Manager or on the Unitholders Council constituted by the Investment Manager:

4.4.1.1. Rights to nominate director on the Board of Investment Manager

4.4.1.2. Constitution of Unitholders Council by the Investment Manager and right to unitholder to nominate representative on such Council

4.4.1.3. Threshold percentage of unitholding requirement to avail special rights

4.4.1.4. Applicability of Stewardship Code

4.5. Rights to nominate director on the Board of Investment Manager

4.5.1. Proposal in Consultation paper

4.5.1.1. The consultation paper inter-alia proposed that unitholder(s) holding minimum ten percent of units may be entitled to nominate one director on the board of the Investment Manager for holding every ten percentage of units in InvIT.

4.5.1.2. It was also proposed that if there are some unitholders who are holding less than ten percent unitholding on an individual basis and who desire to join together such that their collective unitholding amounts to ten percent or more, then such unitholders shall also be entitled to nominate their representation on the board of directors of the Investment Manager.

4.5.2. Public Comments and its analysis

4.5.2.1. A total of 28 comments were received, out of which an overwhelming majority of the respondents supported the proposal of providing board nomination rights to the unitholders of InvIT.

4.5.2.2. It has been submitted that pooling of the unitholding by unitholders holding less than ten percent for exercising board nomination rights may not be ideal as it may add another layer of decision making for such nominated director to seek appropriate instructions from all the unitholders he/ she represents, and to balance interest of all the Unitholders he/she represents. This could also lead to leak of confidential or sensitive material non-public information.

4.5.2.3. It has also been submitted that board nomination rights should not be made available to unrelated entities/unitholders as the rationale for having a unitholders representative on the board of directors is primarily to have such unitholders presence in the Board (who have significant skin in the game) and not to have hundred percent unitholders involved in day to day activities of Board.

4.5.3. Consultation at HySAC

4.5.3.1. Based on the responses received, the revised proposals to provide board nomination right for unitholder were placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated on the proposal of providing board nomination rights to unitholders of the InvIT. The members agreed with the proposal to provide board nomination rights to unitholders of the InvIT.

4.5.4. Proposal for consideration of the SEBI Board

4.5.4.1. In view of the above, it is proposed that InvIT Regulations be amended to provide nomination rights to the unitholders on the board of directors of the Investment Manager.

4.5.4.2. With regard to comments highlighting issue on pooling of the unitholding by unitholders holding less than ten percent for exercising board nomination rights, it is the responsibility of such nominated director(s), to seek instructions from all the unitholders he/she represents and the understanding between such unitholders is a common ground for seeking nomination rights on the board of Director of the Investment Manager of the InvIT.

4.5.4.3. In order to ensure equal right to each unitholders of InvIT, it is proposed that the board nomination rights shall be made available to all unitholders with unitholding above a certain threshold whether individually or collectively. Hence the pooling of the unitholding by unitholders holding less than ten percent for exercising board nomination rights be allowed.

4.5.4.4. Further, it may be provided that the director so nominated shall recuse from voting on any transaction where either such nominee director, such director's associates or the unitholder(s) who nominated him / her or associate of such unitholder(s) is a party.

4.6. Constitution of Unitholders Council by the Investment Manager and right to unitholder to nominate representative on such Council

4.6.1. Proposal in Consultation paper

4.6.1.1. As an alternative to board nomination, the consultation paper inter-alia also proposed creation of a Unitholders Council with unitholders having the right to nominate members on such Council and detailed the composition and areas of decision making for such Council.

4.6.1.2. It was also proposed in the consultation paper that members of the Unitholder Council be considered as 'insider' for the purpose of SEBI (Prohibition of Insider Trading) Regulation, 2015 and they shall ensure that information shared with them during the meetings is not further disseminated.

4.6.1.3. Further, the members of the Unitholders Council shall be responsible for ensuring that the decisions of the Unitholders Council are in compliance with the provision of InvIT Regulations, disclosures in the offer document or placement memorandum and applicable laws.

4.6.2. Public Comments and its Analysis

4.6.2.1. Majority of the respondents have supported board nomination rights over creation of a separate Unitholders Council citing the rationale that board of directors is chosen for their expertise and experience in managing the InvIT, multiple levels of decision making adds to operational costs, potential compromise of confidentiality of strategic decisions and that the constitution of Unitholders Council can be seen as vitiating the role of Board of the

Directors of the Investment Manager by acting as a parallel decision making body.

4.6.2.2. In view of the comments received and that board nomination rights are considered sufficient to address the objective, the proposal of Unitholders Council as proposed in the consultation paper is not being further pursued.

4.6.3. Consultation in HySAC

4.6.3.1. Based on the responses received, the proposal of Unitholders Council has been dropped and the same was deliberated by members of the committee in HySAC meeting dated June 01, 2023. The members agreed with dropping the proposal.

4.7. Threshold percentage of unitholding requirement to avail such special rights

4.7.1. Proposal in Consultation paper

4.7.1.1. The consultation paper inter-alia proposed that board nomination rights be made available to any unitholder holding minimum ten percent of the total outstanding units of the InvIT.

4.7.1.2. It was also proposed that such unitholder be entitled to nominate one director on the board of directors of the Investment Manager for every ten percent of units held.

4.7.2. Public Comments and its Analysis

4.7.2.1. With regard to the threshold percentage of unitholding to provide board nomination rights, majority of respondents proposed that the threshold percentage for such nomination rights may be commercially agreed.

However, it is felt that this may lead to several varied commercial agreements across different InvITs, and potential of certain set of

unitholders being permitted whilst others being denied (since commercial agreement is the basis).

4.7.2.2. On the matter of whether on achieving the prescribed threshold of unitholding, should that unitholder be entitled to nominate one director irrespective of the unitholding, or should the number of nominations be linked to unitholding, majority of comments are in favor of providing nomination rights of only one director on board of Investment Manager on meeting the specified threshold unitholding.

4.7.2.3. Further, suggestions have also been received to permit nomination of such number of directors as commercially agreed and in favor of nomination of one director for every ten percent of units held.

4.7.2.4. The nomination right of one director for every ten percent unitholding held may result in board of directors becoming a large board. Further, nomination of such number of directors as commercially agreed may lead to several varied commercial agreements across different InvITs, and potential of certain set of unitholders being permitted whilst others being denied (since commercial agreement is the basis)

4.7.2.5. Hence, in order to ensure uniformity & ease of compliance and based on the analysis of comments received, it is proposed that unitholder(s) with at least ten percent unitholding be entitled to nominate one director on the board of the Investment Manager.

4.7.2.6. Further, it is also proposed that if there are unitholders who are holding less than ten percent unitholding on an individual basis and who desire to join together such that their collective unitholding amounts to ten percent or more, then such unitholders shall also be entitled to nominate one director on the board of directors of the Investment Manager

4.7.3. Consultation in HySAC

4.7.3.1. Based on the responses received, the revised proposal (as stated at Para 4.7.2.5) that any unitholder with at least ten percent unitholding be entitled to nominate one director on the board of the Investment Manager was placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated and agreed with the revised proposal.

4.7.4. Proposal for consideration of the SEBI Board

4.7.4.1. It is proposed that InvIT Regulations be amended to provide that unitholder(s) holding not less than ten percent of the total outstanding units of the InvIT shall be entitled to nominate one director on the board of directors of the Investment Manager, in the manner as may be specified by the Board. The unitholders collectively holding not less than ten percent of the total outstanding units of the InvIT shall also be allowed to nominate director on the board of the Investment Manager of InvIT.

4.8. Applicability of Stewardship Code

4.8.1. Proposal in Consultation Paper

4.8.1.1. The consultation paper inter-alia proposed mandating principles of Stewardship Code, on similar line as applicable for Mutual Funds and AIFs, to entities having representation on the Board of Directors of the Investment Manager and/or on the Unitholders Council.

4.8.2. Public Comments and its analysis

4.8.2.1. It has been largely represented that instead of introducing separate stewardship code, the code of conduct applicable to parties to InvIT under InvIT Regulations may be mandated as it is in line with the principles of stewardship code. It has also been represented that code of conduct for directors under Companies Act, 2013 and code of conduct for members and senior management under Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("LODR

Regulations”) are adequate to ensure that the broad principles of stewardship code are complied with.

4.8.2.2. The principles of stewardship code were proposed in the consultation paper for unitholder(s) nominating representatives on the board of directors of the Investment Manager and not for the nominee director(s). It has been noted that LODR Regulations provides code of conduct for members of board of directors and senior management. It is further noted that code of conduct specified under Schedule IV of the Companies Act is applicable for independent directors.

4.8.2.3. In view of the above and considering that board nomination rights are proposed to be provided to the unitholders holding at least ten percent of total outstanding units of InvIT, it is proposed that the principles of stewardship code as proposed in the consultation paper may be made applicable to the unitholders holding at least ten percent of total outstanding units of InvIT.

4.8.3. Consultation in HySAC

4.8.3.1. The proposal for applicability of stewardship code to unitholders holding at least ten percentage of total outstanding units of InvIT was placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated and agreed with the proposals.

4.8.4. Proposal for consideration of the SEBI Board

4.8.4.1. It is proposed that InvIT Regulations be amended to provide that the following principles of stewardship code be made applicable for any unitholder holding not less than ten percent of the total outstanding units of the InvIT:

4.8.4.1.1. They must act in the best interests of the InvIT and its unitholders as a whole;

- 4.8.4.1.2. They should formulate a comprehensive policy on the discharge of their stewardship responsibilities and review and update the same periodically;
- 4.8.4.1.3. They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities;
- 4.8.4.1.4. They should periodically monitor the InvIT and its investee entities viz. HoldCo(s) and SPV(s);
- 4.8.4.1.5. They should have a policy on intervention in the InvIT and its HoldCo(s) and SPV(s);
- 4.8.4.1.6. They should have a policy on voting.

5. Provision for Self-sponsored Investment Manager and alignment of the interests of Sponsor and unitholders in InvITs

5.1. Background

- 5.1.1. InvIT Regulations defines “Sponsor” as a person who set(s) up the InvIT and is designated as such at the time of application for registration. InvIT Regulations defines “Investment Manager” as a person who manages the assets and investments of the InvIT and undertakes activities of the InvIT.
- 5.1.2. The Sponsor is responsible for setting up of the InvIT and the formation transactions. The registration of InvIT is inter-alia granted based on the eligibility conditions fulfilled by the Sponsor. Generally, the Sponsor monetizes its assets by transferring infrastructure projects to the InvIT and raise funds from public or by private placement for such acquisition and units offered to the unitholders are listed.
- 5.1.3. It has been noted that most of the Sponsor(s) have significant shareholding in Investment Manager of InvIT which gives them right to appoint directors on the Board of Directors of the Investment Manager. By virtue of the

shareholding in the Investment Manager, the Sponsor controls the Investment Manager and has a say in the decisions of the InvIT including debt financing.

5.1.4. Further, it is also observed from Table 2 below, that acquisition of assets by the InvIT post initial offer is generally from the Sponsor(s) or its associates.

TABLE 2 (INR Cr)				
2023				
as on Jan				
S.No.	Name of InvIT	Purchase of Assets from Unrelated Parties	Purchase of Assets from Related Parties	Total Purchase of Assets
1.	SHREM InvIT	305	0	305
2.	Powergrid Infrastructure Investment Trust	0	331	331
3.	IRB Infrastructure Trust	0	440	440
4.	Data Infrastructure Trust	900	0	900
5.	Virescent Renewable Energy Trust	1,192	0	1,192
6.	Oriental Infra Trust	0	1,250	1,250
7.	Indinfravit Trust	1,136	910	2,046
8.	IRB INVIT Fund	0	2,866	2,866
9.	National Highways Infra Trust	0	10,200	10,200
10.	India Grid Trust	2,225	13,155	15,380
	InvIT Total	5,758	29,152	34,910
	InvIT %	16.5%	83.5%	100%

5.1.5. Furthermore, it may be noted that besides raising capital from the unitholders, InvITs also raise debt in the form of bank loan, non-convertible debentures etc. The data on consolidated borrowings for InvITs is as under:

Table 3		
S.No.	Name of InvIT	Consolidated borrowing on March 31, 2023 as a percentage of Enterprise value of InvIT assets
1.	India Grid Trust	69%
2.	Oriental Infra Trust	63%
3.	Data Infrastructure Trust	57%
4.	Digital Fibre Infrastructure Trust	55%
5.	India Infrastructure Trust	49%
6.	SHREM InvIT	46%
7.	Virescent Renewable Energy Trust	45%
8.	IRB Infrastructure Trust	44%
9.	IndInfraVIT Trust	42%
10.	National Highways Infra Trust	39%
11.	IRB InvIT Fund	35%
12.	Highways Infrastructure Trust	26%
13.	POWERGRID Infrastructure Investment Trust	5%

5.1.6. Considering the importance of the Sponsor(s) and Investment Manager in InvIT, a Working Group was formed under the aegis of Hybrid Securities Advisory Committee (HySAC) to evaluate the roles and responsibilities of the Sponsor(s) and Investment Manager.

5.2. Extant Regulatory Requirement:

5.2.1. InvIT Regulations mandate the Sponsor(s) to collectively hold a minimum of fifteen percent of the total units of the InvIT after initial offer of units, on post-issue basis for a period of at least three years from the date of listing of units subject to certain conditions. After the completion of three years, Sponsor has the option to divest its stake below fifteen percent and/or declassify itself as a Sponsor.

5.3. Recommendation of the working group:

5.3.1. The Working Group submitted its reports on November 9, 2022 and November 23, 2022. The Working Group in its report recommended that REITs and InvITs are relatively a new form of business organization in India and hence it is not advisable to have sponsor-less REIT/InvIT and that there should be at least one Sponsor for the REIT/InvIT on an ongoing basis.

5.4. Consultation

5.4.1. In view of the key role played by the Sponsor in the context of an InvIT and based on the recommendations in the report of the working group on regulation revamp on continuing to require sponsors for InvITs, and concerns around large number of high value related party transactions (due to its very nature and design) as well as long term leverage of InvITs, a need was felt to align the interest of the Sponsor with that of the other unit holders by reviewing the current provisions governing the role of sponsor. Towards this end, it was proposed to seek consultation from public on following matters:

5.4.1.1. Provision for Self- Sponsored Investment Manager

5.4.1.2. Mandatory Unitholding requirement by Sponsor and Sponsor group

5.4.1.3. Restriction of encumbrance on units required to be mandatorily held

5.5. Provision for Self-Sponsored Investment Manager

5.5.1. Proposal in Consultation Paper

5.5.1.1. The consultation paper dated May 16, 2023 inter-alia proposed introduction of a framework for Self-Sponsored Investment Manager, that will create space for mature and independent professionally managed Investment Managers to emerge, and will provide a further exit option for the Sponsor in addition to the exit option through change of sponsor presently envisaged in the InvIT Regulations.

5.5.1.2. The consultation paper sought public comments inter-alia on the qualifying conditions for conversion to a Self-Sponsored Investment Manager.

5.5.1.3. Further, given the Working Group recommendation that it is not advisable to have sponsor-less REIT/InvIT and that there should be at least one Sponsor for the REIT/InvIT on an ongoing basis, the extant norms for declassification of a sponsor will be omitted.

5.5.2. Public Comments and its analysis

5.5.2.1. The comments received on this proposal were largely in favor of introducing the concept of Self-Sponsored Investment Manager. Some respondents have suggested certain modifications in the conditions for Self-Sponsored Investment Manager. A gist of the comments received are as under:

5.5.2.1.1. One of the conditions outlined in the consultation paper in case of a Self-Sponsored Investment Manager was that the mandatory unitholding requirement applicable for Sponsor shall have to be complied with by the Investment Manager and/or shareholders of the Investment Manager.

It has been suggested by market participants that in addition to shareholders of Investment Manager, associates of Investment Manager may also be allowed to contribute units of InvIT held by them towards meeting the mandatory unitholding requirement.

This suggestion has been considered and deliberation at HySAC along with revised proposal on this matter is detailed in subsequent paras.

5.5.2.1.2. The condition of at least twelve distributions on a continuous basis should be changed to *"The InvIT should have complied with the distribution guidelines as per InvIT Regulations in the preceding five years"*

Based on feedback received, it is proposed to revise the above condition on continuous distribution as under:

“The InvIT should have undertaken at least twelve distributions on a continuous basis and has complied with the distribution norms as per InvIT Regulations in the preceding five years”.

5.5.2.1.3. It has been suggested to remove the condition of the Investment Manager meeting the net worth criteria prescribed for the Sponsor.

The same has not been accepted as the primary principle governing the proposed framework for Self-Sponsored Investment Manager is that the Investment Manager should be able to meet sponsor related eligibility conditions.

5.5.2.1.4. The condition that sponsor should not have transferred / sold assets to the InvIT in the last three years – three years should be changed to one year prior to de-sponsorisation, with no assets being committed to InvIT and being transferred in the future.

Considering that the period of one year is too short, it is proposed that the condition that sponsor should not have transferred / sold assets to the InvIT in the last three years may be retained. Further, based on comments received from market participants, an additional condition that no assets/ projects should be acquired by the InvIT from the outgoing sponsor(s) for a period of one year from the date of conversion to Self-Sponsored Investment Manager may also be included.

5.5.2.1.5. The Sponsor or its associates is not the Project Manager and does not own or control the Project Manager – it has been suggested that this should not be pre-condition for a Self-Sponsored Investment Manager.

The primary objective of Self-Sponsored Investment Manager is that the sponsor should not be involved in the day to day activities of the InvIT, hence this suggestion has not been accepted

5.5.3. Consultation at HySAC

5.5.3.1. Based on the responses received, the revised proposals were placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated on the proposal of introduction of Self-Sponsored Investment Manager and related qualifying conditions. The members agreed with the proposals and recommended the following:

5.5.3.1.1. With regard to the matter of how group entities of the Investment Manager be identified, it was decided that such identification may be done on similar line as the identification of entities covered under the extant definition of 'sponsor group' under REIT Regulations, 2014 which has also been proposed for InvIT Regulations;

5.5.3.1.2. In case of Self-Sponsored Investment Manager, it was suggested to clarify that the Investment Manager may be allowed to acquire units of the InvIT;

5.5.3.1.3. Other conclusions as outlined earlier were accepted.

5.5.4. Proposal for consideration of the SEBI Board

5.5.4.1. In view of the above, it is proposed that InvIT Regulations be amended to include the following provisions:

5.5.4.1.1. Self-Sponsored Investment Manager means the Investment Manager of an InvIT who has dual responsibilities of both the Investment Manager as well as the Sponsor

5.5.4.1.2. The existing sponsor(s) proposing to disassociate as sponsor(s) by seeking to convert the Investment Manager to Self-Sponsored Investment Manager shall comply with the following conditions:

5.5.4.1.2.1. the InvIT has been listed for a period of at least five years;

5.5.4.1.2.2. the InvIT has undertaken not less than twelve distributions on a continuous basis and has complied with the distribution norms as per these Regulations in the preceding five years;

5.5.4.1.2.3. the InvIT is rated AAA by a registered credit rating agency for a continuous period of five years immediately preceding exit of the sponsor;

5.5.4.1.2.4. during the period of preceding five years, the InvIT has not breached, at any time, the maximum leverage thresholds specified in these regulations;

5.5.4.1.2.5. the Investment Manager is meeting the net worth criteria specified for the Sponsor in these regulations;

5.5.4.1.2.6. the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) shall be complied with, on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager, by the Investment Manager, shareholders of the Investment Manager and/or group entities of Investment Manager;

Explanation: Investment Manager, shareholders of the Investment Manager and/or group entities of Investment Manager may acquire units of the InvIT for the purpose of the compliance of the above condition.

5.5.4.1.2.7. the sponsor(s) or its associate(s) do not own or control the Investment Manager of the InvIT on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager;

5.5.4.1.2.8. the Sponsor has not transferred / sold assets to the InvIT in the last three years and no assets/ projects shall be acquired by the

InvIT from the outgoing sponsor(s) for a period of one year from the date of conversion to Self-Sponsored Investment Manager;

5.5.4.1.2.9. at least one of the sponsor(s) proposing to disassociate should have been a sponsor of the InvIT for a minimum period of five years;

5.5.4.1.2.10. the InvIT shall not have any under-construction assets acquired from the sponsor that have not commenced commercial operations;

5.5.4.1.2.11. the Sponsor(s) or its associate(s) are not the Project Manager and do not own or control the Project Manager on or after the date of conversion of the Investment Manager to Self-Sponsored Investment Manager;

5.5.4.1.2.12. unitholders approval in terms of regulation 22(7) and consent of the Trustee has been be obtained for conversion to Self-Sponsored Investment Manager;

5.5.4.1.2.13. such other condition as may be specified by the Board.

5.5.4.1.3. *“Group Entities of the Investment Manager”* means:

5.5.4.1.3.1. entities or person(s) which are controlled by the Investment Manager

5.5.4.1.3.2. entities or person(s) who control the Investment Manager

5.5.4.1.3.3. entities or person(s) which are controlled by entities or person(s) specified at Para 5.5.4.1.3.2

5.5.4.1.4. Regulation 22(7) of InvIT Regulations be amended to include exit of co-sponsor as change in sponsor and include provisions related to Self-Sponsored Investment Manager. Further, the extant norms for declassification of sponsor will stand omitted as the introduction of self-

sponsored Investment Manager OR existing option of substituting the sponsor(s) will be the two alternative options for exit of existing sponsor(s).

5.6. Mandatory Unitholding requirement by Sponsor and Sponsor group

5.6.1. Proposal in Consultation Paper

5.6.1.1. SEBI issued a consultation paper on February 23, 2023, titled [“Consultation paper on Holding of Sponsor in REITs and InvITs”](#) inviting public comments inter-alia on the proposal to have at least one Sponsor throughout the life of the REIT/InvIT and mandating the Sponsor to hold following percentage of units in the REITs/InvITs on a perpetual basis:

Table 4		
S.No.	Time period	Mandatory Minimum Unitholding
1.	Upto 3 years	15% of total unit capital
2.	3-5 years	5% of total unit capital
3.	5-10 years	3% of total unit capital
4.	10-20 years	2% of total unit capital
5.	Post 20 years	1% of total unit capital

5.6.1.2. The market participants while submitting comments on the said consultation paper highlighted that while the perpetual unitholding requirement may be suitable for early-stage REITs and InvITs, there may be certain REITs and InvITs which have matured beyond financial and structural reliance on the Sponsors and have demonstrated a strong track record of financial stability and independence from the Sponsor.

Further, the market participants have also represented that the calculation of locked in units on an ongoing basis with requirement of additional lock in at every point of time of fresh issuance of units may hamper the growth of InvIT.

5.6.1.3. Considering the feedback from market participants on the consultation paper dated February 23, 2023, SEBI issued another consultation paper titled [“Consultation paper on Special Rights and Role of Sponsor in REITs and InvITs”](#) on May 16, 2023 inter-alia to provide flexibility in terms of minimum unitholding requirement by Sponsor in REITs and InvITs by specifying:

5.6.1.3.1. Maximum cap on locked-in units in terms of amount

In the May 2023 consultation paper, besides prescribing the percentages for mandatory unitholding, the revised minimum mandatory unitholding requirement was also proposed to be capped at a maximum of Rs. 1,000 crores. The minimum unitholding required in the said consultation paper was proposed to be held by sponsor is tabulated as under:

Table 5		
S.No.	Time period	Mandatory Minimum Unitholding
1.	Upto 3 years	15% of total unit capital
2.	3-5 years	5% of total unit capital or INR 1,000 crores, whichever is lower
3.	5-10 years	3% of total unit capital or INR 1,000 crores, whichever is lower
4.	10-20 years	2% of total unit capital or INR 1,000 crores, whichever is lower
5.	Post 20 years	1% of total unit capital or INR 1,000 crores, whichever is lower

5.6.2. Public Comments and its analysis

5.6.2.1. With regard to the proposal of mandating minimum unitholding requirement to be held by the Sponsor, the market participants majorly submitted the following comments:

5.6.2.1.1. The proposed cap of INR 1000 crores in the consultation paper dated May 16, 2023 is very high considering the current size of REITs and InvITs. Further, the lock in requirement linked to INR value needs to be converted into number of units, the methodology for the same may be specified by SEBI.

In view of the comments received, it is proposed that the cap amount be brought down to INR 500 crores and the methodology for conversion of INR value to number of units is detailed in subsequent paras.

5.6.2.1.2. The requirement of perpetual mandatory lock-in should be made applicable prospectively as retrospective changes in the policy stance on such a crucial matter can make it really challenging for investors (especially foreign investors/ institutional investors) to keep supporting the growth of the Indian REITs and InvITs;

5.6.2.1.3. Further, the proposed mandatory unitholding should apply only on the initial unit capital (if any still held by Sponsor) issued to set up the InvIT and not on further issuance of units unless such units are issued to acquire further assets from the Sponsor itself;

5.6.2.1.4. Associates of the Sponsor should also have the option to offer their units to meet the lock-in requirements of the Sponsor.

5.6.2.1.5. In view of the comments received, the following is proposed:

5.6.2.1.5.1. to grandfather the existing unitholding of Sponsor(s) in InvITs and the proposed perpetual lock-in requirement shall be made applicable only on new issuance of units undertaken by the InvIT after the date of notification of amendments in this regard.

5.6.2.1.5.2. to introduce the concept of sponsor group(s) under InvIT Regulations so that units held by sponsor group entities can also be offered for meeting the mandatory lock-in requirement.

It will also result in alignment of the provisions of InvIT Regulations with REIT Regulations as the concept of sponsor group(s) is already present in REIT Regulations.

5.6.3. Consultation at HySAC

5.6.3.1. Based on the responses received, the revised proposals were placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated on the proposal of introducing mandatory unitholding requirement for sponsor. The members agreed with the proposals and recommended that SEBI may prescribe the following after seeking feedback from industry representatives:

5.6.3.1.1. the event/frequency for assessing compliance with mandatory unitholding requirements;

5.6.3.1.2. the reference price for determination of number units to be mandatory held for meeting the requirement of Rs. 500 crores.

5.6.3.2. Basis the feedback, the proposals in this regard is detailed in Para 5.6.4 below.

5.6.4. Proposal for consideration of the SEBI Board

5.6.4.1. It is proposed that InvIT Regulations be amended to include the following provisions pertaining to mandatory minimum unitholding of sponsor(s) and sponsor group(s):

5.6.4.1.1. In line with REIT Regulations, the definition of sponsor group be included in InvIT Regulations and wherever the reference to sponsor group is included in REIT Regulations, the same shall be suitably modified in InvIT Regulations.

5.6.4.1.2. Grandfathering for existing InvITs:

For existing InvITs that have already come out with initial offer as on the date of notification of these provisions, the provisions contained in Para 5.6.4.1.3 to 5.6.4.1.5 below shall be applicable only for the additional units issued by the InvIT after the date of notification of these provisions instead of total outstanding units. Further, the units already locked in at the time of initial offer shall continue to be locked in only till the completion of three years from the date of listing of units in initial offer.

5.6.4.1.3. For first three years from the date of listing of units in initial offer, mandatory unitholding shall be at least fifteen percent of the total outstanding units of the InvIT (instead of extant requirement of fifteen percent of total units of the InvIT after initial offer).

5.6.4.1.4. After a period of three years, the mandatory unitholding shall be lower of the following:

(A) The following threshold based on the age of InvIT from the date of listing:

Sr. No.	Time period from the date of listing of units issued on initial offer	Mandatory unitholding requirement
1.	4-5 years	5% of total outstanding units
2.	6-10 years	3% of total outstanding units
3.	11-20 years	2% of total outstanding units
4.	Post 20 years	1% of total outstanding units

(B) such number of units corresponding to the value of rupees five hundred crores, or as may be notified by Board from time to time, where the value of units shall be based on the latest available Net asset value of InvIT.

5.6.4.1.5. An assessment of compliance of mandatory unitholding requirement shall be done at the time of any fresh issuance of units and at the beginning of each of the above time slabs (i.e. at the beginning of 4th year, 6th year, 11th year and 21st year).

5.7. Restriction of encumbrance on units required to be mandatory held

5.7.1. Proposal in Consultation Paper

5.7.1.1. It was proposed in the consultation paper that units which are required to be mandatorily held shall not be allowed to be encumbered.

5.7.2. Public Comments and its analysis

5.7.2.1. In response to this proposal, it has been majorly submitted that encumbrance on units should be permitted as per the extant regulatory framework.

5.7.2.2. Although industry comments are not in favor of restricting encumbrance on units required to be mandatorily held by the sponsor, it is felt that the purpose of mandating requirement of minimum unitholding stands defeated in case the encumbrance on the locked-in units is allowed. In view of the same, the proposal of unencumbered unitholding will be retained.

5.7.3. Consultation at HySAC

5.7.3.1. The proposal was placed for discussion in HySAC meeting dated June 01, 2023, wherein members of the committee deliberated on the proposal of locked-in units being unencumbered and agreed with the proposal.

5.7.4. Proposal for consideration of the SEBI Board

5.7.4.1. In view of the above, it is proposed that InvIT Regulations be amended to provide that units required to be mandatorily held should be locked in and cannot be encumbered.

However, for existing InvITs that have already come out with initial offer as on the date of notification of these provisions, the units required to be held to meet the mandatory unitholding requirement applicable before the notification of these amendments (i.e. fifteen percent or twenty-five percent of the total units of the InvIT) on which encumbrance exist as on the date of notification of these amendments, such units may continue to remain encumbered.

6. Proposal to the Board:

6.1. The Board is requested to

- 6.1.1. consider and approve the proposals, as detailed under paragraphs no. 4 and 5 above and the consequent draft amendment notification placed at **Annexure-A.**
- 6.1.2. authorize the Chairperson to take necessary steps to implement the proposals including notification of amendments, wherever necessary with consequential and appropriate changes, as may be required.

Amendment shall be notified after following the due process