

Amendments to SEBI (Infrastructure Investment Trusts) Regulations, 2014 in order to provide a framework for issuance of subordinate units by a privately placed InvIT to facilitate purchase of infrastructure asset

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 a framework for issuance of subordinate units by a privately placed InvIT and seeks approval of the Board for the same.

1.2. The proposed framework addresses the request of the industry to provide clarity on the usage of subordinate units as an instrument to bridge the valuation gap arising on acquisition of an infrastructure asset by a privately placed InvIT thereby providing flexibility in asset acquisition transaction along with promoting ease of doing business.

2. Background

2.1. Infrastructure Investment Trust ('InvIT')

2.1.1. SEBI notified InvIT Regulations on September 26, 2014. The details of InvITs which are registered and have raised funds through issuance of units as on January 31, 2024 are tabulated below:

S. No.	Table 1 : Name of InvIT	Registration Date	Listing Date	Funds raised (INR Cr.)
1	Data Infrastructure Trust	19-03-2019	01-09-2020	25,532
2	Digital Fibre Infrastructure Trust	20-03-2019	31-03-2023	19,495
3	Indinfravit Trust	15-03-2018	14-05-2018	9,606
4	IRB Infrastructure Trust	25-11-2019	03-04-2023	7,750
5	Powergrid Infrastructure Investment Trust	07-01-2021	14-05-2021	7,735

S. No.	Table 1 : Name of InvIT	Registration Date	Listing Date	Funds raised (INR Cr.)
6	India Grid Trust	28-11-2016	06-06-2017	7,119
7	India Infrastructure Trust	23-01-2019	20-03-2019	6,640
8	National Highways Infra Trust	28-10-2020	10-11-2021	6,476
9	IRB INVIT Fund	14-03-2016	18-05-2017	5,033
10	Cube Highways Trust	05-04-2022	19-04-2023	3,803
11	Indian Highway Concessions Trust	24-02-2020	21-06-2023	3,522
12	Highways Infrastructure Trust	23-12-2021	25-08-2022	3,121
13	Intelligent Supply Chain Infrastructure Trust	27-02-2023	25-10-2023	3,048
14	Oriental Infra Trust	26-03-2019	27-06-2019	2,306
15	Sustainable Energy Infra Trust	11-08-2023	15-01-2024	2,263
16	Shrem InvIT	04-02-2021	22-09-2021	800
17	Anzen India Energy Yield Plus Trust	18-01-2022	16-11-2022	750
	Total			114,999

2.1.2. SEBI Hybrid Securities Advisory Committee (hereinafter referred to as “HySAC”) provides recommendations, inter-alia, on development and regulation of Hybrid Securities (i.e. REIT, InvIT, etc.) in India.

2.2. Ease of Doing Business

2.2.1. In order to enhance ease of doing business, working groups were constituted by SEBI to examine and give recommendations on Ease of Doing Business (hereinafter referred as ‘EoDB’) including on the comments received from public and regulated entities.

2.2.2. The recommendations of the working group on EoDB and the public feedback on the proposals made in the consultation paper were placed before the HySAC with SEBI's views thereon. The recommendations of the HySAC are considered for the proposals to the Board.

2.3. The objective of the framework for introduction of subordinate units is to enable usage of such instrument to bridge the valuation gaps that may arise as a result of difference in the valuation of an asset assessed by the Sponsor (in its capacity of the asset seller) and the InvIT (in capacity of the asset buyer), subject to unitholders approval. The same is explained by the following example:

InvIT "XYZ" is proposing to acquire an infrastructure asset from Sponsor "A". The valuation arrived at by the sponsor assuming growth rate in revenue of 10% p.a. comes out to Rs. 1000 crores. However, the InvIT assesses 9% p.a. as the achievable revenue growth rate and accordingly values the asset at Rs. 900 crores. In such a case, the sponsor may get Rs. 900 crores in form of cash or ordinary units or a combination of both; and may take subordinate units worth Rs. 100 crores i.e. for the difference in valuation as assessed by the sponsor and InvIT. The terms and conditions of issuance of subordinate units will provide that the subordinate units shall be reclassified to ordinary units at the end of five years if the InvIT achieves an average revenue growth rate of 10% p.a. during the five-year period (i.e. on achievement of the pre-determined performance benchmark). Till the time the subordinate units are outstanding, they shall carry zero distribution and zero voting rights.

3. Consultation:

3.1. The framework for issuance of subordinate units was deliberated in the meetings of HySAC held on November 15, 2022 and June 01, 2023. Based on the recommendations of HySAC, SEBI issued a consultation paper titled "Consultation paper on Framework for issuance of subordinate units and Unit Based Employee Benefits - REITs and InvITs" on December 08, 2023 seeking comments / views / suggestions from the public inter-alia on the framework for

issuance of subordinate units to the sponsor, its associates and sponsor group when they are a seller of assets to the InvIT and not otherwise.

3.2. A total of 13 entities responded to the proposals made in the consultation paper regarding the framework for issuance of subordinate units. The respondents included market participants, practicing company secretary, law & consulting firms, stock exchanges and working group on Ease of Doing Business for REITs and InvITs. A summary of the number of respondents agreeing / partially agreeing / disagreeing to the proposals made in the consultation paper is as under:

Proposal No.	Proposal Description	Number / %	Agree	Partially Agree	Disagree	Total Count
1	The proposed framework for issuance of subordinate units is adequate	in number	8	3	2	13
		in %	62%	23%	15%	100%
2	Prior approval from seventy five percent of the unitholders by value shall be required for issuance of subordinate units post initial offer	in number	5	4	4	13
		in %	38%	31%	31%	100%
3	Inter se transfer of subordinate units amongst the sponsors, its associates and sponsor group shall be as proposed in	in number	9	4	0	13
		in %	69%	31%	0%	100%

Prop osal No.	Proposal Description	Number / %	Agree	Partially Agree	Disagree	Total Count
	Para 5.11 of the consultation paper					
4	One time extension in the entitlement date as specified in the offer document, placement memorandum or placement document, may be permitted for a maximum period of one year	in number	6	6	1	13
		in %	46%	46%	8%	100%
5	Approval from seventy five percent of the unitholders by value shall be required for extension in entitlement date	in number	6	5	2	13
		in %	46%	39%	15%	100%
6	The minimum time gap between issuance of subordinate units and entitlement date or event for conversion of subordinate units to ordinary units shall be one year	in number	8	4	0	12
		in %	67%	33%	0%	100%

Proposal No.	Proposal Description	Number / %	Agree	Partially Agree	Disagree	Total Count
7	Unitholder approval in case of change in the terms and conditions of the subordinate units post issuance of subordinate units shall be as proposed in para 5.20 of the consultation paper	in number	5	8	0	13
		in %	38%	62%	0%	100%
8	The conditions or safeguards in relation to issuance of subordinate units as proposed in the consultation paper are adequate	in number	6	4	1	11
		in %	55%	36%	9%	100%

3.3. Based on the suggestions received and further deliberations held, SEBI issued a supplementary consultation paper titled “Consultation paper on additional proposals regarding framework for issuance of subordinate units - REITs and InvITs” on January 10, 2024 seeking comments / views / suggestions from the public on certain additional proposals regarding the framework for issuance of subordinate units.

3.4. A total number of 06 entities responded to the supplementary consultation paper. The respondents included market participants, law firm and stock exchange. A summary of the number of respondents agreeing / partially agreeing / disagreeing to the proposals made in the supplementary consultation paper is as under:

Prop osal No.	Proposal Description	Number / %	Agree	Partially Agree	Disagree	Total Count
1	There should be a cap on subordinate units which can be issued by a REIT / InvIT	in number	3	1	2	6
		in %	50%	17%	33%	100%
2	The proposed caps of ten percent are adequate at the asset acquisition level and at the cumulative level in the unit capital of the REIT/InvIT	in number	2	1	2	5
		in %	40%	20%	40%	100%
3	Subordinate units shall only carry inferior voting rights or inferior distribution rights or both	in number	4	2	0	6
		in %	67%	33%	0%	100%
4	Inferior rights on all subordinate units issued by a REIT / InvIT shall be similar i.e. there shall not be multiple classes of subordinate units	in number	3	0	3	6
		in %	50%	0%	50%	100%
5	Inferior rights on subordinate units should be uniform across the industry i.e. uniform inferior rights for all REITs and InvITs. Please provide your	in number	2	1	3	6
		in %	33%	17%	50%	100%

Prop osal No.	Proposal Description	Number / %	Agree	Partially Agree	Disagree	Total Count
	comments as per para 3.2.1.4 of the paper					
6	No change (except extension in entitlement date) in terms and conditions of the subordinate units post issuance shall be permitted	in number	2	1	2	5
		in %	40%	20%	40%	100%

3.5. Based on the suggestions received, the revised framework for issuance of subordinate units was deliberated in the meeting of the HySAC held on February 12, 2024. Further, based on HySAC recommendations and internal deliberations this memorandum is placed before the Board.

4. Framework for issuance of subordinate units by a privately placed InvIT to the sponsor, associates of sponsor and sponsor group

4.1. Background:

4.1.1. InvITs facilitate pooled investments in infrastructure assets through issuance of units to investors. The unitholders of the InvIT are the collective owners of the infrastructure assets / its cash flows. InvITs are permitted to issue only one class of ordinary units to all the investors. The same ensures that rights of unitholders are pro-rata and pari-passu i.e. all unitholders are treated equally, have voting and distribution rights proportionate to their unitholding and all units carry equal rights.

Besides issuance of ordinary units, the InvIT Regulations also contemplate issuance of subordinate units by an InvIT to the sponsors and its associates, where such subordinate units are to carry only inferior rights compared to ordinary units. However, there is no framework or specificity on various items (including disclosures and safeguards for unitholders interest). A framework will serve to bring about uniformity in issuance and disclosures for subordinate units across the industry. This led to the discussions at HYSAC, recommendations by the working group on Ease of Doing Business and hence the consultation papers on the subordinate units.

- 4.1.2. An issuance of subordinate units can take place in the initial offer or in any offering subsequent to the initial offer in relation to acquisition of asset. The InvIT regulations requires a privately placed InvIT to file a placement memorandum at the time of initial offer of units.

An offer of units subsequent to an initial offer may be made by way of a preferential issue, institutional placement or rights issue. In the case of a preferential issue of units, an InvIT is required to make disclosures related to the issue of units in the explanatory statement to the notice prepared for convening a meeting of unitholders to obtain their approval.

Further, as per extant requirements, an institutional placement of units cannot be made to a sponsor or a person related to the sponsor or related party or associate of the sponsor. Accordingly, an issuance of subordinate units through institutional placement cannot be done as subordinate units can be issued only to sponsor, its associates and sponsor group.

A rights issue of units entitles an existing unitholder to subscribe to additional units of InvIT against cash consideration. Since subordinate units are issued to bridge the valuation gap on asset acquisition transaction, the rights issue can be made only on ordinary units.

- 4.1.3. Accordingly, with a view to provide flexibility for bridging valuation gaps in transactions by issuance of subordinate units and to action the request from the industry to promote ease of doing business, the proposal to the Board to

provide a framework for issuance of subordinate units by a privately placed InvIT are detailed in para 4.3.

4.2. Extant Regulatory framework:

4.2.1. Regulation 4(2)(h) of InvIT Regulations inter-alia provides as under:

“no unit holder of the InvIT enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of InvITs: Notwithstanding the above, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units;”

4.2.2. The underlying principle of the above provisions in InvIT Regulations is that the units of InvIT are equal and pari passu in all respects and hence all unitholders should have equal rights. However, the Regulations provide that subordinate units, i.e. units carrying inferior voting or inferior economic or other rights as compared to other units, can be issued to the sponsors and its associates only.

4.3. Proposals for consideration of the SEBI Board

4.3.1. The matters consulted in the aforementioned consultation papers, suggestions received from the public, the suggestions and comments from the working group, revised proposals placed before the HySAC, recommendations of the HySAC and views of SEBI on the same are summarized at Annexure A. The reference to relevant tables of Annexure A has been made in the proposals mentioned in subsequent paras.

4.3.2. Applicability to privately placed InvITs only (Table 1)

4.3.2.1. To begin with, the extant framework for subordinate units shall be applicable only for privately placed InvITs. (Table 1, S.No. 1)

4.3.2.2.A private InvIT shall not convert to a public InvIT when there are any outstanding subordinate units. Accordingly, it is proposed that no InvIT shall raise funds through public issue if any subordinate units have been issued and are outstanding. (Table 1, S.No. 1)

4.3.3. Features of Subordinate Units (Table 2)

4.3.3.1. Subordinate units shall be issued only to the sponsor(s), its associates and sponsor group when they are a seller of assets to the InvIT and not otherwise. (Table 2, S.No. 1)

4.3.3.2. The objective of a framework for subordinate units is to enable usage of such instruments to bridge the valuation gap that may arise as a result of difference in the valuation of an asset assessed by the seller of the asset and the InvIT (in its capacity as the asset buyer). The seller of assets can be the sponsor / its group entities or third party sellers. However, in the current InvIT structures it has been observed that it is primarily the sponsor / its group entities who monetize their infrastructure assets and are primarily the sellers of infrastructure assets to the InvITs. In view of the same, the framework proposed in this memorandum envisages issuance of subordinate units only to the sponsor, associates of sponsor and sponsor group when they are selling assets to the InvIT. Extension of the proposed framework to third party sellers for bridging the valuation gaps on sale transactions involving third party sellers may be considered in future based on experience gained after the introduction of the current proposals over time and after market practices develop in this regard. (Table 2, S.No. 1)

4.3.3.3. Subordinate units shall be issued only in dematerialized form, have a separate ISIN from ordinary units, and shall be unlisted during its tenure/term. Such units shall not be transferable beyond the sponsor, associates of sponsor and sponsor group - see section 4.3.5 below for more detailed discussion on lock-in. (Table 2, S. No. 1)

4.3.3.4. The mandatory minimum unitholding requirement on total outstanding units of the InvIT, applicable to sponsor and sponsor group, shall be reckoned

only through ordinary units. Thus subordinate units shall not be considered for determining the said obligation. (Table 2, S.No. 2)

4.3.3.5. Subordinate units shall be reclassified into ordinary units on achievement of performance benchmarks. If the performance benchmark is not met at the end of entitlement date (including extension period, if any), the subordinate units shall be extinguished without any payment to the holder of subordinate units. (Table 2, S.No. 3)

4.3.4. Issuance of subordinate units (Table 3)

4.3.4.1. Subordinate units can be issued only in the course of an asset acquisition transaction. The issuance can take place, in the initial offer or in any offering subsequent to the initial offer in relation to acquisition of asset. Issuance of subordinate units in the course of an asset acquisition transaction without an issuance of ordinary units can also be made (to bridge the valuation gaps on acquisition of assets primarily through cash). (Table 3, S.No. 1)

4.3.4.2. Any issuance of subordinate units post initial offer (in the course of an asset acquisition transaction) shall require prior approval from unitholders where votes cast in favor of the resolution shall not be less than one and a half times the votes cast against the resolution (i.e. sixty percent of unitholders, present and voting). Sponsor, sponsor group, associates of sponsor and any other parties related to the asset acquisition transaction shall not vote on such matter. (Table 3, S.No. 2)

4.3.4.3. The enabling provisions authorising the issue of subordinate units in the course of an asset acquisition transaction shall be included in the trust deed. The terms and conditions governing subordinate units shall be disclosed in a Term Sheet which shall form part of the placement memorandum, the explanatory statement to the notice for unitholders meeting and any document which may be disclosed to investors including prospective investors. Further, the InvIT shall display such Term Sheet, explanatory statement including the notice for unitholders meeting and placement

memorandum on its website and file the same with the stock exchanges.
(Table 3, S.No. 3)

4.3.4.4. The procedure applicable for issuance of ordinary units shall be applicable mutatis mutandis for issuance of subordinate units. (Table 3, S.No. 4)

4.3.5. Transfer of subordinate units (Table 4)

4.3.5.1. Subordinate units shall be mandatorily locked in till its reclassification into ordinary. (Table 4, S.No. 1)

4.3.5.2. Subordinate units may be transferred or encumbered by the sponsor, its associate and sponsor group amongst themselves. The depository shall not register transfer or encumbrance of a subordinate unit in favor of any person unless such person is a sponsor of the InvIT, associate of such sponsor or belongs to the sponsor group of the InvIT. Such inter-se transfer or encumbrance of subordinate units among the sponsor, its associate and sponsor group, shall be disclosed to the stock exchanges within one working day of such transfer or encumbrance. (Table 4, S.No. 2)

4.3.5.3. An existing sponsor shall not be allowed to disassociate as sponsor by seeking to convert the Investment Manager to self-sponsored Investment Manager when subordinate units are outstanding. Further, in case of change in sponsor, the outgoing sponsor shall transfer subordinate units held by it, if any, to a sponsor, including an inducted sponsor, its associates or sponsor group and the lock-in requirements will then govern such sponsor, its associates and sponsor group. (Table 4, S.No. 2)

4.3.6. Entitlement Date / Event and Performance Benchmark (Table 5)

4.3.6.1. The entitlement date and / or the entitlement event including performance benchmark for reclassification of subordinate units to ordinary units shall be clearly defined and specified in the Term Sheet. (Table 5, S.No. 1)

- 4.3.6.2. The minimum time gap between issuance of subordinate units and entitlement date / event for reclassification of subordinate units to ordinary units shall be one year. (Table 5, S.No. 2)
- 4.3.6.3. The entitlement date may be extended in the manner specified in the Term Sheet, for a maximum of two times, with a cap of one year on each such extension of entitlement date subject to the following (Table 5, S.No. 3):
- 4.3.6.3.1. Such extension shall require prior approval from unitholders where votes cast in favor of the resolution shall not be less than one and a half times the votes cast against the resolution (i.e. sixty percent of unitholders, present and voting). Sponsor, sponsor group, associates of sponsor and any parties related to the transaction shall not vote on such matter.
- 4.3.6.3.2. Such extension can be done only for cases where a possibility of such extension is clearly contemplated and duly approved and disclosed in the Term Sheet prior to the issuance of subordinate units;
- 4.3.6.3.3. Such extension should be done only in case of any unforeseen circumstances as mentioned in the Term Sheet such as impossibility on account of a force majeure event or illegality on account of change in law or an order of any court or authority.
- 4.3.6.3.4. The reasons for proposing an extension and the impact on ordinary unitholders (including potential dilution) on account of such extension in the entitlement date shall be disclosed in the explanatory statement to the notice of unitholders meeting convened for seeking approval of unitholders for the extension in entitlement date.
- 4.3.6.4. The performance benchmark for reclassification of subordinate units shall be quantifiable and objective, and shall be based on the audited financials. (Table 5, S.No. 4)
- 4.3.6.5. Till the time the subordinate units are outstanding, the progress related to achievement of performance benchmark shall be monitored and reported

on an annual frequency or such other frequency as may be prescribed by SEBI. Further, such progress shall be certified by the statutory auditor of the InvIT and approved by the audit committee of the Investment Manager and the trustee of the InvIT. (Table 5, S.No. 4)

4.3.6.6. The Investment Manager shall disclose the progress related to achievement of performance in the annual report of the InvIT. (Table 5, S.No. 4)

4.3.7. Reclassification of subordinate units to ordinary units (Table 5 and 6)

4.3.7.1. The status of achievement of performance benchmark shall be certified by the statutory auditor of the InvIT for reclassification of subordinate units to ordinary units, and shall be approved by the audit committee of the Investment Manager. (Table 5, S.No. 4)

4.3.7.2. The Board of the Investment Manager shall then consider the reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units depending on the achievement of the performance benchmark and pass a resolution making the necessary recommendation to this effect to the trustee of the InvIT. (Table 6, S.No. 1)

4.3.7.3. The recommendation for reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, shall be considered by the trustee and after ensuring compliance with the proposed provisions, the trustee may approve reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, and intimate the same to the Investment Manager. (Table 5, S.No. 4)

4.3.7.4. Pursuant to the approval of the trustee, the Investment Manager shall make the necessary intimation to stock exchanges, depositories, and Registrar and Transfer Agent. (Table 6, S.No. 1)

4.3.7.5. The Investment Manager of the InvIT shall also ensure that the record date (i.e. the date from when subordinate units will be reclassified to ordinary

units) is disclosed as part of the intimation to the stock exchanges, depositories, and Registrar and Transfer Agent. Further, the record date shall be intimated to stock exchanges, depositories, and Registrar and Transfer Agents at least two working days in advance (excluding the date of intimation and the record date). (Table 6, S.No. 1)

4.3.7.6. On being reclassified as ordinary units (and accordingly which are pari passu and equal in all respects to other ordinary units), such ordinary units shall be listed on the stock exchanges upon receipt of final listing and trading approval from the stock exchanges. (Table 6, S.No. 1)

4.3.7.7. The Investment Manager shall make disclosure of the impact of potential reclassification of subordinate units to ordinary units in the Term Sheet. Further, disclosure of such impact shall be made in such format as specified by SEBI. (Table 6, S.No. 1)

4.3.7.8. Prior to the issuance of subordinate units by the InvIT, the Investment Manager of InvIT shall obtain in-principle approval of the recognized stock exchanges for listing of the units as may be reclassified from subordinate units to ordinary units. (Table 6, S.No. 2)

4.3.7.9. On achievement of performance benchmarks, the subordinate units shall be reclassified into equal number of ordinary units (i.e. 1:1) and on a pari passu basis. Such reclassification can happen for all subordinate units or on piecemeal basis in accordance with the terms and conditions specified in the Term Sheet and the achievement of performance benchmarks (as disclosed at the time of issuance of subordinate units in the Term Sheet). (Table 6, S.No. 3)

4.3.7.10. The subordinate units may be reclassified into ordinary units, on an equal and pari passu basis, in part or in full in accordance with the terms and conditions and achievement of performance benchmark as disclosed at the time of issuance of such subordinate units. (Table 6, S.No. 3)

4.3.8. Cap on subordinate units (Table 7)

4.3.8.1. The amount of subordinate units that can be issued at the time of acquisition of an asset by an InvIT shall not exceed ten percent of the acquisition price of the asset. (Table 7, S.No. 1)

4.3.8.2. At any point of time, the total number of outstanding subordinate units shall not exceed ten percent of the total number of outstanding ordinary units. (Table 7, S.No. 1)

4.3.8.3. However, an InvIT which has subordinate units outstanding exceeding the above limit, as on the date of notification of this framework, such InvIT shall be allowed to issue additional subordinate units subject to compliance with the limits mentioned above. Further, for the purpose of such compliance, all outstanding subordinate units (including the subordinate units issued prior to the date of the notification of this framework) shall be considered. (Table 7, S.No. 1)

4.3.8.4. Furthermore, the proposed framework shall apply to subordinate units issued after the notification of the proposed provisions. However, the disclosure requirements proposed in this memorandum shall also be applicable for subordinate units issued prior to the notification of the proposed framework. (Table 7, S.No. 1)

4.3.9. Nature and extent of inferior rights of subordinate units (Table 8)

4.3.9.1. Subordinate units shall carry zero voting rights and zero distribution rights. (Table 8, S.No. 3)

4.3.10. Change in terms and conditions of subordinate units (Table 9)

4.3.10.1. No change in terms and conditions of the subordinate units post issuance shall be permitted, except extension in entitlement date.

4.3.11. Other suggestions (Table 10)

4.3.11.1. The investment manager shall disclose the diluted NAV and the diluted distribution per unit to the stock exchange along with NAV and distribution

per unit till the time subordinate units are outstanding. "diluted NAV" or "diluted net asset value" means the value of the InvIT assets reduced by the external debt divided by the total number of outstanding ordinary units and subordinate units. Further, "diluted distribution per unit" means the value of total distribution, divided by the total number of outstanding ordinary units and subordinate units. (Table 10, S.No. 1)

4.3.11.2. The disclosure of unitholding pattern shall be made separately for ordinary units and subordinate units. (Table 10, S.No. 1)

4.3.11.3. The price of subordinate units shall be determined according to the pricing guidelines applicable for issuance of ordinary units. (Table 10, S.No. 2)

5. Proposal to the Board:

5.1. The Board is requested to

5.1.1. consider and approve the proposals as detailed under para no 4.3 above and the consequent draft amendment notification placed at Annexure B;

5.1.2. authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board

Table 1: Applicability to privately placed InvITs only (Para 4.3.2. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	To introduce the framework for issuance of subordinate units for both publicly placed InvITs as well as privately placed InvITs	No comment received on this proposal.	No revision to the proposal was required.	<p>To begin with, the proposed framework for subordinate units shall be introduced only for privately placed InvITs.</p> <p><u>Rationale:</u></p> <p>It was discussed in the HySAC that reclassification of subordinate units to ordinary units would result in dilution of proportionate unitholding for the existing unitholders of the InvIT.</p> <p>Hence, it is necessary that the unitholders understand the potential</p>	<p>Agree with HySAC.</p> <p>Further, since the proposed framework is envisaged for privately placed InvITs only, a private InvIT shall not convert to a public InvIT when there are any outstanding subordinate units. Accordingly, it is proposed that no InvIT shall raise funds through public issue if any</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
				<p>dilution of their unitholding at the time of issuance of subordinate units.</p> <p>Further, publicly placed InvITs have large number of small retail investors who may not possibly understand the dilution impact of subordinate units. On the other hand, privately placed InvITs have sophisticated and large ticket size investors because of higher lot size for investments in such privately placed InvITs.</p> <p>In view of the above, HySAC recommended that, to begin with, the proposed framework for subordinate units shall be introduced only for privately placed InvITs.</p>	<p>subordinate units have been issued and are outstanding</p>

Table 2: Features of Subordinate Units (Para 4.3.3. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	<p>Subordinate units shall be issued only to the sponsor(s), its associates and sponsor group.</p> <p>Subordinate units shall be issued only in dematerialized form, have a separate ISIN from ordinary</p>	<p>No comment received on this proposal.</p>	<p>No revision to the proposal was required.</p>	<p>HySAC agreed with the proposal of SEBI.</p>	<p>Agree with HySAC.</p> <p>Further, it is proposed to provide that subordinate units shall be issued only to the sponsor(s), its associates and sponsor group when they are a seller of assets to the InvIT and not otherwise.</p> <p><u>Rationale:</u> The sole objective of subordinate units is to bridge the valuation gap that may arise as a result of difference in the valuation of an asset assessed</p>

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	units, and shall be unlisted.				<p>by the seller of the asset and the InvIT (in capacity of the asset buyer).</p> <p>The seller of assets can be the sponsor / its group entities or third party sellers. However, in the current InvIT structures it has been observed that it is primarily the sponsor / its group entities who monetize their infrastructure assets and are primarily the sellers of infrastructure assets to the InvITs.</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
					<p>In view of the same, the proposed framework envisages issuance of subordinate units only to the sponsor, associates of sponsor and sponsor group when they are selling assets to the InvIT.</p> <p>Extension of the proposed framework to third party sellers for bridging the valuation gaps on sale transactions involving third party sellers may be considered in future based on experience gained after the introduction of the current proposals over time and after</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
					market practices develop in this regard.
2.	Subordinate units shall not be considered for the purpose of mandatory minimum unitholding requirement applicable to sponsor(s) and sponsor group(s).	To clarify that minimum unitholding requirement (alignment of interest) shall not be applicable to subordinate units.	Public feedback has been accepted and it was proposed to also specify that the mandatory minimum unitholding requirement, applicable to sponsor and sponsor group, shall be met only through ordinary units. Subordinate units shall not be eligible for meeting the said requirement.	HySAC agreed with the revised proposal of SEBI.	Agree with HySAC.
3.	Subordinate units shall be converted into	Instead of "conversion", the term	Public feedback has been accepted. <u>Rationale:</u>	HySAC agreed with revised	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>ordinary units on achievement of performance benchmark.</p> <p>If the performance benchmark is not met at the end of the entitlement date (including extension period, if any), then the subordinate units shall be</p>	<p>“reclassification” should be used on change in status of subordinate units to ordinary units.</p>	<p>The change in status of subordinate units to ordinary units on the achievement of performance benchmark is not a ‘conversion’ of one security to another. The security is intrinsically the same i.e. units of the InvIT, unlike say convertible debentures wherein one security i.e. debenture is converted to another security i.e. equity share of the issuer. While there will be a distinct ISIN during the tenure of the subordinate units, there is no new instrument being issued. It is just addition of rights to the existing units which gets enabled upon achievement of performance benchmark, or the subordinate units get extinguished.</p>	<p>proposal of SEBI</p>	

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	extinguished without any payment to the holder of subordinate units.		Further, it may be noted that the process of change in ISIN for subordinate units to ordinary units is merely an administrative exercise to enable trading of subordinate units at par with ordinary units and does not imply a 'conversion' of subordinate units to ordinary units.		
4.	-	Subordinate units may also be allowed to be issued to the Investment Manager of InvIT or to the Unit Based Employee Benefit Trust so	Public feedback not accepted. <u>Rationale:</u> The sole intent for issuing subordinate units is to bridge the valuation gap between the asset seller (the sponsor or its associates or sponsor group) and the asset buyer (the InvIT). Hence, the sponsor or its associates or sponsor	HySAC agreed with the views of SEBI.	Agree with HySAC

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		that they may also have skin in the game.	group may take subordinate units against the assets they are selling to the InvIT. Since the Investment Manager of InvIT or Unit Based Employee Benefit Trust would not be selling assets to the InvIT, there does not arise any reason for permitting issuance of subordinate units to the Investment Manager of InvIT or to the Unit Based Employee Benefit Trust.		

Table 3: Issuance of subordinate units (Para 4.3.4. of board memorandum)

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	Subordinate units can be issued to the eligible entities in the initial offer or in any offering subsequent to the initial offer.	To clarify that subordinate units can be issued separately to eligible entities, independent of an offering of ordinary units.	Public feedback has been accepted and it was proposed to clarify that issuance of subordinate units without an issuance of ordinary units can also be made in the course of an asset acquisition transaction. <u>Rationale:</u> Subordinate units will be issued to bridge the valuation gaps on acquisition of assets by the InvIT. The acquisition of units can be made through cash without an issuance	HySAC agreed with the revised proposal of SEBI	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			of ordinary units. Accordingly, it was proposed to clarify that an issuance of subordinate units without an issuance of ordinary units (to bridge the valuation gaps on acquisition of assets primarily through cash) is permitted.		
2.	Any issuance of subordinate units post initial offer shall require prior approval from seventy five percent of the unitholders by	To reduce the approval requirement to at least sixty percent of the unitholders present and voting in line with the approval	Public feedback has been accepted <u>Rationale:</u> Master Circular for InvITs require approval of sixty percent of the unitholders, present and voting, for	HySAC agreed with the revised proposal of SEBI	Agree with HySAC

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>value. Sponsor(s), sponsor group, associates of sponsor(s) and any other parties related to the transaction shall not vote on such matter.</p>	<p>requirement for other issuance by the InvIT such as preferential issue and institutional placement</p>	<p>issuance of units by way of preferential issue and institutional placement. Accordingly, the same approval threshold is proposed for issuance of subordinate units.</p> <p>It is also notable that the revised proposal is for privately placed InvITs which would have sophisticated and large ticket size investors because of higher lot size for investments in such privately placed InvITs, and hence their participation in</p>		

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			the voting process will be far greater, and necessary checks and balances are expected to be operative.		
3.	The terms and conditions governing subordinate units shall be included in the trust deed of the InvIT and shall also be disclosed in the offer document, placement memorandum or placement	It is not feasible to undertake frequent amendments to the trust deed, so it should not be mandatory for the trust deed to include specific terms of subordinate units. The enabling provisions authorizing the issue of subordinate	Public feedback not accepted <u>Rationale:</u> It may be noted that trust deed is the governing document for an InvIT (which is established as trust). The terms and conditions governing subordinate units should be included in the trust deed to ensure that all information pertaining to	The matter was deliberated in the HySAC meeting wherein the following was recommended: (i) The enabling provisions authorizing the issue of subordinate units should be included in the trust deed.	Agree with HySAC Further, it is proposed that the terms and conditions governing subordinate units shall be disclosed in a Term Sheet which shall form part of the placement memorandum, explanatory statement to the

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	document (as the case may be).	units can be included in the trust deed	subordinate units issued by an InvIT is available in one single document, as there will be separate offer document, placement memorandum or placement document for each issuance of subordinate units.	(ii) However, the terms and conditions governing subordinate units (including the performance benchmarks, the entitlement date, the reclassification terms, etc.) shall not require being in the trust deed and instead be disclosed in the offer document / placement memorandum and in the notice of resolutions to unitholders in relation	notice for unitholders meeting and any document which may be disclosed to investors including prospective investors. The InvIT shall display such Term Sheet, explanatory statement and placement memorandum on its website and file the same with the stock exchanges.

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
				<p>to such subordinate units.</p> <p><u>Rationale:</u> Allowing disclosure of terms of subordinate units in the placement memorandum and explanatory statement to the notice for unitholder meeting will ease the procedure otherwise each time the subordinate units are issued, amendment in the trust deed will be required.</p>	<p><u>Rationale:</u> The placement memorandum is a bulky document containing various disclosures. Similarly, the explanatory statement may contain items other than the matter of subordinate units. Hence, the proposed provision aims to ensure that all terms and conditions governing subordinate units</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
				(iii) The InvIT shall also display such terms and conditions on its website and provide the requisite information for the exchanges to display such information as well.	are disclosed at one single section in the placement memorandum and explanatory statement, which is referred to as the Term Sheet.
4.	-	Procedure for issuance of subordinate units subsequent to the initial offer should be prescribed.	Public feedback has been accepted. Since subordinate units are also an issuance of units of the InvIT, it was proposed that the procedure applicable for issuance of ordinary units shall be	HySAC agreed with the proposal of SEBI.	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			made applicable for issuance of subordinate units.		

Table 4: Transfer of subordinate units (Para 4.3.5. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	Subordinate units shall be mandatorily locked in till the time these units get converted to ordinary units and / or are extinguished.	No comment received on this proposal.	No revision to the proposal was required.	HySAC agreed with the proposal of SEBI.	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
2.	Subordinate units shall not be transferable to any person except the sponsor(s), its associates and sponsor group. For giving effect to any inter-se transfer of subordinate units among sponsor(s), its associates and sponsor group, the depositories shall release the lock-in on	(i) To clarify that inter-se transfer is permitted in the event of exit by current sponsor and self-sponsored InvIT.	(i) Since subordinate units are issued only to the sponsor, its associates and sponsor group in the course of an asset acquisition transaction from such sponsor, a sponsor who is exiting from the InvIT, no longer remains the sponsor and hence should not hold subordinate units. Accordingly, it was proposed to clarify that in case of change in sponsor, the outgoing sponsor shall transfer subordinate units held by it, if any, to a sponsor, including an inducted sponsor, its associates or sponsor group. The issuance of subordinate units to self-sponsored Investment Manager is not permitted as it may result in	(i) HySAC agreed with the revised proposals of SEBI.	(i) Agree with HySAC Further, issuance of subordinate units to third party sellers is not envisaged at this stage. Accordingly, it is proposed that an existing sponsor shall not be allowed to disassociate as sponsor by

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>subordinate units, in order to effect such transfer, and lock-in shall be imposed again post transfer of such subordinate units.</p> <p>Such inter-se transfer of subordinate units among the sponsor(s), its associates and sponsor group will require</p>	<p>(ii) To clarify that such inter-se transfer includes encumbrances created by such parties in favor of</p>	<p>avoidable conflict of interest. Accordingly, it was proposed that in case of conversion to self-sponsored Investment Manager, the transfer of subordinate units by an outgoing sponsor to the self-sponsored Investment Manager is not permitted.</p> <p>(ii) Public feedback partially accepted.</p> <p>It was proposed to clarify that encumbrances can be created by sponsor, its associates and sponsor</p>	<p>(ii) HySAC agreed with the revised proposal of SEBI.</p>	<p>seeking to convert the Investment Manager to self-sponsored Investment Manager when subordinate units are outstanding.</p> <p>(ii) Agree with HySAC</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	disclosure to the stock exchanges within one working day of such transfer.	each other and lenders.	group entities, only amongst themselves. However, since issuance of subordinate units is envisaged only to the sponsor, its associates and sponsor group, encumbrances shall not be allowed in favor of any other entities outside sponsor, sponsor group and its associates.		
3.	-	SEBI may prescribe certain conditions such as period of holding in case of inter-se transfers.	Public feedback not accepted. <u>Rationale:</u> It may be noted that considering the various safeguards proposed in relation to the issue and transfer of subordinate units, the specification of a period of holding in case of inter-se transfer of subordinate units is not required.	HySAC agreed with the views of SEBI	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
4.	-	<p>If subordinate units are extinguished without any payment to the unitholders, the accounting treatment should be the same as in case of forfeiture of shares by the company.</p>	<p>It may be noted that specification of accounting treatment is not within the purview of SEBI.</p> <p>In case of forfeiture of shares, the amount called up on the shares is debited to 'share capital account' and the amount already received on forfeited shares is credited to 'forfeited shares account'.</p> <p>Further, at the time of reissuance of forfeited shares, the balance in forfeited shares account is transferred to Capital Reserve account.</p> <p>Hence, with respect to accounting treatment on extinguishment of</p>	HySAC agreed with the views of SEBI	Agree with HySAC

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			subordinate units, a representation to ICAI shall be made by SEBI.		

Table 5: Entitlement Date / Event and Performance Benchmark (Para 4.3.6. of board memorandum)

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	The entitlement date and/or the entitlement event including performance benchmark for conversion of subordinate units to ordinary units	No comment received on this proposal.	No revision to the proposal was required.	HySAC agreed with the proposal in the consultation paper.	Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	shall be clearly defined and specified in the offer document, placement memorandum or placement document, as the case may be.				
2.	The minimum time gap between issuance of subordinate units and entitlement date / event for conversion of subordinate units	Reclassification of subordinate units need not be time bound and allowed to be undertaken as and when the	Public feedback not accepted. Hence, no revision to the proposal was made. <u>Rationale:</u> Reclassification of subordinate units is based on the achievement of performance benchmark. A	HySAC agreed with the proposal in the consultation paper and the rationale specified.	Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	to ordinary units shall be one year.	relevant condition is achieved.	one-year minimum gap was proposed in the consultation paper to ensure that the performance benchmark is not very short term in nature as achievement of a short-term performance benchmark may be highly predictable / achievable, and could be factored in at the time of the transaction itself and valuation thereof. Further, the minimum period of one year allows for the approved parameters being assessable, measurable and then being acted upon, and avoids any short-term		

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			implications (i.e., of less than one year) on the parameters specified.		
3.	A one-time extension in the entitlement date as specified in the offer document, placement memorandum or placement document, may be permitted for a maximum period of one year subject to the following: (i) Such extension shall require	(i) A one-year cap may not be placed since extensions are driven by operational issues. Flexibility should be given to InvITs to extend the entitlement date to meet commercial objectives.	(i) Public feedback has not been accepted. Hence, no revision to the proposal was made. <u>Rationale:</u> Subordinate units are intended to facilitate in bridging the valuation gaps. The performance benchmark or the value of the asset has to be achieved in a time bound manner for reclassification of subordinate units to ordinary units. Accordingly, the suggestion of multiple extensions in	(i) HySAC agreed with the proposal in the consultation paper and the rationale specified.	(i) Agree with HySAC

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>approval from seventy five percent of the unitholders by value. Sponsor(s), sponsor groups, associates of sponsor(s) and any other parties related to the transaction shall not vote on such matter;</p>	<p>(ii) Multiple extensions may be allowed, each of which may be capped at one year.</p>	<p>perpetuity has not been considered.</p> <p>(ii) Public feedback has been accepted and it was proposed that entitlement date may be extended, in the manner specified in the Term Sheet, for a maximum of two times, with a cap of one year on each such extension of entitlement date. Further, the reasons for proposing an extension and the impact on ordinary unitholders (including potential dilution) on account of such extension in the entitlement</p>	<p>(ii) HySAC agreed with the revised proposal of SEBI.</p>	<p>(ii) Agree with HySAC</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>(ii) Such extension can be done only for cases where a possibility of such extension is clearly contemplated and duly approved and duly disclosed prior to the issuance of subordinate units;</p> <p>(iii) Adequate disclosures</p>	<p>(iii) Approval threshold should be 60% present and voting. Some respondents have also submitted that a simple majority (i.e., more than</p>	<p>date shall be disclosed in the notice of unitholders meeting convened for seeking approval of unitholders for the extension in entitlement date.</p> <p>(iii) Public feedback partially accepted and it was proposed that approval from two-third of the ordinary unitholders by value excluding the value of units held by parties related to the transaction, shall be required for extension in entitlement date</p> <p><u>Rationale:</u></p>	<p>(iii) The matter was deliberated in the HySAC meeting wherein it was recommended that such extension should be done only in case of any unforeseen circumstances on</p>	<p>(iii) Agree with HySAC. Additionally given that the revised proposal is for privately placed InvITs which would have sophisticated and large ticket</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	regarding the process and specific details of such extension are included in the trust deed, offer document, placement memorandum or placement document at the time of initial offer and/or at the time of issuance of	50%) unitholder approval from only the holders of the subordinate units should be required.	It may be noted that for issuance of subordinate units, approval threshold of 60% present and voting has been proposed. The extension of entitlement date is considered to be a significant event which should require a higher approval threshold. Further, it is noted that Alternative Investment Fund is also a pooled investment vehicle and under SEBI (Alternative Investment Funds) Regulations, 2012, the extension of tenure of close ended AIF is permitted upto two years subject to approval of two-	account of force majeure events or an order of any regulatory, statutory, judicial or governmental authority. It was also recommended that since related parties will not vote for such resolution, the threshold of sixty percent, present and voting, may be provided for	size investors because of higher lot size for investments in such privately placed InvITs, and hence their participation in the voting process will be far greater, and necessary checks and balances are expected to be operative.

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	such subordinate units;		thirds of the unitholders by value of their investment in the AIF.	the approval of extension in the entitlement date.	
4.	The performance benchmark for conversion of subordinate units shall be quantifiable and objective. Further, the performance benchmark shall be based on the audited financials and the status of achievement of such benchmark	(i) The frequency of monitoring of performance benchmark and reporting thereof should be clarified	(i) Public feedback has been accepted and it was proposed that the performance benchmark shall be monitored and reported on an annual frequency. Further, it was proposed that the Investment Manager shall disclose in the annual report of the InvIT, the progress/status of achievement of performance benchmark based on the audited financials and such	(i) HySAC agreed with the proposal of SEBI.	(i) Agree with HySAC. Further, to ensure that progress related to achievement of performance benchmark is assessed correctly, in addition to the same being certified by the

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	shall be certified by the statutory auditor of InvIT.	(ii) The report for status of achievement of such benchmark as certified by the	progress/status shall be certified by the statutory auditor of the InvIT (ii) Public feedback has been accepted.	(ii) HySAC agreed with the proposal of SEBI.	statutory auditor of the InvIT, it shall also be approved by the audit committee of the Investment Manager and the trustee of the InvIT. (ii) To ensure that status of achievement of performance benchmark is assessed

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		<p>statutory auditor of InvIT to be reported to the Trustee</p>			<p>correctly, instead of the same being reported to the trustee, it is proposed that such status of achievement shall be approved by the audit committee of the Investment Manager and the trustee of the InvIT (in addition to</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
					certification by the statutory auditor).

Table 6: Reclassification of subordinate units to ordinary units (Para 4.3.7. of board memorandum)

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	The Board of the Investment Manager of the InvIT shall consider the recommendation of conversion of the subordinate units into ordinary units and	The disclosure of record date (i.e. the date from when subordinate units will be reclassified to ordinary units) should also be mandated.	Public feedback has been accepted and it was proposed to mandate the disclosure of record date. Further, to ensure that ordinary unitholders are fully aware of the impact of	HySAC agreed with the proposal of SEBI	Agree with HySAC. It is also proposed that disclosure of impact of potential reclassification shall be made in such format as specified by SEBI

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>pass a resolution to that effect and make the necessary intimations to stock exchanges, depositories, Registrar and Transfer Agent etc.</p> <p>Converted units shall be listed and tradeable on the stock exchanges on the receipt of approval from the stock exchanges.</p>		<p>potential reclassification of subordinate units to ordinary units, it was proposed to mandate this disclosure in the offer document, placement memorandum or placement document (as the case may be).</p> <p><u>Rationale:</u> The disclosure of record date is important as the reclassification of subordinate units to ordinary units shall amount to corporate action and the intimation of record date will amount to market</p>		<p>Further, it is proposed that the record date shall be intimated to stock exchanges, depositories and Registrar and Transfer Agent at least two working days in advance (excluding the date of intimation and the record date).</p> <p><u>Rationale:</u> HySAC in its meeting dated February 12, 2024, recommended that the overall timelines for distribution made by InvITs and REITs to</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			adjusting to the price at which the units are being traded.		<p>unitholders may be revised to ten working days with at least two working days for intimation of record date.</p> <p>In order to maintain parity with the record date for distribution and for reclassification of subordinate units, two days is proposed.</p>
2.	-	At the time of issuance of subordinate units, the InvIT should obtain in principle approval of the	Public feedback has been accepted and it was proposed that the Investment Manager of InvIT shall, prior to the issuance of subordinate units by the InvIT, obtain in-	HySAC agreed with the proposal of SEBI	Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommend ations	SEBI's views
		<p>stock exchange(s) for listing and trading of the units post conversion.</p>	<p>principle approval of the recognized stock exchanges for listing of the units pursuant to reclassification of subordinate units to ordinary units.</p> <p><u>Rationale:</u> It may be noted that in-principle approval of stock exchange is required on issuance of units in preferential allotment, institutional placement and rights issue, hence the same was proposed to be mandated for subordinate units so that stock exchanges</p>		

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			are aware of increase in number of units outstanding in future on meeting the performance benchmark.		
3.	-	To provide clarity on whether conversion of subordinate units to ordinary units may be done together or on piecemeal basis.	Public feedback has been accepted. In this regard it may be noted that the reclassification of subordinate units is based on the achievement of performance benchmark as decided and disclosed at the time of issuance of subordinate units. Accordingly, the reclassification can happen for all subordinate units or on	HySAC agreed with the proposal of SEBI.	Agree with HySAC. Further, it is proposed to clarify that the subordinate units may be reclassified into ordinary units, on an equal and pari passu basis, in part or full in accordance with the terms and conditions and achievement of performance benchmark as disclosed at the time of

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommend ations	SEBI's views
			<p>piecemeal basis in accordance with the terms and conditions and the achievement of performance benchmarks as disclosed at the time of issuance of subordinate units.</p> <p>Further, it was proposed to clarify that on achievement of performance benchmark, the subordinate units shall be reclassified into equal number of ordinary units (i.e. 1:1) and a pari passu basis.</p>		issuance of such subordinate units.

Table 7: Cap on subordinate units (Para 4.3.8. of board memorandum)

S. No .	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	The amount of subordinate units that can be issued at the time of acquisition of an asset by an InvIT shall not exceed ten percent of the acquisition price of the asset.	(i) Cap should not be specified as subordinate units are intended to bridge valuation gaps which may be more than 10%. As an alternative to cap, SEBI may consider specifying more robust disclosures to enable all potential	(i) Public feedback not accepted. Hence, no revision to the proposal was made. <u>Rationale:</u> Subordinate units are solely to bridge valuation gaps that may arise as a result of difference in the valuation of an asset assessed by the seller of asset (the sponsor or its associates or sponsor group) and the InvIT (and/or its investors/unitholders). These valuation gaps should be small and not too wide or broad, hence the proposal was made in the consultation paper to specify an	(i) HySAC agreed with the proposal of SEBI.	(i) Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	Further, at any point of time, the total number of outstanding subordinate units shall not exceed ten percent of the total number of outstanding ordinary units.	investors to make an informed decision.	<p>upper ceiling up to which subordinate units can be issued.</p> <p>The specification of a cap will also ensure due accrual of the potential capital appreciation in the value of the asset, if performance benchmarks are achieved, to also the investors/unitholders rather than accruing only to the Sponsor. It will also aid in limiting the impact of dilution for existing unitholders on reclassification of subordinate units to ordinary units.</p> <p>In view of the above, with regard to the suggestion of not specifying a cap on subordinate units, it is</p>		

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		(ii) No cap should be specified at the asset acquisition level as the valuation gap is likely to be more than 10%	<p>reiterated that valuation gaps intended to be bridged by issuance of subordinate units should be small and not too wide or broad. Further, in view of the other objectives sought to be achieved by specification of a cap on subordinate units, this suggestion was not accepted.</p> <p>(ii) Public feedback partially accepted and it was proposed to revise the cap at asset acquisition level from earlier proposal of 10% to 15% of the acquisition price of the asset.</p>	(ii) The matter was deliberated in the HySAC meeting wherein the committee	(ii) Rationale advanced at HYSAC is valid and accordingly agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		<p>for individual assets. Further, at the cumulative level, the cap may be kept at 15% of the ordinary unit capital. Some of the respondents have suggested that the quantum of cap may be decided by unitholders.</p>	<p><u>Rationale:</u> A cap of 10% at the asset acquisition level and at the overall level in the unit capital of InvIT was proposed in the consultation paper. However, in view of the suggestions received that valuation gaps may be more than 10%, it was proposed to revise the cap at asset acquisition level to 15% of the acquisition price of the asset. This will give a higher flexibility in terms of usage of subordinate units to deal with valuation gaps at a transaction level.</p>	<p>recommended that, to begin with, a cap of 10%, at both asset acquisition level as well as cumulative unit capital level should be specified.</p>	

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		(iii) The cumulative caps should be applicable prospectively to ensure that existing	<p>The overall cap of 10% may be retained (i.e. at any point of time, the total number of outstanding subordinate units shall not exceed 10% of the total number of outstanding ordinary units). This will aid in limiting the cumulative dilution for existing unitholders on account of reclassification of subordinate units to ordinary units.</p> <p>(iii) Public feedback partially accepted and it was proposed that any subordinate units outstanding as on the date of notification of this framework shall be grandfathered.</p>	(iii) HySAC agreed with the proposal of SEBI.	(iii) Agree with HySAC Further, to bring out explicit clarity with regard to the grandfathering provisions, it is

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		structures are not affected.			proposed to specify that an InvIT which has subordinate units outstanding exceeding the cumulative cap of 10% as on the date of notification of this framework, such InvIT shall be allowed to issue additional subordinate units subject to compliance with the limits proposed in the memorandum. Further, for the purpose of such compliance, all outstanding subordinate units (including the

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					<p>subordinate units issued prior to the date of the notification of this framework) shall be considered.</p> <p>Furthermore, the proposed framework shall apply to subordinate units issued after the notification of the proposed provisions. However, the disclosure requirements proposed in this memorandum shall also be applicable for subordinate units issued prior to the</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
					notification of the proposed framework. Currently, only one InvIT has issued subordinate units, with zero voting and zero distribution rights.

Table 8: Nature and extent of inferior rights of subordinate units (Para 4.3.9. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	Subordinate units shall only carry inferior voting rights or inferior distribution rights or both.	(i) No right shall be superior to the right of ordinary unitholders.	(i) The consultation paper clearly proposes that subordinate units shall only carry inferior voting rights or inferior distribution	(i) and (ii) HySAC agreed with the proposal in	(i) and (ii) Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		(ii) Subordinate units shall carry inferior voting rights but not inferior distribution rights	rights or both. Hence, no revision to the proposal was required. (ii) Public feedback not accepted. <u>Rationale:</u> This acceptance of suggestion is not appropriate as it may lead to economic benefits by virtue of distribution to subordinate unitholders immediately upon issuance and without the achievement of performance benchmarks.	the consultation paper and rationale specified.	
2.	Inferior rights on all subordinate units issued by a InvIT shall be similar i.e. there shall not be	Different deal structures have different commercial	Public feedback not accepted. Hence, no revision to the proposal was made.	HySAC agreed with the proposal in	Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	multiple classes of subordinate units.	considerations which may necessitate different rights. Further, subordinate units are intended to bridge valuation gaps which may be different across the assets owned by an InvIT and hence limiting the units to one class may not be an effective solution.	<p><u>Rationale:</u> InvIT Regulations provide that subordinate units shall carry only inferior voting or any other rights compared to other units. The extant provisions may result in various different types of subordinate units being issued by an InvIT as there is absence of clarity in regard to the extent of inferior rights which can be offered on subordinate units i.e. whether inferior rights shall mean zero distribution rights or 10% distribution rights or 90% distribution rights etc.</p> <p>The proposals in the consultation paper were made with the objective</p>	the consultation paper and rationale specified.	

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
			of bringing uniformity in the nature of inferior rights conferred by the subordinate units within an InvIT as well as across the industry. Further, uniformity in rights will aid in easier understanding of subordinate units for the investors and easier comparison of value of units across InvITs.		
3.	Further, to bring in uniformity across the industry with regard to the extent of inferior rights offered on the subordinate units, the following options were put forth in the consultation paper for	(i) Mixed responses have been received in favor of option (ii) (inferior rights on the subordinate units to be to the extent of ten percent of the	(i) Public feedback not accepted and it was proposed that subordinate units shall carry zero distribution rights and zero voting rights. <u>Rationale:</u> The option of combination of floor and cap will result in different types	(i) HySAC agreed with the proposal in the consultation paper and	(i) Agree with HySAC

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>public comments and feedback:</p> <p>(i) subordinate units shall carry no distribution and no voting rights, or</p> <p>(ii) subordinate units shall carry inferior distribution rights and inferior voting rights to the extent of ten percent of the corresponding rights conferred on ordinary units, or</p> <p>(iii) a combination of floor and cap may be specified (i.e. a range)</p>	<p>corresponding rights conferred on ordinary units) and option (iii) (combination of floor and cap).</p>	<p>of subordinate units carrying varying rights, which will not be in alignment with the objective of uniformity, comparability and easier understanding of subordinate units by the investors.</p> <p>The option of providing that all subordinate units shall carry inferior rights to the extent of ten percent of the corresponding rights conferred on ordinary units may not be appropriate as it may lead to economic benefits (by virtue of 10% distribution and 10% voting) flowing to subordinate unitholders immediately upon issuance and</p>	<p>rationale specified.</p>	

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	<p>as to the extent of inferior distribution rights and inferior voting rights which can be offered on the subordinate units vis-à-vis ordinary units.</p>	<p>(ii) In case any inferior rights are</p>	<p>without the achievement of performance benchmarks. The option providing that all subordinate units shall carry zero distribution rights and zero voting rights will bring uniformity in the nature of rights on subordinate units across the industry. Further, zero voting and zero distribution rights will also ensure that sponsor and its group entities / associates do not get any economic benefits out of the subordinate units until the pre-specified performance benchmarks are met.</p> <p>(ii) It was proposed that any subordinate units outstanding</p>	<p>(ii) HySAC agreed</p>	<p>(ii) With regard to the need for</p>

S. No	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommen- dations	SEBI's views
		proposed uniformly across the industry, such changes are made applicable on prospective issuance of subordinate units.	as on the date of notification of this framework shall be grandfathered.	with the proposal of SEBI.	grandfathering of subordinate units issued before the date of notification, it may be noted that only one InvIT has issued subordinate units till date. Furthermore, the said subordinate units carry zero voting and zero distribution rights. Hence, a need for

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
					grandfathering does not arise.

Table 9: Change in terms and conditions of subordinate units (Para 4.3.10. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	No change in terms and conditions of the subordinate units post issuance shall be permitted except	(i) Operational changes may require amendment in the terms of reclassification. Not allowing amendment in terms may result in exposure of the	Public feedback not accepted. Hence, no revision to the proposal was made. <u>Rationale:</u> The terms and conditions, related to issuance of subordinate units, are mutually agreed between the asset seller (the sponsor or its associates or sponsor group) and the asset buyer (i.e. the InvIT) at the time of acquisition of the asset. Since the terms and conditions are mutually pre-agreed, it will be	HySAC agreed with the proposal in the consultation paper and rationale specified.	Agree with HySAC

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	extension in entitlement date.	<p>investors to an adverse financial position.</p> <p>(ii) To consider allowing such changes provided approval from a majority of uninterested unitholders has been obtained.</p> <p>(iii) Flexibility may be provided on this issue to account for any unforeseen</p>	<p>imprudent to allow changes in such terms and conditions in future as the same will adversely impact the notion of true sale and will result in disturbing certainty of a sale transaction.</p> <p>Further, such terms and conditions would, inter-alia, include the performance benchmark for reclassification of subordinate units to ordinary units. The performance benchmark is one of the most important terms and conditions for subordinate units and should not be subject to any change post the issuance of subordinate units.</p> <p>The extension in entitlement date was already envisaged in the consultation paper. In view of the public comments received, it has been proposed in Table 5 that entitlement date may be extended for a maximum of two times, with a cap of one year on</p>		

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
		<p>circumstances / force majeure (for eg., COVID, war, etc.) subject to approval of 75% of non-sponsor group unit holders.</p>	<p>each such extension of entitlement date. The same will aid in catering to unforeseen circumstances / force majeure situations.</p> <p>Accordingly, in view of the rationale stated and considering that the option of extension in the entitlement date has already been proposed, the suggestion of permitting change in other terms and conditions of the subordinate units post issuance of subordinate units was not accepted.</p>		

Table 10: Other suggestions (Para 4.3.11. of board memorandum)

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
1.	<p>Till the time the subordinate units are outstanding, the Investment Manager of InvIT shall disclose NAV and Distribution per unit as follows:</p> <p>(i) NAV per unit including and excluding subordinate units</p> <p>(ii) Distribution per unit including and excluding</p>	<p>A third NAV should also be disclosed considering achievable subordinate units.</p>	<p>Public feedback not accepted. Hence, no revision to the proposal was made.</p> <p><u>Rationale:</u> The comment is regarding allowing disclosure of NAV on the basis of greater probability of reclassification of subordinate units in future. It is very subjective, may lead to misrepresentation and may not actually lead to reclassification of ordinary units based on performance benchmark. Hence the suggestion is not accepted.</p>	<p>HySAC agreed with the rationale specified.</p>	<p>Agree with HySAC.</p> <p>Further, it is proposed to specify that the disclosure of unitholding pattern shall be made separately for ordinary units and subordinate units.</p>

S. No.	Proposal in Consultation Paper	Public Comments (including comments of working group)	Revised proposal placed before HySAC	HySAC Recommendations	SEBI's views
	subordinate units				
2.	-	Pricing mechanism for subordinate units should be specified.	Public feedback has been accepted and it was proposed that the price of subordinate units shall be determined according to the pricing guidelines applicable for issuance of ordinary units.	HySAC agreed with the proposal of SEBI.	Agree with HySAC.

Draft Notification

Amendment shall be notified after following the due process