



CIRCULAR

SEBI/HO/DDHS/DDHS/CIR/P/2020/122

July 17, 2020

To,

All Infrastructure Investment Trusts (“InvITs”)

All Parties to InvITs

All Recognised Stock Exchanges

All Merchant Bankers

Dear Sir/ Madam,

Sub: Manner and mechanism of providing exit option to dissenting unit holders pursuant to Regulation 22(5C) and Regulation 22(7) of SEBI Infrastructure Investment Trusts Regulations, 2014 (“SEBI (InvIT) Regulations”)

1. Regulation 22 (5C) and Regulation 22 (7) of SEBI (InvIT) Regulations provide for exit option to be given to dissenting unit holders.
2. This circular details the guidelines in respect of conditions, manner and mechanism of exit option to be provided to dissenting unit holders. The detailed guidelines have been provided in **Annexure - I**.
3. An acquirer providing exit option to dissenting unitholders in terms of this circular shall appoint one or more merchant bankers, registered with the Board, as lead manager(s) for the exit option/offer, who shall ensure compliance with the provisions of SEBI (InvIT) Regulations and this circular. Lead manager(s) shall send the Letter of Offer (LoF) to all dissenting unit holders and shall also file the same along with the due diligence certificate, in line with format specified in Form A in Annexure-I of SEBI circular no. CIR/IMD/DF/55/2016 dated May 11, 2016, with the Exchange(s). The broad contents of LoF are indicated in **Annexure-II** of this circular.
4. Upon completion of exit option process, a due diligence certificate in line with format specified in the Form D in Annexure-I of SEBI circular no. CIR/IMD/DF/55/2016 dated May 11, 2016, shall be filed by the lead manager(s) with the Board within two working days of payment of consideration by the acquirer.



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5. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the SEBI (InvIT) Regulations.
6. This circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the sub-category "Circulars" under the category "Legal".

Yours faithfully,

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1. Definitions

For the purpose of this circular:

1.1 “Acquirer” means,

- (a) a person who, along with persons acting in concert, intends to acquire units of a listed InvIT; or
- (b) a person who intends to be an inducted sponsor as defined under Regulation 2(sb) of SEBI (InvIT) Regulations; or
- (c) a sponsor being subject to a change in control,

and required to provide an exit option in terms of Regulation 22(5C) or Regulation 22(7) of the SEBI (InvIT) Regulations, as the case may be;

1.2 “persons acting in concert” means,—

(1) persons who, with a common objective or purpose of acquisition of units of the InvIT, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of units of the InvIT.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

- i) a company, its holding company, subsidiary company and any company under the same management or control;
- ii) a company, its directors, and any person entrusted with the management of the company;
- iii) directors of companies referred to in item i) and ii) of this sub-clause and associates of such directors;
- iv) immediate relatives;
- v) an institutional investor and wherever applicable its sponsor, trustees, trustee company, asset management company;
- vi) a collective investment scheme and its collective investment management company, trustees and trustee company;
- vii) a merchant banker and its client, who is an Acquirer;
- viii) a portfolio manager and its client, who is an Acquirer;



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- ix) banks, financial advisors and stock brokers of the Acquirer, or of any company which is a holding company or subsidiary of the Acquirer, and where the Acquirer is an individual, of the immediate relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an acquisition/exit option under SEBI (InvIT) Regulations;

- x) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unit holder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation—For the purposes of this clause “associate” of a person means any person as defined under Regulation 2(1)(b) of SEBI (InvIT) Regulations and shall also include-

- i) trusts of which such person or his immediate relative is a trustee;
- ii) partnership firm in which such person or his immediate relative is a partner; and
- iii) members of Hindu undivided families of which such person is a coparcener

1.3 “Cut-off date” means a date not more than three working days before the date of meeting for determining the eligibility to vote;

1.4 “Dissenting unit holders” means unit holders as on the cut-off date who have not voted in favour of the resolution proposed in terms of Regulation 22(5C) or Regulation 22(7) of the SEBI (InvIT) Regulations, irrespective of whether present or not;

1.5 “Frequently traded units” shall have the same meaning as assigned to it in SEBI circular SEBI/HO/DDHS/DDHS/CIR/P/2019/143 dated November 27, 2019;



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1.6 “Relevant date” means the last day of voting for resolution under Regulation 22(5C) or Regulation 22(7) of the SEBI (InvIT) Regulations.

2. Manner and mechanism of exit option:

- 2.1 The Acquirer shall facilitate tendering of units by the unit holders and settlement of the same through the stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting in case of equity listed companies.
- 2.2 Investment Manager (IM) shall be entitled to receive from the Acquirer all expenses incurred and payable to external agencies related to the exit offer process prescribed in this circular.
- 2.3 Units tendered in exit option shall be in multiples of the trading lot as applicable to the units of the same class of the InvIT, under the existing provisions of the InvIT Regulations and circulars issued thereunder.
- 2.4 Dissenting Unit holders who are unitholders on the cut-off date for the purpose of voting shall be eligible to avail the exit option/offer only in respect of such number of units held by such Dissenting Unitholders on the cut-off date.
- 2.5 A summary of activities pertaining to exit option/offer is indicated below along with the prescribed timelines:

Activity Description	Timelines
Acquirer shall give notice to the IM for the purpose of obtaining approval of the unit holders under Regulation 22(5C) or Regulation 22(7) of SEBI (InvIT) Regulations. Further, a person being inducted as a sponsor shall give declaration to IM with regard to satisfying the eligibility conditions prescribed for a sponsor under SEBI (InvIT) Regulations.	-
On receipt of notice, IM shall intimate to stock exchange(s)	Immediately but not later than twenty four hours from the receipt of such notice
IM shall convene a meeting of unit holders for voting	Voting to be completed not later than three working days from the cut-off date and within twenty one days from the date of receipt of notice from the acquirer



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<p>Intimation of outcome of the unit holders' meeting by the IM to Acquirer and stock exchange(s) along with the number of dissenting unit holders and total number of units held by them as of the cut-off date, as certified by its compliance officer.</p> <p>The day of aforesaid intimation by IM shall be construed as "Date of Intimation".</p>	<p>Within forty eight hours of the last day of voting</p>
<p>Acquirer through the Lead Manager shall give a public notice to stock exchange(s) and IM regarding his intention of providing exit option to dissenting unit holders</p>	<p>Within twenty four hours of the Date of Intimation</p>
<p>Upon receipt of public notice from the Lead Manager, IM shall provide the list of dissenting unit holders to the Lead Manager(s).</p>	<p>Immediately but not later than twenty four hours from the receipt of public notice from the Acquirer</p>
<p>Acquirer through the Lead Manager(s) shall send the Letter of Offer (LoF) to all dissenting unit holders and file a copy of the same with the stock exchange(s). Lead Manager(s) shall exercise due diligence with regard to all information and disclosures contained in the LoF.</p> <p>The stock exchange(s) shall disseminate the LoF on its website as soon as it receives the same.</p>	<p>Within three working days from the date of public notice by the Acquirer regarding exit option/offer</p>
<p>Acquirer shall create an escrow account wherein the aggregate amount of consideration based on the list of dissenting unit holders provided by the IM to Lead Manager would be deposited in the manner specified at para 2.6 below.</p>	<p>At least two working days prior to opening of the tendering period.</p>
<p>Tender date and tender period for tendering units in exit option</p>	<p>Seventh working day from the "Date of Intimation"</p> <p>Tender period shall be five working days.</p>



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Payment of consideration to dissenting unit holders by the Acquirer	Within a period of three working days from the last date of the tendering period
Lead Manager shall submit a report to IM that the payment has been duly made to all the dissenting unit holders whose units have been accepted in the exit option. Based on the information received from Lead Manager, IM shall update aggregate number of units tendered, accepted, payment of the consideration and the post-exit option unit holding pattern of the InvIT with stock exchange(s).	Within two working days from the date of payment of consideration

2.6 The escrow account referred to in aforesaid table may be in the form of —

- (a) cash deposited with any scheduled commercial bank; and/or
- (b) bank guarantee issued in favour of the Lead Manager to the exit option/offer by any scheduled commercial bank;

2.6.1 In the event of the escrow account being created by way of a bank guarantee, the Acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

2.6.2 For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the lead manager to the exit option/offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account.

2.6.3 For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the lead manager to the exit option/offer and shall be kept valid throughout the period of exit option/offer and for an additional period of thirty days after completion of payment of consideration to unit holders who have tendered their units in acceptance of the exit option/offer.



3. Exit Price

3.1 The exit price payable to the dissenting unit holders shall be highest of the following:

- 3.1.1 the highest negotiated price per unit of the InvIT for any acquisition under the agreement attracting the obligation of exit option;
- 3.1.2 the volume-weighted average price paid or payable for acquisitions, whether by the proposed Acquirer or any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date;
- 3.1.3 the highest price paid or payable for any acquisition, whether by the proposed Acquirer or any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date;
- 3.1.4 the volume-weighted average market price of such units for a period of sixty trading days immediately preceding the relevant date as traded on the stock exchange where the maximum volume of trading in the units of the InvIT are recorded during such period, provided such units are frequently traded;
- 3.1.5 Where the units of the InvIT are not frequently traded, the price determined by the Acquirer and the lead manager to the exit option/offer taking into account valuation parameters including the NAV of the InvIT based on a full valuation of all existing InvIT assets conducted in terms of SEBI (InvIT) Regulations, book value, comparable trading multiples, and such other parameters as are customary for valuation of units of such InvITs.

3.2 Where the Acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any units of the InvIT between the relevant date and the date of payment of consideration to dissenting unit holders, whether by subscription or purchase, at a price higher than the exit option price, the exit option price shall stand revised to the highest price paid or payable for any such acquisition:

Provided that no such acquisition shall be made after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.



3.3 Where the Acquirer or persons acting in concert with him acquires units of the InvIT during the period of twenty-six weeks after the tendering period at a price higher than the exit option price, the Acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the exit option price, to all the unit holders whose units were accepted in the exit option/offer, within sixty days from the date of such acquisition:

Provided that this provision shall not be applicable to acquisitions under another exit option/offer under SEBI (InvIT) Regulations or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of units of the InvIT whether by way of bulk deals, block deals or in any other form.

4. Maintenance of minimum public unitholding

If the units tendered in exit option are such that, if accepted may result in public unit holding below the minimum public unit holding norm prescribed under SEBI (InvIT) Regulations, in such scenario, tendered units shall be accepted on proportionate basis so as to maintain the minimum public unit holding post completion of exit option process.



Contents of letter of offer (LoF) and certificate by the Merchant Banker:

1. The disclosures prescribed herein are the minimum disclosure requirements to be contained in the LoF for an exit option/offer. The lead manager/Acquirer is free to add any other disclosure(s) which in his opinion is material for the unit holders, provided such disclosure(s) is not presented in an incomplete, inaccurate or misleading manner.
 - 1.1. All the requisite disclosures/statements in respect of the Acquirer, persons who are acting in concert (PAC) with the Acquirer for the purpose of the offer shall be made in the LoF.
 - 1.2. Lead manager shall ensure that the timelines specified for tendering period, payment of consideration to unit holders, etc. are as per the timelines specified in this circular.
 - 1.3. The source from which data / information is obtained should be mentioned in the relevant pages of LoF.
 - 1.4. The LoF shall, inter alia, shall include the following:
 - 1.4.1. Details of the Acquirer (including PAC, if any) including its background, experience, areas of operation, relationship between Acquirers, pre and post exit offer unit holding etc. financial position (financial statements/net worth, as applicable) etc. In case of financial statements, audited Profit & Loss statement, Balance Sheet and Cash Flow statement for last three years along with latest available financial statements. Latest financials should not be older than six months from the date of LoF.
 - 1.4.2. Details of the exit option/offer, statutory approvals and detailed timelines with regard to exit option process including operational terms and conditions etc. subject to which Acquirer(s) would accept the offer.
 - 1.4.3. Details of exit price including total amount of funds required to make the payment of consideration to unit holders, details of escrow account and bank guarantee, as the case may be. It shall also be disclosed that the lead manager has been empowered by Acquirer to realise the value of such escrow account.



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- 1.4.4. Procedure for accepting the offer including disclosure of relevant provisions pertaining to acceptance of units.
- 1.4.5. In case there is any agreement, mention important features of the agreement(s), acquisition price per unit, number and percentage of units to be acquired under the agreement, name of the seller(s), names of parties to the agreement, date of agreement, manner of payment of consideration including salient features of the agreement, if any, entered between the Acquirer and PAC with regard to the offer/ acquisition of units.
- 1.4.6. Due diligence certificate of Lead Manager & Declaration by the Acquirer (including PAC, if any) including statements regarding the Acquirer's responsibility for the information contained in the LoF and a statement to the effect that the Acquirer (including PAC, if any) would be responsible for ensuring compliance with this circular shall be incorporated in the LoF.
2. The due diligence certificate to be filed with exchange(s) along with the LoF shall inter-alia undertake that lead manager(s) have examined all relevant information and documents pertaining to this exit option/offer. Certificate shall also include that letter of offer filed with the exchange(s) is in conformity with the documents, materials and papers relevant to the exit option/offer. The lead manager(s) shall be responsible for ensuring compliance with SEBI rules, regulation and the provisions of this circular and lead manager(s) shall continue to be responsible until completion of the exit option process and for any related matter thereafter.
3. Any act of omission or commission on the part of any of the intermediaries noticed by the lead manager(s) shall be duly reported by them to the Board.
4. In the due diligence certificate to be submitted to SEBI upon completion of exit option process, the lead manager(s) shall confirm compliance with all provisions of this circular by the Acquirer and the certificate shall also mention that information disclosed in the LoF was true and correct to the best of his knowledge and was obtained after exercising proper due diligence.
