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In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.

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What are the InvITs?

Infrastructure Investment Trusts also popularly referred to as InvITs are investment vehicles similar to mutual funds which provide collective and direct investment framework for a number of investors like individuals, corporate entities or institutional investors in the infrastructure sector. The aim is to use InvITs to attract private investment in cash-strapped infrastructure sector. Simply put, InvITs are trust which solicit money from the general public to fund infrastructure projects (such as building of highways, railways, power plants) and yield regular returns. A portion of the revenue earned by InvITs is distributed as dividend to the investors.

Is there a regulation which governs InvITs in India?

Yes, in India, InvITs are regulated by the Securities and Exchange Board of India (SEBI). Keeping in mind the huge infrastructure requirement of the country, SEBI has introduced and notified SEBI (Infrastructure Investment Trusts) Regulations, 2014 on September 26, 2014 for the infrastructure projects. Amongst other provisions, the SEBI Regulations provide for registration of InvITs, policies and requirements with respect to distribution of dividends, minimum capital required for an initial public offer (IPO), listing requirements, key responsibilities of the parties to the trust. Besides significant compliance and disclosure requirements prescribed for transactions entered into with related parties, SEBI Regulations also mandate that all related party transactions should be at arm's length. The regulatory framework, distribution policies, capital requirements governing InvIT in India is similar to those in other countries.

Whether there is any minimum limit to invest in InvITs?

The minimum application size for InvIT units is ₹ 10 lakhs. Considering the quantum of investment, the investment in the InvITs would be only from very limited sources and will be out of the reach for the small and retail investors. Accordingly, the main investors could be foreign institutional investors, insurance and pension funds and domestic institutional investors (like mutual funds, banks, etc) and also high net worth individuals.

How do InvITs work?

The InvITs issue a unit to an investor to raise the funds. An investor holding units of an InvIT will own both the debt advanced by the InvIT and ownership of the equity share capital in the underlying infrastructure projects. The funds raised by InvITs are directly invested in the infrastructure projects or through a special purpose vehicle (SPV). As per the SEBI Regulations, two types of InvITs are allowed. The first type of InvITs invest in completed infrastructure projects which are generating revenue. Such investment is done through the route of public offer of units of InvITs. Another type of InvITs have the option to invest in projects which though have been completed are yet not generating revenue or under construction projects. Those investing in under construction projects take the route of private placement of units. Both these types of InvITs are required to be listed on stock exchanges, just the way the shares are listed through IPOs. Since an InvIT issues units that are listed at the Stock Exchange, in that sense, InvITs are like exchange traded funds (ETFs) of mutual funds. The difference is, in a mutual fund, the underlying portfolio of shares or bonds change in value every day and there is an NAV declared every day. An InvIT invests in the projects which are identified as special purpose vehicles that are not valued everyday but once in 6 months.

What are the rights of the unit holders of InvITs?

Some of the rights of the unit holders include the right to receive dividend declared by InvIT, vote on matters pertaining to acquisition of new assets and on matters such as appointment or change of the Investment Manager.

What is the structure of InvITs?

An InvIT has four parties, which being Trustee, Sponsor(s), Investment Manager and Project Manager. Trustee is a SEBI registered debenture trustee who inspects the performance of an InvIT and is responsible to ensure that it functions (including that of the investment manager and project manager) are in compliance with the SEBI Regulations. Any infrastructure company interested to solicit funds from the investors will be required to form the trust and appoint a trustee. As per the requirement, the Trustee cannot be an associate of the Sponsor or Manager. As regard to the Sponsor, it means the promoters (being a company or Limited Liability Partnership (LLP) or body corporate) with a net worth of ₹ 100 crores which sets up the InvIT and is designated as Sponsor at the time of application made to the SEBI. In case of PPP projects, it refers to the infrastructure developer or a special purpose vehicle. The Promoters or Sponsor(s), collectively, have to hold minimum stake in the InvIT for the duration, as prescribed in the SEBI Regulations (except for the cases where a regulatory requirement or the concession agreement requires the sponsor to hold a certain minimum percent in the underlying SPV). If the investment is done through an SPV, then InvIT has to hold a controlling interest with not less than 50% of the equity share capital or interest in SPV, or as per the regulatory requirement. In such cases sponsor has to enter into an agreement with the InvIT, to ensure that no decision taken by the sponsor, including voting decisions with respect to the SPV, are against the interest of the InvIT/ its unit holders. Investment Manager is a company or Limited Liability Partnership (LLP) or body corporate which manages assets and investments of the InvIT and undertakes activities of the InvIT. Project manager means the person designated as the manager of the project by the InvIT and is overseen by the investment manager. In case of PPP projects, it refers to the entity responsible for the execution of projects and achievement of project milestones, in accordance with the concession agreement or any other project document.By way of an illustration, as per the information available in the public domain, in case of IRB InvIT, IRB Infrastructure Developers Limited is the sponsor, IDBI Trusteeship Services Limited is the trustee, IRB Infrastructure Private Limited is the investment manager and Modern Road Makers Private Limited is the project manager.

How does InvIT benefit the developers and investors?

InvIT is a trust like structure which helps large infrastructure developers to free their assets (such as roads, railways, power projects) by pooling multiple projects under a single entity. There are several infrastructure companies whose funds are locked in infrastructure projects which can otherwise be monetized and used for the development of other projects. InvITs can also be used as a vehicle for refinancing such assets as well as creating an investment option. Infrastructure projects generally have a long gestation period and they take time to generate steady cash flows. Meanwhile, the infrastructure Companies have to service interest on finance availed by them for the projects. However, an InvIT provides the Company an avenue to repay the loan and thus to an extent reduces the dependence on Banks for funding of infrastructure projects. InvITs are also expected to increase the availability of funds for infrastructure projects by raising long-term capital at competitive rates. In order to safeguard the interest of the investor, there are certain guidelines that the InvIT issuers have to adhere to. To begin with, the sponsor has to hold a minimum stake of the InvIT units with a prescribed lock-in period. InvITs have to distribute 90% of their net cash flows to the investors. Lastly, the InvIT is required to invest a minimum of 80% in the revenue generating infra asset and the balance 20% can be used for under-construction projects. Any dividend from the InvIT will be distributed to the investor, depending on its cash flow. There is also no dividend distribution tax on the units. InvITs also enable the investors to hold a diversified portfolio of infrastructure assets. Infrastructure and real estate are the most critical sectors in any developing economy. Considering the benefits that the developers and investors can derive from the InvITs framework, the same are expected to encourage more foreign investment in the infrastructure sector, reduce the burden on the Bank to fund infrastructure projects, provide more funding options to the developers and allow developers to unlock locked-in capital.

Whether the SEBI Regulations mandate InvITs to provide assured returns to the investors?

No, the SEBI Regulations do not provide for any assured or fixed return in an InvIT structure. However, the SEBI Regulations require a distribution equivalent to 90% or more of the Net Distributable Cash Flows (NDCF) of the InvIT. (The NDCF include cash flows received by the InvIT from the SPVs (in the form of interest, dividends).

What is the status of InvITs in India?

As on date, IRB InvIT Fund (of IRB Infrastructure Developers Limited) and Indiagrid Trust (of Sterlite Power Grid) are the only two InvITs listed on the Stock Exchanges, with IRB Infrastructure being the first in India to do so. There are reports which also suggest that the Companies such as MEP Infrastructure Developers and IL&FS Investment Managers Limited also plan to launch InvITs. National Highways Authority of India (NHAI) also plans to float InvITs, to raise money from the market for Bharatmala project which has been put on hold. Among Asian countries, Singapore is a success story for REITs and InvITs. In Singapore, there has been 39 listings with a market capitalization of approximate USD 70 billion, with the focus more on REITs than on InvITs. EPC World