

August 17, 2016

Shri Tapan Ray
Secretary
Ministry of Corporate Affairs
Room No.519, A' Wing, Shastri Bhawan
Rajendra Prasad Road,
New Delhi - 110 001

Sub.: Clarification on Exemption under the Companies (Acceptance of Deposits) Rules, 2014 vide notification dated 29th June 2016

Sir,

This is further to our previous communication dated June 16, 2016 addressed to your good-self seeking exemption for Infrastructure Investment Trust (InvITs) registered under SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations).

We also refer to the **Ministry of Corporate Affairs** Notification dated 29th June 2016 which has provided exemption to Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI from applicability of Section 73 & 76 of the Companies Act 2013 & Rules thereof.

In this regard, we draw your kind attention to the fact that Infrastructure Investment Trusts (InvIT) registered with SEBI under SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) notified by the Securities and Exchange Board of India on September 26, 2014.

SEBI's regulation has facilitated launch of Infrastructure Investment Trusts (InvIT) essentially to address the challenging phase of funding requirements of infrastructure in the country today and to provide a suitable structure for financing/refinancing of infrastructure projects in the country.

Several existing infrastructure projects which are under development in India are delayed and 'stressed' on account of varied reasons including increasing debt finance costs, lack of/locked up equity of private investors in projects precludes them from an interest in undertaking new projects, lack of international finance flowing to Indian infrastructure projects, project implementation delays caused by various factors like global economic slowdown, cost overruns, inability of concessionaire to meet funding requirements on time, etc. Infrastructure Investment Trust (InvITs), as an investment vehicle, may aid:

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- i. To provide wider and long-term re-finance for existing infrastructure projects
- ii. To free up current developer capital for reinvestment into new infrastructure projects
- iii. To refinance/takeout existing high cost debt with long-term low-cost capital and help banks free up/reduce loan exposure, and thereby create bank headroom for new funding requirements

In terms of the InvIT Regulations, InvIT is required to be set up as a Trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908. The InvIT Regulations also requires that before carrying out any activity, InvITs shall obtain a registration from SEBI in a manner and by payment of such fees as prescribed under the InvIT Regulations.

Infrastructure projects have long gestation period and are normally financed by a mix of equity and debt (loan) from the financial institutions, hence, in case of transfer of such assets from sponsor to an InvIT, such transaction may require financing/ retiring the debt (loan) of such projects. SEBI has come out with consultation paper recently for amendments to the InvIT Regulations. One of the proposed amendments is to allow InvITs to lend money to SPVs in which the InvIT has invested. This will certainly pave the way for new capital freeing up the current debt at SPV Company level.

However, as per the Companies (Acceptance of Deposits) Rules, 2014 (Deposit Rule), loan availed by the private / public SPV companies from InvITs, being major shareholders, will be treated as "Deposit". This anomaly exists since lender (ie. InvIT) is not a company under the Companies Act, 2013.

This will restrict the InvITs from providing the much required financial support to the SPVs in which InvITs has invested. This difficulty can be overcome by providing concession to the infrastructure sector from the compliance of Deposit Rule by treating any money received by SPVs from SEBI registered InvITs as "not a Deposit" under Deposit Rule (ie at par with amount received by a company from other company).

Accordingly, we request your goodself for an appropriate clarification that InvIT registered with SEBI is covered under sub-clause (xviii) of the Companies (Acceptance of Deposit) Rules 2014 as amended on 29th June 2016.

We sincerely look forward to an early consideration of our suggestion please.

With regards,

(Siddharth Singh)
Secretary General

Encl.: MCA Notification dated 29.6.2016

June 16, 2016

Shri Tapan Ray

Secretary

Ministry of Corporate Affairs

Room No.519, A' Wing, Shastri Bhawan

Rajendra Prasad Road,

New Delhi - 110 001

Sub.: Exemption under the Companies (Acceptance of Deposits) Rules, 2014

Sir,

Construction Federation of India is the representative body of leading engineering firms of the country engaged in the construction of critically important infrastructure development projects such as dams, power stations, highways, ports and similar works. They have been integral part of the nation building process over several decades and are today playing a critical role towards achieving the highly ambitious infrastructure creation targets. It may be mentioned that the infrastructure construction industry is going through a very lean phase and hence a supportive policy ecosystem has become an urgent necessity.

On behalf of CFI members, we would like to draw your kind attention that the Securities and Exchange Board of India on September 26, 2014 has notified SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) to address the challenging phase of infrastructure in the country today and to provide a suitable structure for financing/refinancing of infrastructure projects in the country.

Several existing infrastructure projects which are under development in India are delayed and 'stressed' on account of varied reasons including increasing debt finance costs, lack of/locked up equity of private investors in projects precludes them from an interest in undertaking new projects, lack of international finance flowing to Indian infrastructure projects, project implementation delays caused by various factors like global economic slowdown, cost overruns, inability of concessionaire to meet funding requirements on time, etc. Infrastructure Investment Trust (InvITs), as an investment vehicle, may aid:

- i. To provide wider and long-term re-finance for existing infrastructure projects
- ii. To free up current developer capital for reinvestment into new infrastructure projects

- iii. To refinance/takeout existing high cost debt with long-term low-cost capital and help banks free up/reduce loan exposure, and thereby create bank headroom for new funding requirements

In terms of the InvIT Regulations, InvIT requires to be set up as a Trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908. The InvIT Regulations also requires that before carrying out any activity, InvITs shall obtain a registration from SEBI in a manner and by payment of such fees as prescribed under the InvIT Regulations.

Infrastructure projects have long gestation period and are normally financed by a mix of equity and debt (loan) from the financial institutions, hence, in case of transfer of such assets from sponsor to an InvIT, such transaction may require financing/ retiring the debt (loan) of such projects. The SEBI has come out with consultation paper recently for amendments to the InvIT Regulations. One of the proposed amendments is to allow InvITs to lend money to SPVs in which the InvITs has invested. This will certainly pave the way for new capital freeing up the current debt at SPV Company level.

As per the Companies (Acceptance of Deposits) Rules, 2014 (Deposit Rule), loan availed by the private/public SPV companies from InvITs, being major shareholders, will be treated as "Deposit". This anomaly exists since lender (ie. InvIT) is not a company under the Companies Act, 2013.

This will restrict the InvITs from providing the much required financial support to the SPVs in which InvITs has invested. This difficulty can be overcome by providing concession to the infrastructure sector from the compliance of Deposit Rule by treating any money received by SPVs from SEBI registered InvITs as "not a Deposit" under Deposit Rule (ie at par with amount received by a company from other company).

Accordingly, **we suggest you to kindly consider following amendment by inclusion of Clause (xv) after clause (xiv) in the Companies (Acceptance of Deposits) Rules, 2014.**

(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, by does not include –
(xv) any amount received by a company from Infrastructure Investment Trust registered with SEBI

We sincerely look forward to an early consideration of our suggestion please.

With regards,

(Siddharth Singh)
Secretary General

