



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

DEPARTMENT OF DEBT AND HYBRID SECURITIES – POD II

FRAMEWORK FOR ISSUANCE OF SUBORDINATE UNITS AND UNIT BASED EMPLOYEE BENEFITS – REITs and InvITs

DECEMBER 2023



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Timeline to Respond

Comments on the Consultation paper (CP) may be sent by December 29, 2023

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1. OBJECTIVE:

1.1. The objective of this consultation paper is to seek comments / views / suggestions from the public on the following proposals:

- (a) Framework for issuance of subordinate units by REITs and InvITs to sponsor(s), their associates and sponsor group.
- (b) Framework for Unit Based Benefits for the employees of the Manager of REIT and Investment Manager of InvIT.

2. BACKGROUND:

Framework for issuance of subordinate units by REITs and InvITs to sponsor(s), their associates and sponsor group

- 2.1. SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) and SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) permit REITs and InvITs to issue subordinate units only to the sponsors and its associates. However, there is no framework detailing the mechanism for issuance of subordinate units. PART A of this consultation paper seeks to propose a framework for the issuance of subordinate units.

Framework for Unit Based Benefits for the employees of the Manager of REIT and Investment Manager of InvIT

- 2.2. REIT Regulations and InvIT Regulations do not specifically permit the Manager of REIT / Investment Manager of InvIT to acquire units of REIT/ InvIT in order to offer benefits to its employees based on such units. An enabling framework for the Manager of REIT / Investment Manager of InvIT to offer benefits to its employees based on units of the REIT / InvIT will result in better alignment of the interest of employees of the Manager / Investment Manager with the interest of REIT / InvIT. Accordingly, PART B of this consultation paper seeks to propose an enabling framework for unit based employee benefits for the employees of Manager of REIT / Investment Manager of InvIT in the context of REITs and InvITs.

PART A - FRAMEWORK FOR ISSUANCE OF SUBORDINATE UNITS BY REITS AND INVITS TO SPONSOR(S), THEIR ASSOCIATES AND SPONSOR GROUP

3. REGULATORY REQUIREMENT – REIT and INVIT:

- 3.1. Regulation 4(2)(h) of Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 provide as under:

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

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....”

- 3.2. Regulation 4(2)(g) of Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, provide as under:

“no unit holder of the REIT enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT:

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... ;”

- 3.3. The underlying principle of the above provisions in REIT Regulations and InvIT Regulations is that the units of REIT and InvIT are equal 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 other rights as compared to other units, can be issued to the sponsors and its associates only.

4. RECOMMENDATION OF WORKING GROUP ON REGULATION REVAMP

4.1. SEBI's Hybrid Securities Advisory Committee ("HySAC") in its first meeting dated July 19, 2022 constituted a working group on regulation revamp to recommend changes in the provisions of REIT Regulations and InvIT Regulations. The working group on Regulation Revamp submitted a framework for issuance of subordinate units which *inter-alia* provided the following:

- subordinate units shall have inferior voting and economic rights in comparison with the ordinary units issued by the REIT/InvIT;
- subordinate units may only be issued to the sponsor(s) or sponsor group or associates of the sponsor(s) of the REIT/InvIT on a private placement basis;
- subordinate units may only be transferred inter-se amongst the sponsor entities;
- subordinate units shall not be listed on the stock exchanges;
- terms and conditions governing subordinate units must be included in the trust deed of the REIT/InvIT and also disclosed in the offer document/placement memorandum;
- subordinate units and ordinary units must be issued under separate ISINs;
- subordinate units shall not be considered for the purposes of mandatory minimum unitholding requirement applicable to sponsor(s) and sponsor group(s);
- prior approval of at least seventy five percent of the holders of the subordinate units shall be required for any amendment in the terms of the subordinate units.

4.2. The detailed 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 recommendation of working group and deliberations held in HySAC meetings, the proposed framework for issuance of subordinate units has been detailed in the subsequent section.

5. FRAMEWORK FOR ISSUANCE OF SUBORDINATE UNITS

The following norms are proposed with respect to issuance of subordinate units:

- 5.1. Subordinate units can be issued only to the sponsor(s), its associates and sponsor group;
- 5.2. Subordinate units shall carry only inferior voting or any other inferior rights as compared to ordinary units;
- 5.3. Subordinate units can be issued to the eligible entities in the initial offer or in any offering subsequent to the initial offer;
- 5.4. Any issuance of subordinate units post initial offer shall require prior approval from seventy five percent of the unitholders by value. Sponsor(s), sponsor group, associates of sponsor(s) and any other parties related to the transaction shall not vote on such matter;
- 5.5. The terms and conditions governing subordinate units shall be included in the Trust Deed of the REIT/InvIT and shall also be disclosed in the offer document / placement memorandum / placement document, as the case may be;
- 5.6. Subordinate units shall be issued only in dematerialized form;
- 5.7. Subordinate units shall have a separate ISIN;
- 5.8. Subordinate units issued shall be unlisted;
- 5.9. Subordinate units shall not be considered for the purposes of mandatory minimum unitholding requirement applicable to sponsor(s) and sponsor group(s);
- 5.10. Subordinate units shall be mandatorily locked in till the time these units get converted to ordinary units and / or are extinguished;
- 5.11. 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 subordinate units, in order to effect such transfer, and lock-in shall be imposed again post transfer of such subordinate units. Such inter-se transfer of subordinate units among the sponsor(s), its

associates and sponsor group, will require disclosure to the stock exchanges within one working day of such transfer;

- 5.12. The entitlement date and / or the entitlement event including performance benchmark for conversion of subordinate units to ordinary units shall be clearly defined and specified in the offer document, placement memorandum or placement document, as the case may be.
- 5.13. 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:
 - 5.13.1. Such extension shall require 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;
 - 5.13.2. 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;
 - 5.13.3. Adequate disclosures 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 such subordinate units;
- 5.14. The minimum time gap between issuance of subordinate units and entitlement date / event for conversion of subordinate units to ordinary units shall be one year;
- 5.15. 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 shall be certified by the statutory auditor of REIT / InvIT.
- 5.16. Till the time the subordinate units are outstanding, the Manager of REIT / Investment Manager of InvIT shall disclose NAV and Distribution per unit as follows:
 - 5.16.1. NAV per unit including and excluding subordinate units

5.16.2. Distribution per unit including and excluding subordinate units

- 5.17. If the performance benchmark is not met at the end of entitlement date (including extension period, if any), then the subordinate units shall be extinguished without any payment to the holder of subordinate units;
- 5.18. The Board of the Manager of REIT / Investment Manager of the InvIT shall consider the recommendation of conversion of the subordinate units into ordinary units and pass a resolution to that effect and make the necessary intimations to stock exchanges, depositories, Registrar and Transfer Agent etc;
- 5.19. The converted units shall be listed and tradeable on the stock exchanges on the receipt of approval from the stock exchanges;
- 5.20. Post issuance of subordinate units, any change in the terms and conditions of the subordinate units shall require prior approval from:
- 5.20.1. Seventy five percent of the unitholders of ordinary units by value. Sponsor(s), sponsor groups, associates of sponsor(s) and any other parties related to the transaction shall not vote on such matter
- 5.20.2. Hundred percent of the unitholders of subordinate units.

Consultation 1: Framework for Issuance of Subordinate Units

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 1) Whether the proposed framework for issuance of subordinate units is adequate?
- 2) Whether the proposed requirement of prior approval from seventy five percent of the unitholders by value for issuance of subordinate units post initial offer is adequate?
- 3) Whether the proposed provisions for inter-se transfer of subordinate units amongst the sponsor(s), its associates and sponsor group in Para 5.11 above are adequate?



Consultation 1: Framework for Issuance of Subordinate Units

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 4) Whether the proposed period of one year for one-time extension in entitlement is adequate?
- 5) Whether the proposed requirement of approval from seventy five percent of the unitholders by value for extension in entitlement date is adequate?
- 6) Whether the proposed minimum time gap between issuance of subordinate units and entitlement date / event for conversion of subordinate units to ordinary units of one year is adequate?
- 7) Whether the proposed requirement of unitholder approval in case of change in the terms and conditions of the subordinate units post issuance of subordinate units in Para 5.20 is adequate?
- 8) Is there a need for any other conditions and/or safeguards in relation to issuance of subordinate units? If yes, please indicate the same and provide supporting rationale for your response.

PART B - FRAMEWORK FOR UNIT BASED BENEFITS FOR THE EMPLOYEES OF THE MANAGER OF REIT AND INVESTMENT MANAGER OF INVIT

6. BACKGROUND AND PROPOSAL

6.1. It has been represented by market participants that an enabling framework for Unit Based Employee Benefits (UBEB) may be provided in the context of REITs and InvITs. It has also been represented that enabling UBEB will result in better alignment of the interest of employees of the Manager of REIT / Investment Manager of InvIT with the interest of REIT / InvIT. In this regard, the detailed guidelines received from market participants on framework for Unit Based Employee Benefits was deliberated in the meetings of HySAC held on February 28, 2023 and June 01, 2023.

6.2. Based on the deliberations made in HySAC and to align the interest of employees of the Manager / Investment Manager with the interest of REIT/InvIT, it is proposed to provide the following enabling framework for Unit Based Employee Benefits:

6.2.1. Manager of REIT / Investment Manager of InvIT may offer UBEB schemes for their employees based on the units of REIT / InvIT;

6.2.2. The implementation of UBEB scheme shall be done through a separate Employee Benefit Trust ("EB Trust") which shall be created by Manager of REIT/Investment Manager of InvIT;

6.2.3. For the purpose of offering UBEB schemes, EB Trust may receive units of REIT/InvIT in following ways:

6.2.3.1. Any shareholder of the Manager of REIT / Investment Manager of InvIT may offer its existing units to the EB Trust

6.2.3.2. The Manager of REIT / Investment Manager of InvIT through EB Trust may subscribe to the units of REIT/InvIT in lieu of management fees, only for the limited purpose of providing UBEB. Such units shall be allotted

directly to the EB Trust so that these units are used exclusively for the UBEB scheme

6.2.4. In case where REIT/InvIT is allotting units to the EB Trust, in lieu of management fees, for the purpose of providing unit based employee benefits, the following shall be applicable:

6.2.4.1. The issuance of units in lieu of management fees shall be approved by seventy five percent of unitholders by value. Sponsor, sponsor group, associates of sponsor and any other parties related to the transaction shall not vote on such matter;

6.2.4.2. Such issuance of units can be done only once in a year, within sixty days after the completion of annual valuation exercise;

6.2.4.3. For issuance of units in lieu of management fee, the unit price to be considered shall be higher of the following:

6.2.4.3.1. Net asset value of the units as per the latest available valuation report, which shall not be more than sixty days old;

6.2.4.3.2. Market price of the units which shall be determined in the same manner as mentioned in the guidelines for preferential issue of units;

6.2.4.3.3. The issue price of any issuance of units made by the REIT/InvIT within the preceding six months from the date of issuance of units in lieu of management fee;

6.2.5. The units held by EB Trust shall be used only for the limited purpose of providing unit based employee benefits. The EB trust shall not undertake any transfer or sale of units of REIT/InvIT held by it except for providing unit based benefits to the employees of the Manager/Investment Manager;

6.2.6. The trustee of the EB Trust shall not be eligible to vote on account of the units of the REIT/InvIT held by it;

6.2.7. For the purpose of disclosure to the recognized stock exchange(s), the unitholding of the EB Trust shall be shown as “non-sponsor and non-public” unitholding;

- 6.2.8. In case where the EB Trust has accumulated any cash on account of distributions received on units of REIT/InvIT held by such trust, then EB trust may use such surplus cash for acquiring units of the REIT/InvIT either from the secondary market or during any fresh issuances of REIT/InvIT for the purpose of using such units for the UBEB scheme;
- 6.2.9. The provisions of SEBI (Prohibition of Insider Trading), Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 shall apply to the Manager / Investment manager, its directors, its key managerial personnel, recipients of UBEB, EB Trust, etc;
- 6.2.10. The nomination and remuneration committee of the Manager of REIT / Investment Manager of InvIT shall frame suitable policies and procedures to ensure that there is no violation of securities laws including the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 by the Manager of REIT / Investment manager of InvIT, its directors, its key managerial personnel, recipients of UBEB, EB Trust, etc.

Consultation 2: Framework for Unit Based Employee Benefits

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 1) Whether the proposed enabling framework for unit based employee benefits is adequate?
- 2) Whether the proposed requirement of unitholder approval (seventy five percent by value) for issuance of units in lieu of management fees for the purpose of providing unit based employee benefits is adequate?
- 3) Whether the proposed period of sixty days after the completion of annual valuation exercise for issuance of units in lieu of management fees adequate?

Consultation 2: Framework for Unit Based Employee Benefits

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 4) Whether the proposed methodology in Para 6.2.4.3 for determination of price at which units will be issued in lieu of management fees is adequate?
- 5) Whether the proposed classification of unitholding held by the EB Trust as “non-sponsor and non-public” unitholding for disclosure to the recognized stock exchange(s) is reasonable?
- 6) Whether the provisions of SEBI (Prohibition of Insider Trading), Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 be made applicable to the Manager / Investment manager, its directors, its key managerial personnel, recipients of UBEB, EB Trust, etc.?
- 7) Is there a need for any other conditions and/or safeguards in relation to the framework for unit based employee benefits? If yes, please indicate the same and provide supporting rationale for your response.

7. Public Comments

7.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposals. The comments/ suggestions should be submitted by any of the following modes latest by December 29, 2023 :-

7.1.1. Preferably through Online web-based form

7.1.1.1. The comments may be submitted through the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

7.1.1.2. The instructions to submit comments on the consultation paper are as under:

1. *Before initiating the process, please read the instructions given on top left of the web form as “Instructions”.*
2. *Select the consultation paper you want to comment upon from the dropdown under the tab – “Consultation Paper” after entering the requisite information in the form.*
3. *All fields in the form are mandatory;*
4. *Email Id and phone number cannot be used more than once for providing comments on a particular consultation paper.*
5. *If you represent any organization other than the types mentioned under dropdown in “Organization Type”, please select “Others” and mention the type, which suits you best. Similarly, if you do not represent any organization, you may select “Others” and mention “Not Applicable” in the text box.*
6. *There will be a dropdown of Proposals in the form. Please select the proposals one- by-one and for each of the proposal, please record your level of agreement with the selected proposal. Please note that submission of agreement level is mandatory.*
7. *If you want to provide your comments for the selected proposal, please select “Yes” from the dropdown under “**Do you want to comment on the proposal**” and use the text boxes provided for the same.*
8. *After recording your response to the proposal, click on “Submit” button. System will save your response to the selected proposal and prompt you*

to record your response for the next proposal. Please follow this procedure for all the proposals given in the dropdown.

9. *If you do not want to react on any proposal, please select that proposal from the dropdown and click on “**Skip this proposal**” and move to the next proposal.*

10. *After recording your response to all the proposals, you may see your draft response to all of proposals by clicking on “**Check your response before submitting**” just before submitting response to the last proposal in the dropdown. A pdf copy of the response can also be downloaded from the link given in right bottom of the web page.*

11. *The final comments shall be submitted only after recording your response on all of the proposals in the consultation paper*

7.1.1.3. A sample video recording for submission of comments can be accessed through clicking on the following link:



7.1.1.4. In case of any technical issue in submitting your comment through web based public comments form, you may contact the following through email with a subject: *"Issue in submitting comments on Consultation Paper on Framework for issuance of subordinate units and Unit Based Employee Benefits – REITs and InvITs"*.

- a) Ritesh Nandwani, DGM (riteshn@sebi.gov.in)
- b) Pawan Kumar Chowdhary, AGM (pawanc@sebi.gov.in)
- c) Barun Gurani, AM (barung@sebi.gov.in)

7.1.2. Through Post

7.1.2.1. Alternately, comments may be sent by post to:

*Shri Ritesh Nandwani, DGM
Department of Debt and Hybrid Securities
Securities and Exchange Board of India,*

*SEBI Bhavan, C4-A, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai -400051*

7.1.2.2. Kindly use the below format for sending comments by post:



7.1.2.3. While sending the post, kindly mention the subject of the communication as, *“Comments on Consultation Paper on Framework for issuance of subordinate units and Unit Based Employee Benefits – REITs and InvITs”*.

Issued on: December 08, 2023