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Analysis

SEBI's InvIT proposals: Stage set for more control deals?

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Samaahith Addoor **Ruchir Sinha**

Key Takeaways

- ≥75% approval matters (e.g. >25% unit acquisition, sponsor change etc.) to be tested against votes actually cast, rather than 75% of unitholders "by value" – this aligns with the special resolution computation under company law
- In an exit offer, a unitholder who does not vote at all will no longer be considered a "dissenting unitholder" – i.e., non-participation will not translate to an exit right
- No more proportionate acceptance of units in an exit offer – all units tendered by dissenting unitholders to be accepted + InvIT given 1-year cure period to restore the min. 25% "public" unitholding if breached, although experience with the listed company regime suggests that restoring the min. public holding within the timeframe may not always be straightforward
- If unitholder approval for underlying transaction (i.e., >25% acquisition or sponsor change) is not received, the acquirer/ incoming sponsor gets a clean walk-away from both the transaction and exit offer; deviation from how open offers work under the takeover code
- Proposals seem less like standalone "ease of doing business" measures and more like setting the stage for more control deals in InvITs
- Separately, minority investments in greenfield projects allowed, but InvIT required to have a "glide path" to controlling interest; sponsor-backed projects excluded altogether

*The authors would also like to acknowledge and thank **Aditya Das** for his contribution to the article.*

InvITs have come a long way from their early years. There is now a baseline understanding of the asset class, and sponsors, infrastructure funds, lenders and institutional investors are increasingly comfortable with the structure. InvITs have moved from relatively novel yield vehicles to established platforms for owning and aggregating infrastructure assets.

Against that backdrop, SEBI's recent consultation paper on ease of doing business for InvITs is worth looking at through an M&A lens.[1] As InvIT platforms get larger, ownership becomes more institutional and infrastructure assets increasingly change hands, the ability to acquire control of an InvIT, change its sponsor, consolidate platforms and build a pipeline of future assets becomes more important. While SEBI has presented the proposals largely as "ease of doing business" measures, there may be more to these proposals than meets the eye. We examine.

1. ≥75% approval matters move to "present and voting" basis

Current position. Certain key matters under the InvIT Regulations[2] require approval from at least 75% of unitholders "by value".[3] This sits awkwardly with the broader voting framework under which other approval thresholds (i.e. >50%/ >60% matters) are assessed with reference to unitholders who actually participate in the meeting.[4]

Proposed change. SEBI proposes to make the position consistent – for ≥75% matters as well, votes in favour would need to constitute at least 75% of the votes actually cast on the resolution. In other words, the denominator now becomes participating voters rather than the wider unitholder base. This aligns with how special resolution under company law is tested.

Impact/ relevance. This matters particularly for InvITs with dispersed or passive unitholding, where getting unitholders to vote can itself be difficult. Take an acquirer proposing to cross 25%. It would no longer need affirmative support representing 75% of the broader unitholder base. It would instead need 75% of the votes actually cast.

2. Silence will no longer be treated as dissent

Current position. An exit offer is relevant in transactions that fundamentally alter the ownership profile of an InvIT – e.g., a >25% acquisition by a non-sponsor or a change in sponsor. In this context, the InvIT Regulations require ≥75% unitholder approval for such transactions. If the approval is not received, an exit offer (by the acquirer or incoming sponsor as relevant) to the "dissenting unitholders" must be made. However, the current definition of a "dissenting unitholder" is unusually wide. It covers not only a unitholder who votes against the transaction, but also one who simply does not vote.[5] So, today, silence is effectively treated as dissent.

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[1] Consultation Paper on Measures Towards Ease of Doing Business for REITs and InvITs dated August 6, 2026.
[2] Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014.
[3] These include an >25% acquisition by a non-sponsor, a change in sponsor or control of the sponsor, borrowings above specified thresholds and conversion of a privately listed InvIT into a publicly listed InvIT.
[4] Regulation 22(2)(aa) of the InvIT Regulations establishes the general principle that voting thresholds are calculated by reference to unitholders "present and voting". The provisions dealing with matters requiring more than 50% or 60% approval also expressly follow this approach.
[5] Paragraph 11.1.4 of the InvIT Master Circular currently defines dissenting unitholders to include unitholders who have not voted in favour of the relevant resolution, whether or not they participated in the vote.

Proposed change. SEBI proposes to narrow the definition so that only a unitholder who actually votes against the relevant resolution is treated as a "dissenting unitholder". Read together with the proposed change to the 75% voting threshold, non-participation would neither make the 75% approval harder to obtain nor automatically entitle passive unitholders to an exit.

Impact/ relevance. Now, there are three buckets. One, who consent. Two, who dissent. And third, who are indifferent. SEBI is making exit offers manageable, while simultaneously proposing protection for those dissenting. Notably, this is different from takeover code[6] regime, where the right to tender is irrespective of whether a shareholder supported, opposed or even voted on the underlying acquisition.

3. Dissenting unitholders get a full exit

Current position. Even where a unitholder qualifies as a "dissenting unitholder" and tenders all of their units in an exit offer, there is currently no guarantee that all of those units will be accepted. Units tendered by dissenting unitholders may be accepted only to the extent that the applicable minimum public unitholding of the InvIT (i.e., ≥25%) is maintained. If accepting all units tendered would breach that requirement, acceptance may need to be proportionate. The result is slightly counterintuitive – a unitholder may vote against a sponsor change and tender their entire holding, but still have to remain invested in the InvIT.

Proposed change. SEBI proposes that all units tendered by eligible dissenting unitholders must be accepted. If this causes a breach of minimum public unitholding, the InvIT will have 1-year to restore compliance.[7]

Impact/ relevance. Proposed InvIT regime gives a dissenting unitholder stronger exit certainty than even the listed company regime, which has usually been seen as benchmark for InvIT /REITs. Under the takeover code for listed companies, an open offer is ordinarily required to be for at least 26% of the target's shares and if shareholders tender more shares than the offer size, such 26% acceptance is on a proportionate basis. A public shareholder wishing to exit completely can therefore still be left holding shares after the open offer. Under SEBI's InvIT proposal, by contrast, once a unitholder qualifies as a dissenter, all of the units tendered by that unitholder would have to be accepted.

As for having the 1-year cure period, this is aligned with the listed company regime. While the InvIT framework provides a number of routes to restore minimum public unitholding (similar to the listed company regime), at least in listed companies context, tapering shareholding within the 1-year window has been easier said than done.

4. Walk away from an exit offer – never envisaged under takeover code

Current position. As discussed above, the InvIT Regulations require approval of ≥75% of unitholders for certain transactions (e.g. >25% acquisition by non-sponsor or sponsor change) and contemplate an exit option for dissenting unitholders if approval is not received. Particularly, Regulation 22(7) says that if approval is not received, the "*proposed inducted sponsor shall provide*" dissenting unitholders an exit.[8] On a literal reading, the language could be read to suggest that the exit offer obligation subsisted even

[6] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

[7] In addition to this, one smaller clean up change is also worth noting. Where an InvIT has multiple sponsors and an exit is triggered by one sponsor leaving, SEBI proposes to clarify that the exit may be provided either by the outgoing sponsor/sponsor group or by a continuing sponsor/sponsor group. It is less dramatic than the other changes, but removes a practical question around who actually funds the exit.

if the proposed sponsor subsequently abandoned the transaction. That reading was, however, difficult to reconcile with the broader InvIT framework. Unlike the takeover code, which restricts circumstances in which an acquirer can withdraw an open offer, the InvIT Regulations contain no corresponding provision. The absence of such a restriction weakened the argument that Regulation 22(7) was intended to compel a proposed sponsor to proceed with an exit offer even after it had decided not to proceed with the sponsor change itself. Consistent with this, sponsor change processes involving IndiGrid[9], Cube Highways InvIT and Anzen InvIT contemplated the incoming sponsor being able to abandon the transaction altogether rather than proceed with an exit offer in the event the resolution failed to get the requisite approval.

In contrast, under the takeover code, an acquirer cannot, after triggering an open offer, withdraw merely because the underlying transaction does not proceed. There is no general walk-away simply because the acquirer no longer proceeds with the transaction. In fact, an acquirer must complete the open offer, save for a few high threshold exceptions.[10]

Proposed change. SEBI now proposes to put the issue beyond doubt and remove the ambiguity in the current drafting. If the unitholder approval is not received, the acquirer or proposed sponsor can choose whether to proceed with the underlying transaction. If they walk away, there is no exit offer. If they nevertheless want to proceed, they must provide the exit to dissenting unitholders. The revised exit offer timetable in the InvIT Master Circular[11] reinforces this. The acquirer is required to move into the subsequent exit offer steps only if, after the vote result is known, they state that they intend to proceed with the transaction.

So, the choice is now clear – if the approval is not received, the acquirer can walk away from the underlying transaction without being required to make the exit offer; if it still wants to proceed, it must provide the exit offer.

Impact/ relevance. Perhaps the most consequential proposal appears rather inconspicuously among SEBI's "minor drafting inputs". While the ability to walk away is not entirely new, its express recognition is significant. The resulting InvIT framework is considerably more acquirer friendly than the listed company takeover regime. In fact, the takeover code is so stringent that a tender offer triggered by a preferential issue is required to be consummated even if shareholder approval for such preferential issue doesn't come through. For InvIT transactions, SEBI appears to be taking a more flexible approach. This should reduce execution risk for control transactions.

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[8] Regulation 22(7) – "*In case of any change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor or conversion to Self-Sponsored Investment Manager, -*
(a) prior to such change, approval from seventy five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained
(b) if the required approval is not received,-
(i) in case of change of sponsor or inducted sponsor, the proposed inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the Board;…"

[9] Interestingly, in IndiGrid's sponsor change in 2020, PNB MetLife's Proxy Activity Details for July 2020 to September 2020 records that the exit option being at the incoming sponsor's discretion was inconsistent with Regulation 22(7), which resulted in the PNB MetLife voting against the resolution. The relevant document can be accessed here.

[10] Regulation 23 of the takeover code permits withdrawal of the open offer in very limited circumstances such as refusal of required statutory approvals, death of a sole individual acquirer, non-receipt of a disclosed condition for reasons outside the acquirer's reasonable control, or other circumstances which, in SEBI's view, merit withdrawal.

[11] Master Circular for Infrastructure Investment Trusts (InvITs) dated July 11, 2025.

5. InvITs may acquire minority stakes in greenfield projects

The consultation paper also tackles a different issue – how early in the life of an infrastructure project should an InvIT be allowed to invest?

Current position. InvITs are already permitted to have limited exposure to greenfield infrastructure projects, which is capped at 10% of the InvIT asset value. However, the InvIT is required to hold controlling interest and at least 51% of the equity/ interest in the underlying SPV. It cannot simply invest development capital for a minority stake in a third-party greenfield project.

Proposed change. SEBI proposes to permit an InvIT to make a non-controlling investment in an "investee entity" holding a greenfield infrastructure project, within the existing limits applicable to under construction projects. The proposal contains a number of safeguards.[12] Among these, 2 are particularly relevant:

a. the InvIT is required to have a clear "glide path" under which the InvIT ultimately acquires the interest required for the investee entity to qualify as an SPV; and

b. neither the sponsor nor any sponsor group entity can have any shareholding, interest or rights in the investee entity.

Impact/ relevance. This is a welcome proposal when seen from a risk adjusted return basis. Greenfield projects need patient development capital, and InvITs can potentially provide it. For the InvIT, this creates access to a future acquisition pipeline. For the developer, it opens up another source of development capital. There are, however, 3 points on which the final framework needs greater clarity.

First, what exactly is the "glide path"? SEBI clearly does not intend the minority stake to remain permanent, but the consultation paper does not appear to prescribe when the InvIT must acquire control. Is the relevant trigger construction completion, commercial operations, achievement of a particular project cost or physical progress milestone, or simply a contractually agreed date? The pathway from an initial minority investment to eventual control will also affect how InvITs and investors look at valuation, future funding commitments, governance arrangements and the economics of the eventual rollover.

Comment to SEBI. The clarification that residence of investment funds is defined solely with respect to who holds ownership and control of the sponsor and investment manager should be set out in the Draft Rules itself, or in the foreign investment policy.

Second, what happens if the project does not develop as planned? A greenfield project may be delayed, suffer cost overruns or cease to be attractive to the InvIT. The "glide path" should therefore be a pathway to eventual control and not an unconditional obligation on the InvIT to keep deploying capital regardless

[12] The other conditions applicable are: (a) the investee entity must hold at least 90% of its assets directly in infrastructure projects; (b) it must hold, or propose to hold, one or more under-construction projects; (c) it cannot carry on activities other than those pertaining or incidental to the underlying infrastructure projects; (d) the investment is to be made at the InvIT level rather than through an existing SPV; (e) the InvIT must enter into a binding agreement with the other shareholders or partners under which their decisions cannot be inconsistent with this glide path; (f) the agreement must also require them to procure a board resolution of the investee entity approving the glide path; and (g) the investment must be approved by the investment manager's board.

of how the project develops.

Comment to SEBI. The final framework should make it clear that the "glide path" is a pathway to eventual control, not an unconditional obligation to acquire control irrespective of how the project develops. On that note, SEBI should also require the InvIT to have appropriate downside protections to address scenarios where the investee entity cannot be rolled over into the InvIT within the prescribed period.

Third, should sponsor-backed projects really be excluded? SEBI's proposal is confined to third party greenfield projects. Neither the sponsor nor the sponsor group can have an interest in the investee entity. The conflict concern is understandable, but a complete prohibition also means that developer-sponsored InvITs cannot use the route to roll over the sponsor's own development pipeline. This feels like a missed opportunity.

Comment to SEBI. The proposed framework should also extend to sponsor and sponsor group-backed projects rather than excluding them altogether. The related-party concerns can instead be addressed through existing safeguards around independent valuation, board oversight and unitholder approval, with interested related parties excluded from voting, rather than through a complete prohibition.

Conclusion

None of these proposals, by itself, changes the character of the InvIT regime. But when the voting and exit offer changes are read together, the direction is fairly clear. A significant acquisition or sponsor change now becomes easier to approve because the 75% threshold is tested against votes cast. Passive unitholders (i.e. those who do not vote) are no longer entitled to an exit by default. Those who do vote against the transaction get a full exit. And if the approval is not obtained, the acquirer has a clean walk-away rather than being forced into an exit offer. Put together, these look less like a collection of housekeeping changes and more like a framework designed to make control deals in InvITs easier to execute.

As an aside, if the broader objective is to make InvIT-level M&A easier, the next logical area for SEBI is to facilitate consolidation between InvIT platforms themselves. The market has already seen a version of InvIT consolidation. IndiGrid's acquisition of Virescent Renewable Energy Trust a few years ago resulted in Virescent's renewable assets moving into the IndiGrid platform and Virescent subsequently being delisted. But the transaction had to be achieved through an acquisition of the units of an InvIT (with specific exemptions from SEBI) rather than through a regulatory mechanism for an InvIT to merge into another. If SEBI is now making it easier for investors to acquire control of InvIT platforms, a framework for merger or combination of InvITs would be a logical next step.

The InvIT market now has the scale, capital and institutional participation for platform-level M&A to become much more common. The present consultation paper appears to be an important step in that direction.

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