

CIRCULAR

SEBI/HO/DDHS-PoD-2/P/CIR/2023/153

September 11, 2023

To,

All Infrastructure Investment Trusts (“InvITs”)

All Parties to InvITs

All Depositories

All Recognized Stock Exchanges

Madam / Sir,

Sub: Board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs)

1. Regulation 4(2)(h) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) *inter-alia* provides that unitholder(s) holding not less than ten percent of the total outstanding units of the InvIT, either individually or collectively, shall be entitled to nominate one director on the board of directors of the Investment Manager, in the manner as may be specified by the Board.
2. Accordingly, the framework to exercise board nomination rights by the Eligible Unitholder(s) has been specified at Annexure - A.
3. Reporting and Monitoring

The Investment Manager of the InvIT shall, within ten days from the end of each calendar month, review whether the Eligible Unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of InvIT and make a report of the same. The Investment Manager of the InvIT shall submit such report to the Trustee of the InvIT.

4. This circular shall come into force with immediate effect.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 4(2)(h) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014. This circular is issued with the approval of the competent authority.
6. The recognized Stock Exchanges are advised to disseminate the contents of this Circular on their website.
7. This circular is available on the website of Securities and Exchange Board of India at www.sebi.gov.in under the category “Legal → Circulars”.

Yours faithfully

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Annexure – A

**Board Nomination Rights to Unitholders of Infrastructure Investment
Trusts (InvITs)**

1. Definitions

- 1.1. “Eligible Unitholder(s)” shall mean unitholder(s) holding ten percent or more of the total outstanding units of the InvIT, either individually or collectively.
- 1.2. “Unitholder Nominee Director” shall mean a non-independent director nominated by Eligible Unitholder(s) on the Board of Directors of the Investment Manager.

2. Conditions for Nomination of a Unitholder Nominee Director

- 2.1. (a) Eligible Unitholder(s) shall have the right, but not the obligation, to nominate any person for appointment as Unitholder Nominee Director.
- (b) Eligible Unitholder(s) shall be entitled to nominate only one Unitholder Nominee Director, subject to the unitholding of such Eligible Unitholder(s) exceeding the specified threshold. If the right to nominate one or more directors on the Board of Directors of the Investment Manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the Investment Manager or lender to the Investment Manager or the InvIT (or its HoldCo(s) or SPVs), then such entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a Unitholder Nominee Director.
- 2.2. If the unitholding of more than one unitholder is aggregated for the purpose of qualifying as Eligible Unitholder(s) to exercise the right to nominate a Unitholder Nominee Director, then such unitholders shall not be eligible to participate in any other group of Eligible Unitholder(s).

- 2.3. The Board of Directors of the Investment Manager shall formulate and adopt a policy in relation to the qualifications and criteria for appointment and evaluation parameters of individuals nominated for Unitholder Nominee Director. The policy shall also specify remuneration / sitting fees, process of removal or resignation of Unitholder Nominee Directors and the role of the Nomination and Remuneration Committee and/or the Board of Directors in such matters. Such policy shall be made available on the website of the InvIT.
- 2.4. Unitholder Nominee Directors shall recuse themselves from voting on any transaction where either such director, such director's associates or the Eligible Unitholder(s) who nominated him / her or associate of such Eligible Unitholder(s) is a party.

3. First time Nomination after the issuance of this circular

3.1. Intimation by the Investment Manager to all unitholders

- 3.1.1. The Investment Manager shall send a written intimation to all unitholders on their email address(es) registered either with the Investment Manager or with any depository, within ten days from the end of September 30, 2023, requesting them to inform the Investment Manager if any Eligible Unitholder(s) wish to exercise the right to nominate a Unitholder Nominee Director.

3.2. Notice by Eligible Unitholder(s) who wish to exercise the board nomination right

- 3.2.1. Eligible Unitholder(s) who wish to exercise this right shall inform the Investment Manager through a written notice within ten days of receipt of the intimation from the Investment Manager. The Eligible Unitholder(s)

shall be reckoned based on the unitholding pattern as on September 30, 2023.

3.2.2. The Eligible Unitholder(s) shall inform the Investment Manager of the InvIT in writing of their proposed candidate for the Unitholder Nominee Director along with following details:

- i. name of the candidate
- ii. DIN of the candidate
- iii. a brief profile of the candidate, including age, educational qualifications, professional qualifications, nationality, occupation, address, experience in the sector and sub-sector in which the InvIT operates and directorship in other entities, together with back-up documents
- iv. details of any outstanding criminal action, regulatory action or material civil litigation against the candidate
- v. details required under The Companies Act, 2013 to facilitate the Investment Manager for filing of Form DIR-12
- vi. confirmations in relation to eligibility of the candidate as set out in [Annexure – B.](#)

3.2.3. If multiple unitholders are aggregating their unitholding for the purpose of nomination right then such notice shall also identify up to two unitholders as authorized representative of the group of Eligible Unitholder(s). Any communication by such authorized representatives to the Investment Manager for the purpose of such nomination shall be deemed to be on behalf of, and representative of the interests of, the entire group of Eligible Unitholder(s).

3.2.4. The notice shall also set out the names, demat account details and unitholding of the Eligible Unitholder(s). The notice shall also contain a

specific acknowledgement from the Eligible Unitholder(s) that their unitholding shall be maintained at atleast ten percent of the total outstanding units of the InvIT, failing which they shall lose the right to have their Unitholder Nominee Director on the Board of Directors of the Investment Manager.

- 3.2.5. The eligibility of a Unitholder Nominee Director shall be confirmed by the Investment Manager, based on the evaluation done by the Nomination and Remuneration Committee and/or the Board of Directors of the Investment Manager in line with the policy formulated in this regard, within ten days of receipt of notice from Eligible Unitholder(s).
- 3.2.6. Once the eligibility of a Unitholder Nominee Director is confirmed, the Investment Manager shall take necessary steps to complete the appointment of such director on the Board of Directors within thirty days from the date of such confirmation. The Investment Manager shall ensure that the appointment of the Unitholder Nominee Director is in compliance with the requirements with respect to the composition of the Board of Directors under the InvIT Regulations and other applicable laws.
- 3.2.7. If the candidate proposed is not eligible or not found suitable based on the evaluation done by the Nomination and Remuneration Committee and/or the Board of Directors of the Investment Manager in line with the policy formulated in this regard, the reasons shall be recorded in writing and shall be communicated by the Investment Manager to the Eligible Unitholder(s) within ten days of receipt of notice from Eligible Unitholder(s). In such case, the Eligible Unitholder(s) may submit another candidate within a period of ten days from the receipt of such communication from the Investment Manager.

4. Subsequent Nomination by unitholders on an annual basis

4.1. The Investment Manager shall send a written intimation to all unitholders on their email address(es) registered either with the Investment Manager or with any depository, within ten days from the end of each financial year, requesting them to inform the Investment Manager if any Eligible Unitholder(s) wish to exercise the right to nominate a Unitholder Nominee Director.

4.2. Eligible Unitholder(s) who wish to exercise this right shall inform the Investment Manager through a written notice within ten days of receipt of the intimation from the Investment Manager. The Eligible Unitholder(s) shall be reckoned based on the unitholding pattern of the InvIT as on March 31st of the financial year.

4.3. The provisions contained in paragraph 3.2 above shall apply in regard to the notice by Eligible Unitholder(s) to the Investment Manager and for appointment of the Unitholder Nominee Director.

5. A Unitholder Nominee Director shall continue to remain on the Board of Directors of the Investment Manager unless:

- i. the nomination is withdrawn by Eligible Unitholder(s) or
- ii. change in the Unitholder Nominee Director is requested by Eligible Unitholder(s) or
- iii. the unitholding of Eligible Unitholder(s) falls below the required threshold consequent to which the Unitholder Nominee Director resign / step down from the Board of Directors of the Investment Manager or
- iv. the Unitholder Nominee Director is unable to serve or resign or is removed from the Board of Directors of the Investment Manager for any reason including the reasons set out in this circular.

6. If any unitholder(s) acquires/holds units of the prescribed threshold of ten percent unitholding or more during a particular financial year, then such unitholder(s) shall be entitled to exercise the nomination right only in the following financial year as per the process mentioned in paragraph 4.
7. **Review of Unitholding of Eligible Unitholder(s) by the Investment Manager**
 - 7.1. The Investment Manager of the InvIT shall, within ten days from the end of each calendar month, review whether the Eligible Unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of InvIT and make a report of the same. The Investment Manager of the InvIT shall submit such report to the Trustee of the InvIT.
 - 7.2. On review by the Investment Manager, if it is found that Eligible Unitholder(s) do not have/hold the required number of units, then the Investment Manager shall inform the same to the Trustee, such unitholder(s) and the Unitholder Nominee Director. The Investment Manager and such Unitholder(s) shall require the relevant Unitholder Nominee Director nominated by such Unitholder(s) to resign / step down from the Board of Directors of the Investment Manager forthwith and such Unitholder Nominee Director shall accordingly resign / step down from the board.
8. **Change in Unitholder Nominee Director or withdrawal of nomination**
 - 8.1. If an Eligible Unitholder or a group of Eligible Unitholders propose to withdraw their nomination for the Unitholder Nominee Director that has been appointed on the Board of Directors of the Investment Manager, then such Eligible Unitholder(s), or their authorized representatives, shall inform the Investment Manager and the Unitholder Nominee Director of the same, and

the Unitholder Nominee Director shall resign / step down from the Board of Directors of the Investment Manager forthwith.

- 8.2. If an Eligible Unitholder or a group of Eligible Unitholders propose to change a Unitholder Nominee Director who has been appointed on the Board of Directors of the Investment Manager, then such Eligible Unitholder(s), or their authorized representatives, shall inform the Investment Manager of the proposed candidate in the manner set out in paragraph 3.2.2 to 3.2.4 of this circular. The Investment Manager shall evaluate the proposed candidate and the provisions of paragraph 3.2.5 to 3.2.7 of this circular shall apply.

9. Vacating of office of a Unitholder Nominee Director

- 9.1. If at any time, the individual or collective unitholding of the Eligible Unitholder(s), who have nominated a Unitholder Nominee Director, falls below ten percent of the total outstanding units of the InvIT, then the Eligible Unitholder(s) shall, notwithstanding the requirement contained in paragraph 7 above, immediately inform the Investment Manager within two working days from such change and the Unitholder Nominee Director shall resign / step down from the Board of Directors of the Investment Manager within two working days from such change.
- 9.2. If the individual or collective unitholding of the Eligible Unitholder(s), who have nominated a Unitholder Nominee Director, falls below ten percent of the total outstanding units of the InvIT on account of any fresh issuance of units by InvIT, then the Eligible Unitholder(s) shall, notwithstanding the requirement contained in paragraph 7 above, immediately inform the Investment Manager within two working days from the date of allotment of fresh units of the InvIT and the Unitholder Nominee Director shall resign /

step down from the Board of Directors of the Investment Manager within two working days from such date of allotment.

- 9.3. In case of death or permanent disability of a Unitholder Nominee Director, the Eligible Unitholder(s) that nominated such Unitholder Nominee Director may propose another individual as a replacement in the manner described in paragraph 3.2.2 to 3.2.7 of this circular.
- 9.4. The Board of Directors (including the Nomination and Remuneration Committee) shall have the power to remove a Unitholder Nominee Director from office, for reasons to be recorded in writing, including if the Unitholder Nominee Director ceases to meet the eligibility criteria or other requirements, including as set out in the policy adopted by the Investment Manager under paragraph 2.3 of this circular.

10. Amendment of Trust Deed and Investment Management Agreement

- 10.1. In view of the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023 notified on August 18, 2023, the trust deed and investment management agreement shall stand amended or be deemed to incorporate provisions to provide board nomination rights to Eligible Unitholder(s) in the manner specified in this circular.
- 10.2. Further, the trustee and the Investment Manager shall, within a period of six months from the date of this circular, ensure that the trust deed and the investment management agreement of the InvIT are amended to provide for nomination and appointment of Unitholder Nominee Directors on the Board of Directors of the Investment Manager by Eligible Unitholder(s).

Eligibility criteria for Unitholder Nominee Directors

The following eligibility requirements should be fulfilled by the candidates proposed to be considered for appointment as Unitholder Nominee Directors. The Investment Manager may supplement these requirements as it deems fit, through the policy adopted under paragraph 2.3 of this circular.

1. The person should be “fit and proper” based on the criteria specified under Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, as amended.
2. The person is not a willful defaulter or fraudulent borrower, or a promoter or director or person in control of a company or entity categorized as such by any bank or financial institution in accordance with the guidelines prescribed by the Reserve Bank of India.
3. The person’s name does not appear under any list of disqualified directors issued by the Ministry of Corporate Affairs and is not debarred from acting as a director or member of management by any court, regulatory or supervisory authority.
4. The person is not debarred from accessing the capital markets by the Board or any other authority.
5. The person is not or has not been a promoter or director or person in control of any company or entity which has been debarred from accessing the capital markets by the Board or any other authority.