



IFRS Notes

**SEBI issues a
consultation paper on
continuous disclosures to
be made by infrastructure
investment trusts**

28 June 2016

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Introduction

On 15 June 2016, the Securities and Exchange Board of India (SEBI) issued a consultation paper inviting comments on continuous financial disclosures and other continuous disclosures to be made by Infrastructure Investment Trusts (InvITs) that are registered under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT regulations). SEBI's consultation paper includes the proposals of the committee constituted by SEBI (comprising representatives from the real estate and infrastructure industry, stock exchanges, investment banks, audit firms and law firms) to evaluate the disclosure obligations under the InvIT regulations and accounting norms for InvITs.

SEBI's consultation paper has proposals under the following three areas:

Part A – Continuous financial disclosures

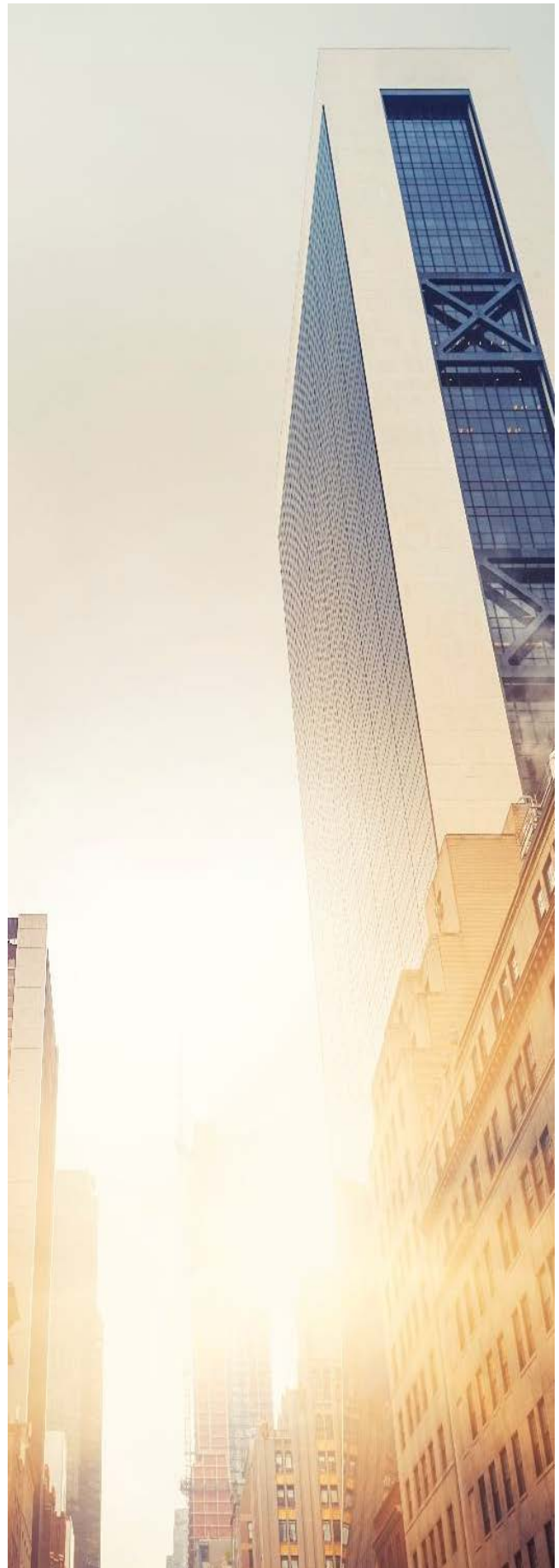
Part B – Other continuous disclosures

Part C – Framework for the calculation of Net Distributable Cash Flows (NDCF).

“The consultation paper is a welcome step towards enhancing the reporting requirements for InvITs based on an internationally accepted Ind AS framework. However, entities that are in the process of evaluating or setting up InvIT structures should assess the Ind AS implications at the time of structuring and developing their investment guidelines or plans.”

Sai Venkateshwaran

Partner and Head
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Background

The InvIT regulations were notified by SEBI on 26 September 2014 and included initial listing requirements and certain continuous listing requirements. The disclosures proposed in the consultation paper are in accordance with Schedule III of the InvIT regulations.

This consultation paper has recommendations to operationalise the requirement of the InvIT regulations. In addition, these proposals are prepared on the basis of the structure proposed in the InvIT regulations, which envisage that the InvIT will hold infrastructure assets either directly or through a special-purpose vehicle (SPV), which may be in the legal form of a company or an LLP.

Overview of the proposals

Part A – Continuous financial disclosures

The following is an overview of the significant proposals in this section:

Disclosure requirements

Audited or limited review of financial statements, frequency of disclosures and time period within which disclosures should be made

Current requirements

- Regulation 10(22) of the InvIT regulations provides that the financial results of the InvIT should be audited at least twice annually and the report submitted to the stock exchange within 45 days of the financial year ending 31 March and half-year ending 30 September.

Proposals

- The consultation paper has sought comments on whether an InvIT may submit half-yearly audited results or unaudited results subject to limited review by the statutory auditor along with a limited review report. Such disclosures should be made on a quarterly basis.
- Regarding disclosures to be made to the stock exchanges, the proposal lays down whether disclosures should be made to the stock exchange(s) on a half-yearly basis or a quarterly basis.
- The InvIT regulations do not specify the time period during which disclosures should be made to stock exchange. Therefore, the consultation paper proposes that annual financial results should be submitted to stock exchanges within 60 days from the end of the financial year, whereas other disclosures should be submitted within 45 days of the end of each quarter or half year, as applicable.

Components of the financial statements

Current requirements

- The InvIT regulations do not specify the components of the financial statements.

Proposals

- The consultation paper proposes that the annual financial statements to be submitted by the InvIT, on both consolidated and stand-alone basis should include:
 - A balance sheet
 - A statement of profit and loss
 - A statement of changes in equity
 - A statement of cash flows
 - Explanatory notes annexed to or forming part of the above statements.

Other financial statements (quarterly/half-yearly) should include:

- A statement of profit and loss
- Explanatory notes.

Accounting standards applicable

Current requirements

- The InvIT regulations do not specify the applicable accounting standards.

Proposals

- The consultation paper proposes that the financial statements of InvITs should be prepared in accordance with Indian Accounting Standards (Ind AS). In addition, accounting standards prescribed by sectoral regulators would also need to be followed for projects being executed by the InvITs.
- The committee while framing the proposal considered that InvITs would attract international investment, therefore, the financial statements prepared by the InvITs should be comparable internationally.
- Financial statements for the SPVs that the InvITs have invested in would have to be prepared based on the accounting standards applicable to them depending on whether the SPVs are established as companies or as LLPs. However, where the SPVs are required to be consolidated by the InvIT, they would have to prepare and provide financial information under Ind AS for consolidation purposes.
- The consultation paper also prescribes the generic/basic minimum line items for the annual financial statements of the InvIT. These are broadly in line with the requirements for Ind AS financial statements under Schedule III of the Companies Act, 2013.

Auditor's report

Current requirements

- The InvIT regulations do not specify the format of the auditor's report.

Proposals

- The consultation paper proposes that the auditor of the InvIT is required to provide an opinion on whether the consolidated and stand-alone financial statements of the InvIT and comment on the following:
 - The balance sheet and statement of profit and loss are in agreement with the books of accounts of the InvIT
 - The auditor has obtained all information and explanations which, to the best of his/her knowledge and belief, were necessary for the purpose of the audit
 - The balance sheet gives a true and fair view of the state of affairs of the InvIT as at the balance sheet date
 - The statement of profit and loss gives a true and fair view of the surplus/deficit of the fund for the year/period ended at the balance sheet date
 - The cash flow statement gives a true and fair view of the cash movements of the InvIT for the year/period ended at the balance sheet date
 - The statement of changes in equity gives a true and fair view of the movement of the unit holders' funds for the year/period ended at the balance sheet date
 - The statement of net assets at fair value gives a true and fair view of the net assets attributable to the unit holders' per unit at the balance sheet date
 - The statement of total return at fair value gives a true and fair view of the total return to the unit holders for the year/period ended at the balance sheet date.

Others

- Other proposals include those relating to the disclosure of comparatives, consideration of 'materiality', components of interim financial statements and other disclosures relating to contingent liabilities and commitments, the market value of units, earnings per unit, profit/loss on the sale of infrastructure assets and sale/redemption of investments.

Part B – Other continuous disclosures

The following is an overview of the significant proposals in this section:

Listing Agreement

Current requirements

- Regulation 23(7) of the InvIT regulations specify that the InvITs should submit such information to the designated stock exchanges and unit holders on a periodic basis as may be required under the listing agreement. The SEBI circular dated 13 October 2015 specified the format of a uniform listing agreement under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 (Listing Regulations).

Proposals

- The consultation paper provides that instead of following the Listing Regulations, InvITs should follow the InvIT regulations.

Disclosure of related party transactions

Current requirements

- Regulation 19 of the InvIT regulations has provisions relating to Related Party Transactions (RPTs) and provides that all the RPTs of an InvIT should be disclosed to the designated stock exchange(s) and unit holders periodically in accordance with the listing agreement and InvIT regulations.

Proposals

- The consultation paper proposes that additional disclosures with respect to the RPTs being acquired/disposal of assets with details specified as under or any other matter requiring the unit holder's approval shall be promptly intimated to the stock exchange after the approval thereof by the board of directors of the investment manager. These disclosures include the:
 - i. Details of related parties and their relationship with InvIT
 - ii. Nature of the transaction
 - iii. Value of the transaction
 - iv. Summary of the valuation report
 - v. Current yield and the impact of the acquisition/disposal on the yield of the units of InvIT
 - vi. Material conditions or obligations in relation to the transaction
 - vii. Rate of interest, if external financing has been obtained for the transaction/acquisition and
 - viii. Any fees or commissions received or to be received by any associate of the related party in relation to the transaction.

Disclosure of the unit holding pattern

Current requirements

- The InvIT regulations do not specify requirements for the disclosure of a unit holding pattern.

Proposals

- The consultation paper proposes that the unit holding pattern should be disclosed separately for each class holder, and has prescribed the below time period to be provided in the prescribed format:
 - i. One day prior to the listing of units on the stock exchanges
 - ii. On a quarterly basis, within 21 days from the end of each quarter
 - iii. Within 10 days of any capital restructuring of InvIT resulting in a change exceeding 2 per cent of the total outstanding units of InvIT.
 - iv. The proposals also include a format for a statement showing the unit holding pattern of InvIT.

Prior intimation and disclosure of material and price sensitive information

Current requirements

- Regulation 23(6) of the InvIT regulations provides that the investment manager should disclose prescribed price sensitive information such as the acquisition or disposal of projects, additional borrowing at the level of SPV/InvIT, legal proceedings, etc. to the stock exchange.

Proposals

- The consultation paper proposes that prior intimation of two working days should be given to the stock exchanges for the meeting of the Board of Directors of the investment manager, in which specific matters need to be considered. Additionally, InvITs should also disclose certain specified material and price sensitive information.

Composition of the Board of Directors of SPVs

Current requirements

- Regulation 18(3) of the InvIT regulations specifies that the InvIT may invest in infrastructure projects through SPVs subject to the following:
 - i. No other shareholder or partner of the SPV shall have any rights that prevent the InvIT from complying with the provisions of these regulations and an agreement shall be entered into with such shareholders or partners to that effect prior to investment in the SPV
 - ii. In case the SPV is a company, the investment manager, in consultation with the trustee, shall appoint not less than one authorised representative on the Board of Directors or the Governing Board of such SPVs
 - iii. The investment manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the InvIT is exercised.

Proposals

- In relation to composition of the Board of Directors of SPVs, the consultation paper proposes that the investment manager after consulting with the trustees appoint one or more authorised representatives on the Board of Directors/Governing Board of the SPV and the number of such authorised representatives should be on pro-rata basis depending on the stake held in the SPV excluding director(s) nominated by government/government undertaking for pro-rata calculation.

Others

- Other proposals include those relating to the separate disclosure of the unit holding pattern for each class of unit holders within the specified time period and format, review of credit rating received for each units and maintaining a functional website.

Part C – Framework for the calculation of NDCFs

The following is an overview of the significant proposals in this section:

Listing Agreement

Current requirements

- Regulation 18(6) of the InvIT regulations, inter alia, states that:
 - i. No less than 90 per cent of the NDCFs of the SPV shall be distributed to the InvIT in proportion to its holding in the SPV subject to the applicable provisions in Companies Act, 2013 or Limited Liability Partnership Act, 2008
 - ii. No less than 90 per cent of the NDCFs of the InvIT shall be distributed to the unit holders.

Thus, the regulation requires that both the SPV and the InvITs distribute at least 90 per cent of NDCFs. However, InvIT regulations did not provide a definition of the NDCF.

Proposals

- The consultation paper proposes a framework that acts as minimum guidance for every InvIT/investment manager to define NDFCs for itself/himself/herself. It also provides a framework for the calculation of NDFCs at the standalone SPV level and at the InvIT level.
- It also provides an illustrative format for the calculation of NDCF both at the standalone SPV level and at the consolidated InvIT level.

Our comments

Ind AS considerations

InvITs, being trusts registered under the InvIT Regulations, would not fall within the road map for implementation of Ind AS notified by the Ministry of Corporate Affairs (MCA) for companies. However, these are expected to attract international investors and therefore, SEBI has mandated the implementation of Ind AS in the preparation of their financial statements. Some of the key accounting implications that InvITs should consider are:

- **Ind AS reporting by SPVs**

While SPVs that the InvIT invests in are required to follow the accounting framework applicable to them as companies or LLPs, they may need to provide Ind AS financial results to the InvIT for consolidation purposes if required. As discussed earlier, as InvITs are expected to present financial statements under Ind AS, SPVs would also need to gear up for Ind AS reporting to the InvITs. While preparing reports under Ind AS for InvITs, SPVs may need to incur additional costs but application of Ind AS requirements are likely to be beneficial for the Indian infrastructure sector.

Additionally, the application of Ind AS by an SPV is likely to involve significant accounting issues, including the classification of compound financial instruments issued, identification and accounting of leases (including any embedded leases), accounting for service concession arrangements (where the infrastructure is acquired or constructed based on a public private partnership) and fair valuation of financial instruments such as investments.

- **Ind AS disclosures**

While the consultation paper sets out the components of the Ind AS financial statements and the basic items to be presented by InvITs, the actual requirements may differ based on the nature of transactions, categorisation as investment entity, accounting policies selected by the InvITs and so on. As these are only minimum requirements, InvITs would need to evaluate the extensive disclosure requirements under Ind AS and determine which of these are applicable to them.

- **Application of 'materiality'**

The consultation paper states that all material items are to be disclosed by the InvITs in their financial statements. Materiality has been defined and is generally in line with the requirements in Ind AS. However, its application will require the exercise of judgement by the InvIT. Additionally, while preparing the statement of profit and loss, it proposes that a disclosure by way of a note of any item of income or expenditure which exceeds 1 per cent of the revenue from operations or INR10,00,000, whichever is higher, in addition to the consideration of materiality.

- **Consolidation and categorisation as an 'investment entity'**

Ind AS requires that entities that meet certain characteristics to be categorised as 'investment entities' and recognise all their investments (including investments in subsidiaries, associates and joint ventures) at their fair value, with changes in fair value recognised in the statement of profit and loss. An InvIT will generally be considered an investment entity if it:

- Obtains funds from one or more investors for the purpose of providing those investors with investment management services
- Commits to investors that its business purpose is to invest funds solely for returns from capital appreciation, investment income, or both
- Measures and evaluates the performance of substantially all of its investments on a fair value basis.

InvITs will need to assess if they meet these conditions and are consequently required to account for their investments in subsidiaries (including SPVs through which they hold infrastructure assets) at fair value through profit and loss. InvITs that do not qualify as investment entities will have to assess if they need to consolidate the SPVs that they invest in based on a combination of factors under Ind AS.

Audit requirements

As mentioned earlier, the consultation paper requires that the auditor provide an opinion on whether the following statements present a true and fair view, such as the:

- Balance sheet
- Statement of profit and loss
- Cash flow statement
- Statement of changes in equity
- Statement of net assets at fair value
- Statement of total return at fair value.

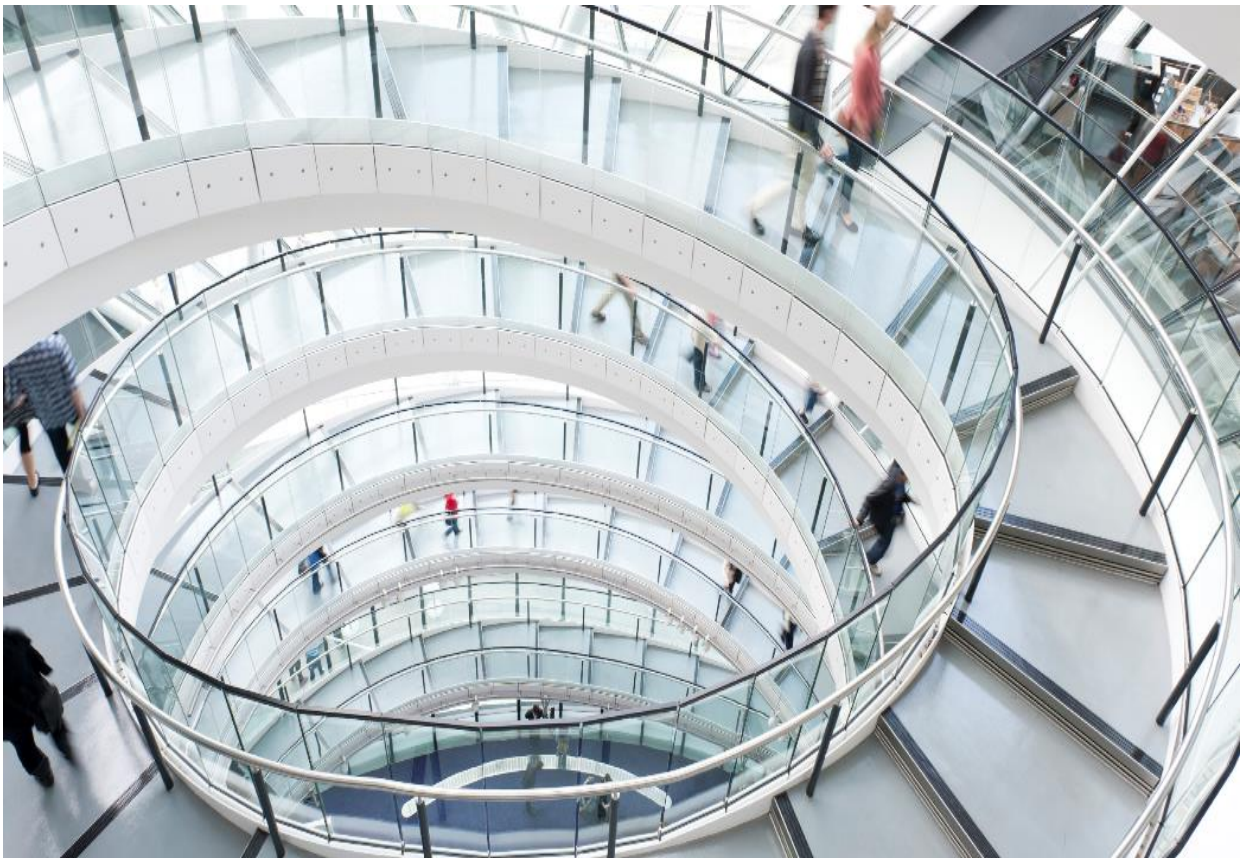
However, the InvIT regulations and this consultation paper do not include any requirement to prepare a 'statement of net assets at fair value' or a 'statement of total return at fair value'. Hence, clarity is required on whether these statements are mandatory and their manner of preparation as well as the key disclosures required. While these are not mandated at present, they are likely to include information that is of key relevance to international investors and may therefore be useful to prepare.

Related party transactions

The consultation paper requires additional disclosures for transactions with related parties, such as impact of the transactions on the yield of the units issued by the InvIT, cost of external financing obtained for acquisitions from related parties and material conditions or obligations related to the transaction. These requirements are more extensive than the Ind AS disclosure requirements.

Disclosure of NDCFs at the InvIT and SPV level

The requirements prescribed by the consultation paper are intended to be broad guidelines and each investment manager is required to define the net distributable cash flows for each InvIT. This definition is required to be disclosed in the offer document and is subject to compliance with the Companies Act, 2013 or the Limited Liability Partnership Act, 2008 as applicable. The InvITs should also evaluate the impact that Ind AS will have on the determination of distributable profits under the relevant regulation since Ind AS adoption may give rise to significant volatility in the reported book profits.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

Voices on Reporting



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In our recent call, on 22 June 2016, we covered key financial reporting and regulatory matters that are expected to be relevant for stakeholders for the quarter year ending 30 June 2016.

Our call included updates from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), the Institute of Chartered Accountants of India (ICAI) etc.

Missed an issue of our Accounting and Auditing Update or First Notes



Issue no. 9/2016 – Transport, Logistics and Leisure

This month the Accounting and Auditing Update focusses on the transport, logistics and leisure sector and highlights key matters relating to accounting, financial reporting and regulatory areas relevant to this sector. This sector encompasses various sub-sectors. In this edition, we cast our lens on six sub-sectors: maritime, logistics, ports, rail, aviation and leisure. For the sub-sectors discussed in this publication, the Ind AS guidance relevant to revenue recognition and property, plant and equipment is likely to throw up potential challenges following the adoption of Ind AS and our articles elaborate those implementation challenges. The publication carries the results of a survey that we ran with a number of leading transport and logistics companies on the key regulatory changes that they face. These include Ind AS, the Companies Act, 2013, Income Computation and Disclosure Standards (ICDS) and proposed Goods and Services Tax (GST).

This publication also highlights direct and indirect tax issues, such as the treatment of service tax collected as part of gross income, ports facing ambiguity on claiming tax holiday and certain withholding tax issues, etc. Additionally, the article on GST highlights its expected impact on the supply chain, shipping, and logistics sub-sectors.

Finally, our publication carries a regular synopsis of regulatory updates including the guidance note on CARO 2016 issued by the Institute of Chartered Accountants of India and a summary of the clarifications given by the Ind AS Transition Facilitation Group in its second bulletin.



The RBI issues a scheme for Sustainable Structuring of Stressed Assets

23 June 2016

The Reserve Bank of India (RBI), through its notification, DBR.No.BP.BC.103/21.04.132

/2015-16 dated 13 June 2016, has issued guidelines for a scheme for Sustainable Structuring of Stressed Assets (the scheme) to facilitate the resolution of large borrower accounts that are facing severe financial difficulties.

The scheme is an optional framework for the resolution of large stressed accounts in addition to the Strategic Debt Restructuring (SDR) mechanism that was previously introduced by the RBI. It was issued in order to facilitate the deep financial restructuring necessary for a sustained revival of large projects, even without a change in promoters as was envisaged under the SDR mechanism.

This issue of First Notes aims to provide overview of the scheme.

Previous editions are available to download from: www.kpmg.com/in

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