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## IL&FS Proposes InvIT for Road Assets

### THE PLAN

InvIT to be created under IL&FS Transportation Networks, which will own **15%** of the units

The rest will be allotted to other IL&FS group cos, which in turn will allot them to lenders

### IMPLICATIONS

Sebi nod may prod other stressed infra cos to go for InvITs. However, some may try to misuse it to stall liquidation under IBC



Move expected to pare IL&FS group debt by around **₹10,750 cr**



Proposal submitted to Sebi; group wants to compensate lenders by offering units at zero cost

**Pavan Burugula & Maulik Vyas**

**Mumbai:** Bankrupt Infrastructure Leasing and Financial Services (IL&FS) group has proposed the creation of an infrastructure investment trust (InvIT) to house the group's road assets and compensate lenders by offering units at zero cost.

The group, whose management was superseded by the government in 2018, has submitted the proposal to the Securities and Exchange Board of India (Sebi) but experts say approval

could take some time as there are no rules governing the creation of the kind of InvIT proposed by IL&FS.

Three people familiar with the matter told **ET** that the InvIT will be created under the company's subsidiary IL&FS Transportation Networks, which will own 15% of the units as sponsor to comply with Sebi rules. The remaining 85% will be allotted to other IL&FS group companies, which in turn will allot them to lenders as per their exposure.

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# InvIT to Provide Exits to Lenders

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The proposal, if approved, is expected to pare the debt of IL&FS group by around ₹10,750 crore.

Sebi did not respond to ET's questions on the issue. But an IL&FS spokesperson confirmed the move. "The board has decided to consider InvIT for its potential ability of providing higher value accretion on multiple accounts," the spokesperson said.

The InvIT will provide exits to lenders as the units will be listed and traded on stock exchanges. But the lenders will have to comply with the one year lock-in period as per Sebi's InvIT regulations.

According to an official filing with National Company Law Appellate Tribunal (NCLAT) on January 9, the assets where bids received were less than 90% of the fair market value (FMV) will be transferred to the InvIT while other properties will be sold separately. While the board had identified nine assets that will be a part of the SPV, three of them—the Jharkhand Road Projects Implementation Company, Mahua Bharatpur Expressways and West Gujarat Expressway (WGEL)—have been normalised through restructuring of debt and payout schedules. "For the balance six entities, cashflows are insufficient to meet all obligations and rescheduling may not help service all debt," the company said in the affidavit.

## SLOW RESOLUTION PROGRESS

Executives close to the situation said that the move was forced on them by the slow progress of the resolution of IL&FS' asset sale in the bankruptcy court. Recovery of dues have failed to gather pace amid roadblocks in sale of some assets and also lack of a framework on how the sale proceeds will be distributed among lenders.

None of the lenders were also able to convert their debt into equity after the moratorium kicked in. The lenders were also afraid of assuming a huge hair-

cut on the loans as the equity value of the company itself is assumed near zero.

Distribution of proceeds amongst various creditors of IL&FS has been a contentious issue as various creditors are currently at loggerheads over who gets how much from the proceeds. The NCLAT is currently hearing the matter. The allotment will be done based on directions issued by the appellate tribunal.

## REGULATORY PRECEDENT

A Sebi nod will have significant impact on the stressed asset industry, said a person cited above adding that the approval or denial will set a precedent. A favourable outcome could prompt other stressed infrastructure companies to consider similar structures.

"The bigger problem is companies could use the InvIT structures to ward off liquidation through Insolvency and Bankruptcy Code (IBC)," said a person directly dealing with the matter. "While IL&FS may be a genuine case, Sebi should clarify the applicability of regulations if others try to replicate similar models."

Currently, there are no regulatory precedents for creating such structures, said a senior lawyer. "Unlike a normal InvIT, allotments to unit holders in this case will be done at zero cost. Also, the InvIT would need preferential tax treatment from the government," the lawyer said.

If any of the lenders in the future decide to sell the units of InvIT, they would be subject to step capital gains tax of 20-30% depending on the holding period. Also, the dividend income of InvIT is subjected to tax in the hands of investors.

"The lenders get relief from all taxes including capital gains and STT if the resolution process is done as per IBC rules," said another person cited above. "Since the arrangement is also aimed to pare debt and pay back lenders, IL&FS InvIT should also get the same treatment equity shares get in a similar scenario."

However, unlike debt, InvITs are vulnerable to market risks and lower revenues from the assets could negatively impact the lenders. "However, lenders could consider that mark to market impact may be similar to haircuts that may be entailed if the return on units are at market yields," IL&FS said in an affidavit filed with NCLAT on January 9, 2020.

The structure of InvITs is akin to that of a mutual fund. But instead of owning shares or debt instruments as the underlying securities, InvITs will hold infrastructure assets.