

## Budget 2021: Implications of the Finance Bill on INVITS AND REITS

The Finance Minister, Ms. Nirmala Sitharaman presented the Finance Bill, 2021, as introduced before the Lok Sabha on February 1, 2021. Pursuant to the Finance Bill, 2021 (the “**Finance Bill**”), certain key amendments impacting INVITs and REITs were made in respect of the following:

- ▮ Recognition of pooled investment vehicles under the Securities Contracts (Regulation) Act, 1956 (the “SCRA”)
- ▮ Recognition of units, debentures, other marketable securities and other instruments issued by InvITs and REITs as “securities” under the SCRA;
- ▮ Enabling pooled investment vehicles to borrow and issue debt securities under the SCRA and enforcement mechanisms for lenders to InvITs and REITs under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”); and (ii) the Recovery of Debts and Bankruptcy Act, 1993 (the “RDB Act”); and
- ▮ Dividend payments to InvITs and REITs.

In addition, the Finance Minister in her speech reiterated that debt financing to InvITs and REITs by foreign portfolio investors would be enabled by making amendments to relevant legislations.

Details in relation to the key changes proposed in terms of the Finance Bill are as follows:

### 1. Definition of pooled investment vehicles

The Finance Bill proposes to include a definition of pooled investment vehicle which shall comprise business trusts as defined under the Income-tax Act, 1961 (the “**IT Act**”). The IT Act defines business trusts



as trusts registered with the Securities and Exchange Board of India (“**SEBI**”) as an infrastructure investment trust or a real estate investment trust. Such amendment is proposed to be in effect from April 1, 2021.

### 2. Recognition of units, debentures and other instruments issued by pooled investment vehicles as “securities”

The Finance Bill proposes to recognise units, debentures and other instruments issued by infrastructure investment trust or a real estate investment trust as “securities” under the SCRA. This may have further implications under various regulations issued by SEBI governing securities including under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. Such amendment is proposed to be in effect from April 1, 2021.



### 3. Borrowing by InvITs and REITs and Enforcement of security

The proposed amendment to the SCRA, enables InvITs and REITs to borrow monies and issue debt securities, subject to the conditions issued by SEBI and applicable to InvITs and REITs. Further, InvITs and REITs have been permitted, subject to the provisions of the trust deed, to create security interest in terms of the financing documents entered into by InvITs and REITs.

In the event of default by an InvIT or a REIT in respect of payment of principal or interest or such other amount due to a lender, the proposed amendment to the SCRA empowers lenders to recover such amounts against the trust assets by initiating action against the trustee of InvITs or REITs (acting in such capacity). In such cases, the trustee shall not be personally liable and its assets shall not be utilized to recover such debt. The trust assets that remain after recovery of the defaulted amount, shall be remitted to the unitholders of the InvIT or REIT on a proportionate basis.

Further, borrowings availed by InvITs and REITs are proposed to be recognised as “debt” under the RDB

Act and the SARFAESI Act. Further, InvITs and REITs are proposed to be recognised as “borrowers” under the SARFAESI Act. With these amendments, lenders to InvITs and REITs, shall have adequate statutory enforcement options against InvITs and REITs.

Such amendment is proposed to be in effect from April 1, 2021.

### 4. Dividend payments to InvITs and REITs

As announced in the previous budget, the dividend distribution tax applicable on InvITs and REITs was abolished and replaced with dividend withholding tax. The Finance Bill proposes to exempt payment of tax deducted at source on dividend paid to InvITs and REITs. Such amendment is proposed to be in effect from April 1, 2022.

The above changes are yet to be enacted by the Parliament through the Finance Act and may require further amendments and notifications to be issued by other regulators.

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