

## Amendments to the InvIT and REIT Regulations

The Securities and Exchange Board of India (“SEBI”) amended the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“**InvIT Regulations**”), and the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”, together with the InvIT Regulations, the “**Regulations**”) on August 16, 2023, amending certain provisions of the Regulations applicable to infrastructure investment trusts (“**InvITs**”) and real estate investment trusts (“**REITs**”, and together with InvITs, “**Business Trusts**”).

A summary of the key amendments is provided below:

### A. Amendments for InvITs only

#### Introduction of the concept of “Sponsor Group”

- ▮ In line with the REIT Regulations, the concept of sponsor group has been introduced for InvITs as well.
- ▮ “Sponsor Group” for InvITs has been defined to mean the sponsor, and any entity or persons controlling or controlled by the sponsor. Further, entities or persons which are under common control as the sponsor shall also be considered to form part of sponsor group.
- ▮ The InvIT Regulations also provide sponsors with the flexibility of considering only those sponsor group entities: (i) which directly or indirectly hold an interest or shareholding in any of the assets or SPVs or Holdcos proposed to be transferred to the InvIT; (ii) which directly or indirectly hold units of the InvIT on a post-issue basis; (iii) whose experience is being utilized by the sponsor for meeting the eligibility criteria applicable to the sponsor in respect of the experience requirements of the sponsor.



- ▮ Introduction of above the definition and concept, shall have an impact on the lock-in, disclosures and other compliances by InvITs, which were previously applicable only to sponsors of InvITs.

### B. Amendments for InvITs and REITs

#### De-Classification of Sponsors of Trusts:

- ▮ The pre-existing requirements for de-classification of sponsors of Trusts has been omitted. A Sponsor can now be de-classified as a sponsor without meeting any of the objective criteria prescribed earlier. De-classification of a sponsor can be achieved if the Trust obtains approval of at least 75% (by value) of the unitholders (excluding related parties).
- ▮ In cases where there is *more than one* Sponsor, one of the Sponsors may exit by obtaining unitholder approval.

- ▮ In cases where there is *only one* Sponsor, such Sponsor may exit only by obtaining unitholder approval and ensuring that (i) the Trust migrates to a self-sponsored investment manager; or (ii) the Trust inducts a new sponsor.

## Self-Sponsored Investment Manager:

- ▮ The concept of a “Self-Sponsored Investment Manager” has been introduced in the Regulations. A self-sponsored manager or investment manager of an InvIT or a REIT (“**Manager**”) is one which will have dual responsibilities of both the Manager as well as the sponsor i.e. will act as a Manager and sponsor of the Trust.
- ▮ Migrating to a Self-Sponsored Manager, is subject to the following conditions: (i) the Trust obtains approval of at least 75% (by value) of the unitholders (excluding related parties); and (i) compliance with the following requirements:
- the Trust having been listed for a period of at least five years;
  - the Trust having undertaken not less than 12 distributions on a continuous basis;
  - the Trust having complied with the distribution requirements in the preceding five years;
  - the Trust being rated AAA by a registered credit rating agency for a continuous period of five years immediately preceding exit of the sponsor;
  - during the period of preceding five years, the Trust not having breached, at any time the maximum leverage thresholds;
  - the Manager meeting the net worth criteria for the sponsor;
  - the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) being complied with by the (i) Manager, (ii) shareholders of the Manager; and/or (iii) group entities of Manager.
- the sponsor(s) or its associate(s) not owning or controlling the Manager of the Trust from the date of migration;
  - the sponsor not having transferred or sold assets to the Trust in the last three years
  - No assets or projects having been acquired by the Trust from the outgoing sponsor(s) for a period of one year from the date of conversion to Self-Sponsored Investment Manager;
  - at least one of the sponsor(s) proposing to disassociate should have been a sponsor of the Trust for a minimum period of five years; and
  - the Trust not having any under-construction properties acquired from the sponsor that have not commenced commercial operations.
  - In addition, for *InvITs only*, from the date of migration the sponsor(s) or its associate(s) shall not be the project manager and not own or control the project manager.
- ▮ For the purposes of self-sponsored Manager, the concept of “group entities of Manager” has also been introduced in the Regulations. Group entities of the Manager means entities or person(s) controlled by or controlling the Manager, or other entities or persons which are under common control as the Manager.
- ▮ For the conversion of a Manager into a self-sponsored Manager, the Manager shall be required to provide an option to exit to the dissenting unitholders if requisite unitholder approval is not obtained.

## Sponsor Lock-in

- ▮ Perpetual sponsor unitholding lock-in has been introduced which will be extended to sponsors and sponsor group(s) for Trusts with the introduction of the concept of sponsor group for InvITs.

▮ Sponsors and the Sponsor Group to lock-in Units in the following manner:

|                                                                                                                       |                                                                      |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| For a period of 3 years from listing.<br>(Units in excess of 15% to be locked in for a period of 1 year from listing) | 15% of total Units                                                   |
| From the beginning of 4 <sup>th</sup> year and till the end of 5 <sup>th</sup> year from the date of listing          | 5% of total Units or Rs. 500 crores, whichever is lower              |
| From the beginning of 6 <sup>th</sup> year and till the end of 10 <sup>th</sup> year from the date of listing         | 3% of total Units of the InvIT or Rs. 500 crores, whichever is lower |
| From the beginning of 11 <sup>th</sup> year and till the end of 20 <sup>th</sup> year from the date of listing        | 2% of total Units of the InvIT or Rs. 500 crores, whichever is lower |
| after completion of the 20 <sup>th</sup> year from the date of listing                                                | 1% of total Units of the InvIT or Rs. 500 crores, whichever is lower |

▮ An assessment of compliance of these requirements (from the 4<sup>th</sup> year onwards) shall be done (i) at the time of each fresh issuance of units by the Trust; and (ii) at the beginning of change in threshold of the percentage for minimum unitholding requirement as specified under the Regulations.

▮ In case of existing Trusts, the above lock-in restrictions will become applicable only from the date of any subsequent fresh issue undertaken by the Trust and only for the additional units issued by the Trust after such date.

## Encumbrance on locked-in Units:

▮ Units under mandatory sponsor/ sponsor group lock-in may not be encumbered. However, to the

extent of pre-existing encumbrances over locked-in units created prior to these amendments, the encumbrances may continue.

## Nomination Right to Unitholders:

▮ Unitholders holding at least 10% of the total outstanding units of the Trust, either individually or collectively, shall be entitled to nominate one director on the board of directors of the Investment Manager.

## Stewardship Code:

▮ Unitholders holding at least 10% of the total outstanding units of the Trust will be required to comply with the Stewardship Code as prescribed by SEBI.

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