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Recent amendments to the SEBI REIT Regulations and the SEBI InvIT Regulations

Introduction

The SEBI had released consultation papers titled “Consultation Paper on Holding of Sponsor in REITs and InvITs” on February 23, 2023 and “Special Rights to Unitholders and Role of Sponsor in REITs and InvITs” on May 16, 2023, proposing certain amendments to the existing REIT Regulations and the InvIT Regulations, respectively. Subsequently, there have been certain amendments to the REIT Regulations and InvIT Regulations through the notification of the Amendment Regulations, which came into effect on August 16, 2023. Further, SEBI, through the SEBI Circulars, has also set forth a framework with respect to the board nomination rights of unitholders of REITs and InvITs. This update summarises certain of these amendments.

Identification of sponsor(s) and members of the sponsor group of InvITs

The InvIT Second Amendment Regulations introduced the concept of ‘sponsor group’ for InvITs. The term ‘sponsor group’ includes the sponsor, entities or persons controlled by the sponsors, or who control such body corporate and entities or persons which are controlled by entities or persons who control such body corporates. Further, among the entities categorized as sponsor group, only a person or entity: (i) that is directly or indirectly holding an interest or shareholding in any of the assets or SPVs or holdco’s proposed to be transferred to the InvIT; (ii) that is directly or indirectly holding units of the InvIT on a post-issue basis; or (iii) whose experience is being utilized by the sponsor for meeting the eligibility conditions, will be classified as sponsor group.

Additionally, the provision requiring the sponsors to hold not less than 15% of the total outstanding units of the InvIT for three years from the date of listing of units in the initial offer,

has now also been extended to include the members of the sponsor group along with the sponsors.

The concept of ‘sponsor group’ is already in place for REITs under the REIT Regulations. While this amendment will provide greater flexibility to meet the minimum lock-in requirements, it may require additional effort from the perspective of ensuring compliance with eligibility norms, such as ‘fit and proper’ criteria for the greater number of entities who will get classified as sponsor group.

Perpetual liability of the sponsor(s) and members of the sponsor group under the formation transactions for InvITs

The sponsors and members of the sponsor group will be responsible for all acts, omissions, representations and covenants relating to the formation of the InvIT or sale or transfer of assets, holding companies or SPVs to the InvIT. This provision is already a part of the REIT Regulations.

Additionally, the InvIT or the trustee of the InvIT will have recourse against the sponsor(s) and members of the sponsor group for any breach arising on account of the above.

Minimum unitholding requirement for sponsor(s) and members of the sponsor group

Prior to the Amendment Regulations, sponsor(s) and members of the sponsor group(s) (in the case of REITs) were required to hold at least 15% of the total units of a REIT/ InvIT for a minimum period of 3 years from the date of listing. Any holding of the sponsor(s) and sponsor group(s) (in the case of REITs) exceeding 15% of the total units of the REIT or InvIT were required to be held by the sponsor(s) and sponsor group(s) (in



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the case of REITs) for a minimum period of 1 year from the date of listing. Notably, the REIT Regulations or the InvIT Regulations did not prescribe any requirement for the sponsor(s) and/ or sponsor group(s) (in the case of REITs) to mandatorily hold any units in a REIT/ InvIT, after the expiry of 3 years from the date of listing.

However, pursuant to the Amendment Regulations, the sponsor(s) and members of the sponsor group(s) are mandatorily required to hold units in a REIT/ InvIT in the manner set out below:

S. No.	Holding period from the date of listing of units	Units to be locked in (In percentage)
1.	Upto 3 rd year	15%* of the total units of the REIT/InvIT
2.	From the beginning of 4 th year and till the end of 5 th year	5% of the total units of the REIT/InvIT** or INR 500 crore**, whichever is lower
3.	From the beginning of 6 th year and till the end of 10 th year	3% of the total units of the REIT/InvIT** or INR 500 crore**, whichever is lower
4.	From the beginning of 11 th year and till the end of 12 th year	2% of the total units of the REIT/InvIT** or INR 500 crore**, whichever is lower
5.	After completion of the 20 th year	1% of the total units of the REIT/ InvIT** or INR 500 crore**, whichever is lower

* Any unitholding held by sponsor(s) or sponsor group(s) in excess of 15% is subject to a 1 year lock-in from the date of listing of units issued in the initial offer.

** Valuation to be based on the latest available net asset value of the REIT/ InvIT.

The lock-in requirement applicable from the beginning of the 4th year from the date of listing of units will be tested at the time of each fresh issuance of units and at the beginning of change in threshold of the percentage for minimum unitholding requirement as set out above. With a view to ease the transition for the existing REITs/ InvITs, please note that the units issued by REITs/ InvITs, pursuant to the initial offer, as on August 16, 2023, are exempt from compliance with the above minimum threshold norms as the above requirements are applicable only for any additional units issued by REITs/ InvITs. The units that were locked in at the time of initial offer, as on August 16, 2023, are required to continue to be locked in till the completion of 3 years from the date of listing of units in the initial offer.

Creation of encumbrance over locked in units

The units required to be held in terms of the minimum unitholding requirements (as set out above) are required to be locked in and cannot be encumbered. Any encumbrance created on units which were being held to comply with the minimum unit holding requirement applicable before August 16, 2023, may continue if the encumbrance existed on such date.

De-classification and disassociation from the status of sponsor(s)

The Amendment Regulations have deleted the provision which provided for de-classification from the status of sponsor(s) of a REIT/ InvIT whose units have been listed on the stock

exchanges for a period of 3 years. The Amendment Regulations have introduced the concept of disassociation by the sponsor(s) wherein the existing sponsors proposing to disassociate as sponsors may, subject to fulfilment of conditions specified in **Annexure A**, seek to convert the investment manager to a self-sponsored investment manager (i.e., investment manager having dual responsibilities of both the investment manager as well as the sponsor). However, with the removal of the provision in relation to declassification of a sponsor, there might be a need for further clarity in cases where an existing sponsor seeks to exit (in a multiple sponsor scenario) without a new sponsor coming in.

Self-Sponsored REITs/InvITs

While the regulation for de-classification of the status of a sponsor(s) of a REIT/InvIT has been deleted, the Amendment Regulations have introduced the construct of a “self-sponsored investment manager”, i.e., the investment manager of the REIT/ InvIT may be considered to be the sponsor upon satisfaction of the prescribed requirements, which are summarised in **Annexure A**. In case of a conversion to “self-sponsored investment manager”, approval from 75% of unitholders (by value) is required to be obtained, excluding any parties related to the transaction. In the event the proposal for conversion to “self-sponsored investment manager” does not receive the requisite approval of the





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unitholders, then the dissenting unitholders must be provided an option to exit the REIT/ InvIT. In other words, SEBI has clarified that a sponsor may exit only if the investment manager meets the criteria and undertakes to comply with the obligations set out in **Annexure A**.

Right to appoint a nominee director in REITs/ InvITs

The Amendment Regulations read with the SEBI Circulars provide that the Eligible Unitholders will have a right to nominate 1 Unitholder Nominee Director. Such director is not allowed to vote on any transaction involving such nominee director or the unitholder who has nominated the said director and their respective associates. If the unitholding of more than one unitholder is aggregated for the purpose of qualifying as an eligible unitholder(s), then such unitholder(s) cannot participate in any other group of eligible unitholder(s).

Additionally, entities such as shareholders of the investment manager or lender to the investment manager or the REIT/ InvIT (or its holdco(s) or SPV(s)) entitled to nominate directors on the board of the investment manager cannot nominate or participate in the nomination of a Unitholder Nominee Director

in their capacity as unitholder of a REIT/ InvIT.

The board of directors of the investment manager is also required to formulate and adopt a policy in relation to the qualifications and criteria for appointment and evaluation parameters of individuals nominated for appointment as Unitholder Nominee Director. Further, such unitholders need to ensure that they comply with the stewardship code as introduced pursuant to the Amendment Regulations. These principles include, among others, acting in the best interests of the REIT/ InvIT and its unitholders, formulating a comprehensive policy on discharge of stewardship responsibilities, as well as a policy on managing conflict of interest while fulfilling stewardship responsibilities and periodically monitoring the REIT/ InvIT, holdco(s) and SPV(s).

Please note that this is merely a right and not an obligation of the unitholders holding the specified percentage of units of the REIT. The broad framework governing the process of exercising the board nomination rights by the Eligible Unitholder(s) is set forth in **Annexure B**.

Annexure A

- the REIT/InvIT has been listed for a period of at least 5 years;
- the REIT/InvIT has undertaken not less than 12 distributions on a continuous basis and has complied with the distribution norms as per the REIT Regulations/InvIT Regulations in the preceding 5 years;
- the REIT/InvIT is rated AAA by a registered credit rating agency for a continuous period of 5 years immediately preceding exit of the sponsor;
- during the period of preceding 5 years, the REIT/InvIT has not breached, at any time, the maximum leverage thresholds specified in the REIT Regulations/InvIT Regulations;
- the investment manager is meeting the net worth criteria for the sponsor as specified in the REIT Regulations/InvIT Regulations;
- the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) shall be complied with, on or after the date of conversion of the investment manager to self-sponsored investment manager, by the investment manager, shareholders of the investment manager and/or group entities of investment manager;
Explanation: investment manager, shareholders of the investment manager and/or group entities of investment manager may acquire units of the REIT/ InvIT for the purpose of compliance of the above condition.
- the sponsor(s) or its associate(s) do not own or control the investment manager of the REIT/InvIT on or after the date of conversion of the investment manager to a self-sponsored investment manager;
- the sponsor has not transferred / sold assets to the REIT/InvIT in the last 3 years and no assets/ projects shall be acquired by the REIT/InvIT from the outgoing sponsor(s) for a period of 1 year from the date of conversion to a self-sponsored investment manager;
- at least 1 of the sponsor(s) proposing to disassociate should have been a sponsor of the REIT/InvIT for a minimum period of 5 years;
- the REIT/InvIT shall not have any under-construction properties acquired from the sponsor that have not commenced commercial operations;
- specifically, with respect to an InvIT, the sponsor(s) or its associate(s) are not the project manager and do not own or control the project manager on or after the date of conversion of the investment manager to self-sponsored investment manager;
- unitholders approval in terms of the REIT Regulations/InvIT Regulations and consent of the trustee has been obtained for conversion to self-sponsored investment manager;
- such other condition as may be specified by SEBI.



Annexure B

S. No.	Particulars	Details
1.	Process	<p>a) The investment manager is required to intimate all the unitholders within 10 days from September 30, 2023, requesting any Eligible Unitholders to express their intention to exercise the right to nominate a Unitholder Nominee Director within 10 days from the receipt of such intimation.</p> <p>b) For subsequent nominations, the investment manager is required to follow the same process as above within 10 days from the end of each financial year.</p> <p>c) If any unitholder acquires 10% unitholding or more of a REIT/ InvIT during a particular financial year, then such unitholder(s) is eligible to exercise the nomination right only in the following financial year.</p>
2.	Eligibility	<p>a) The investment manager is required to confirm the eligibility of the Unitholder Nominee Director in line with the policy formulated within 10 days of receipt of notice from Eligible Unitholders.</p> <p>b) Upon confirmation of eligibility, the appointment of the Unitholder Nominee Director is required to be completed within 30 days.</p> <p>c) The candidates proposed for appointment as Unitholder Nominee Directors are required to fulfil certain eligibility conditions including the 'fit and proper' criteria specified under Schedule II of the SEBI (Intermediaries) Regulations, 2008, not be a wilful defaulter or fraudulent borrower and not be debarred from accessing the capital markets by the SEBI or any other authority.</p>
3.	Reporting and monitoring obligation of the investment manager	The investment manager of the REIT/ InvIT is required to within 10 days from the end of each calendar month review the unitholding of the Eligible Unitholders who have exercised the board nomination right and report the same to the trustee of the REIT/ InvIT.
4.	Tenure of Unitholder Nominee Director	<p>The Unitholder Nominee Director will continue to remain on the board of the investment manager unless:</p> <p>a) the nomination is withdrawn by Eligible Unitholders; or</p> <p>b) a change in Unitholder Nominee Director is requested by Eligible Unitholders; or</p> <p>c) the unitholding of Eligible Unitholders falls below the required threshold; or</p> <p>d) the Unitholder Nominee Director is unable to serve or resigns or is removed from the board of directors for any reason.</p>
5.	Vacation of office of a Unitholder Nominee Director	<p>a) If the unitholding of the Eligible Unitholder(s) (individually or collectively) falls below 10% of the total outstanding units of the REIT/ InvIT including on account of any fresh issuance of units by a REIT/InvIT, then the Eligible Unitholder(s) are required to immediately inform the investment manager within 2 working days from such change and the Unitholder Nominee Director is required to resign within 2 working days from such change.</p> <p>b) The Eligible Unitholder(s) may propose another individual as a replacement, in case of death or permanent disability of their nominee.</p> <p>c) The investment manager may remove a Unitholder Nominee Director from office, by recording such reasons in writing, including if the Unitholder Nominee Director ceases to meet the eligibility criteria or other requirements.</p>



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S. No.	Particulars	Details
6.	Amendment of the Trust Deed and Investment Management Agreement	While during the interim period the trust deed and investment management agreement will be deemed to be amended to incorporate the provisions pertaining to board nomination rights of Eligible Unitholder(s), however, the said documents are required to be amended within a period of 6 months from the date of the SEBI Circulars.

Glossary

Term	Definition
Amendment Regulations	InvIT Second Amendment Regulations and REIT Second Amendment Regulations
Eligible Unitholder(s)	Unitholders holding (individually or collectively) not less than 10% of the total outstanding units of the REIT/ InvIT
InvIT(s)	Infrastructure Investment Trusts
InvIT Regulations	SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended
InvIT Second Amendment Regulations	SEBI (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2023
REIT(s)	Real Estate Investment Trusts
REIT Regulations	SEBI (Real Estate Investment Trusts) Regulations, 2014, as amended
REIT Second Amendment Regulations	SEBI (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023
SEBI	Securities and Exchange Board of India
SEBI Circulars	SEBI circulars each dated September 11, 2023 on “Board nomination rights to unitholders of REITs” and “Board nomination rights to unitholders of InvITs”
Unitholder Nominee Director	A non-independent director nominated by Eligible Unitholder(s) on the board of directors of the investment manager of the REIT/ InvIT

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