Amendments to the SEBI REIT Regulations

Introduction

The Securities and Exchange Board of India (the "**SEBI**") has notified several significant amendments to the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (the "**REIT Regulations**") on April 22, 2025, by way of the Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2025 (the "**REIT Amendment Regulations**"). Unless specifically provided otherwise, all amendments are already in effect since the publication of the REIT Amendment Regulations in the Official Gazette.

The amendments to the REIT Regulations have been introduced by SEBI to promote ease of doing business and enhance investor protection measures. Broadly, the amendments cover compliance requirements for real estate investment trusts ("**REITs**"), review of investment conditions, governance norms, alignment with other listed instruments and clarity on provisions relating to small and medium real estate investment trusts ("**SM REITs**"). Please see below a summary of the key amendments introduced:

Transfer of locked-in units amongst sponsor and sponsor group entities

Pursuant to the REIT Amendment Regulations, the units that are locked-in by the sponsor(s) or the sponsor group entities (as the case may be) under Regulation 11(3) of the REIT Regulations and paragraph 10.6 of the master circular for REITs dated May 15, 2024 (in case of preferential allotments), are now permitted to be transferred amongst such sponsor(s) or sponsor group entities, provided that the lock-in period continues with the transferee, who cannot transfer the units until the lock-in period ends. Additionally, in case of multiple sponsors, locked-in units can only be transferred within such sponsor and their own sponsor group entities and not to the other sponsors or their sponsor group entities.

Separately, in case of a change in sponsor or conversion to a self-sponsored manager, locked-in units may be transferred to the incoming sponsor or its sponsor group entities or to the self-sponsored manager/ its shareholders/ its group entities, as the case may be, subject to minimum unitholding requirements being met after the transfer. Similar amendments have also been introduced to the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (the "**InvIT Regulations**").

This is a welcome change and brings the REIT Regulations at par with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 where the promoter/promoter group have similar flexibility. Read along with the mandate to meet the minimum unit holding requirement on a collective basis among the sponsor/sponsor group, this relaxation will give the much needed flexibility to sponsors, especially financial sponsors, to rejig their holdings after the listing of the REIT.

Expanding the asset base for REITs

The definition of 'real estate' or 'property' under the REIT Regulations provided that any asset falling under the purview of 'infrastructure' (as defined by way of the notification of Ministry of Finance dated October 07, 2013, as amended (the "**Harmonized List**")) shall not be considered as 'real estate' or 'property' for the purposes of the REIT Regulations. However, this often led to overlaps in respect of certain asset classes such as warehouses, hotels, data centres etc., which were considered as 'infrastructure' by the Harmonized List (subject to certain conditions being met), but retained characteristics of real estate assets.

In what could prove to be a significant change, following the REIT Amendment Regulations, REITs (including SM REITs) have been permitted, either directly or through a HoldCo(s) or SPV(s), to invest in assets falling under the purview of 'infrastructure' (as defined under the Harmonized List) if holding of such infrastructure asset is to earn fixed rental income from leasing out of such asset without assumption of any risk or reward arising out of or related to the operation of such asset, subject to certain conditions being complied with.

While this is a step in the right direction, its efficacy will have to be examined further in the context of some asset classes, like warehousing, which although classified as 'infrastructure', are owned and operated in the same manner as other core real estate properties such as offices and malls.

Timeline for filling up of vacancy in the office of the Board of Directors of Managers of REITs

Regulation 26B (1) of the REIT Regulations require the board of directors of the manager to comprise not less than six directors (of which half are required to be independent directors) and have not less than one woman independent director. Previously the REIT Regulations did not provide a time period within which a director could be replaced. Pursuant to the REIT Amendment Regulations, if the manager becomes non-compliant with the above requirement as a result of a vacancy in the office of directors (including an independent director) of the manager, such vacancy can be filled in by the manager, as follows (i) if such vacancy arises due to expiry of the term of office of the director, then the resulting vacancy shall be filled not later than the date such office is vacated, and (ii) if such vacancy arises due to any other reason, then the resulting vacancy shall be filled at the earliest and not later than three months from the date of such vacancy. Similar amendments have also been introduced to the InvIT Regulations.

Introduction of the definition: 'Common Infrastructure'

Prior to the REIT Amendment Regulations, while the term 'common infrastructure' was used in the definition of 'real estate' or 'property' under the REIT Regulations, it was not a defined term. By way of the REIT Amendment Regulations, a definition of the term has been introduced to include facilities or amenities such as power plants, district or retail heating and cooling systems, water and waste treatment or processing plants, and any other facilities or amenities incidental to real estate business which exclusively supply or cater to, or are exclusively consumed by the REIT, its HoldCo(s) or SPV(s), irrespective of whether such facilities or amenities are co-located within any project of the REIT or not.

However, any excess production or capacity not consumed by the REIT, its HoldCo(s) or SPV(s), may be sold to a central or state grid or utility in accordance with applicable law, subject to certain conditions specified by the REIT Amendment Regulations. The interplay of group captive holding/consumption requirements and the conditions prescribed under the definition will need to be examined in each case.

This is a very welcome change and it will provide a huge support to initiatives taken by all REITs to explore greener sources of electricity for their developments.

Review of investment conditions applicable to REITs

Regulation 18(4) of REIT Regulations permits REITs to invest not less than 80% of the value of the REIT assets in completed and rent and/or income generating properties subject to certain conditions specified therein. Further, Regulation 18(5) of REIT Regulations provide a list of investments that the REITs are permitted to invest in, which cannot exceed 20% of the value of REIT assets ("**20% Investment Limit**"). Prior to the REIT Amendment Regulations, the 20% Investment Limit included investments by REITs in unlisted equity shares of companies which derive not less than 75% percent of their operating income from real estate activity as per the audited account of the previous financial year.

From the date of coming into effect of the REIT Amendment Regulations, REITs are no longer permitted to invest in unlisted equity shares of companies (other than in HoldCo(s) or SPV(s)) except in case of unlisted equity shares of companies: (i) which provide property management or property maintenance or housekeeping and other incidental services exclusively to the REIT, its HoldCo(s) and SPV(s), and (ii) where the entire shareholding or interest in such company is held by REIT either directly or through its HoldCo(s) or SPV(s). Further, in case of business parks, townships and other real estate projects, such services may be provided to other entities which are contiguous within the project, subject to certain conditions specified under the REIT Amendment Regulations.

Separately, the 20% Investment Limit has now been broadened to include: (i) units of liquid mutual funds schemes where the credit risk value is at least 12 and which falls under the Class A-I in the potential risk class matrix as specified by SEBI, (ii) interest rate derivatives, including interest rate futures, forward rate contract and interest rate swap, subject to certain conditions, and

(iii) equity shares of a company exclusively holding common infrastructure, provided that the REIT, its HoldCo(s) and/or SPV(s) own the entire shareholding and interest in such company. In a linked amendment, REITs are required to consider cash flows from all 'REIT assets' for the purposes calculating net distributable cash flows and hence, entities holding such incidental property management/housekeeping services or 'common infrastructure' shall be accordingly covered.

Roles and responsibilities of trustees

The REIT Amendment Regulations have expanded and provided further clarifications on the roles and responsibilities of the Trustees for the REITs. It requires the Trustee to comply with: (i) core principles of transparency, accountability, due diligence and compliance with the REIT Regulations, (ii) act impartially in their fiduciary capacity, prioritize protection of the interests of unitholders, ensure effective management oversight over the manager and the REIT and maintain high standards of governance of the manager and the REIT, amongst others. An illustrative list of the roles and responsibilities of the Trustee have also been included in the REIT Regulations. Similar amendments have also been introduced to the InvIT Regulations.

While these amendments have been notified pursuant to the REIT Amendment Regulations, the relevant provision (i.e. Regulation 9(19)) will come into force on the 180th day from the date of publication of the REIT Amendment Regulations in the Official Gazette.

Credit Rating for REITs

REITs are required to obtain a credit rating from a credit rating agency in the event borrowings availed by the REITs exceed specific thresholds specified under Regulation 20 of the REIT Regulations. Pursuant to the REIT Amendment Regulations, it has been clarified that the 'issuer credit rating of the REIT' shall be obtained in the above instance. Similar amendments have also been introduced to the InvIT Regulations.

Composition of the NRC of the Manager

By way of the REIT Amendment Regulations, it has been clarified that the NRC can now comprise of non-executive directors as well, as long as two-thirds of the directors are independent directors.

In addition to the above amendments, the REIT Amendment Regulations have also (i) introduced clarifications on the disclosure requirements relating to the framework of SM REITs, and (ii) clarified that cash flows generated by all REIT assets shall be considered with respect to the distributions made by the REIT and the HoldCo(s) and/or the SPV(s).

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