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FURTHER AMENDMENTS TO THE LAWS ON REITS AND INVITS IN INDIA

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The Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (SEBI REIT Regulations) and the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (SEBI InvIT Regulations), which were last amended on 27 December 2017, have been further amended by the notifications issued by the Securities and Exchange Board of India (SEBI) on 10 April 2018 (hereinafter referred to as the REIT Amendment Regulations and InvIT Amendment Regulations, respectively). The REIT and InvIT Amendment Regulations have been introduced to further facilitate the growth of infrastructure investment trusts (InvIT) and the real estate investment trusts (REIT).

Some of the significant amendments introduced by the REIT Amendment Regulations are

- *Definition of real estate assets and REIT assets clarified:* The definition of "real estate assets" and "REIT assets" has been amended to clarify that such assets include assets held on a freehold as well as on a leasehold basis. Further, such assets held by the holding company of the entity have been included under the definition of real estate assets and REIT assets. Prior to the REIT Amendment Regulations, the definition of real estate assets as well as REIT assets was limited to assets owned by REITs directly or through special purpose vehicles.
- *Amendment to the meaning of a "sponsor group" with respect to eligibility while applying for a certificate of registration:* While considering an application for registration under the SEBI REIT Regulations, SEBI is required to consider and examine, *inter alia*, the eligibility of the persons who have been named as the sponsors and sponsor groups in the application. The REIT Amendment Regulations have clarified that while considering the eligibility of the entities categorised as the sponsor group, only the following persons or entities shall be considered: (i) a person or entity who is directly or indirectly holding an interest or shareholding in any of the assets or special purpose vehicles or holding companies proposed to be transferred to the REIT, (ii) a person or entity who is directly or indirectly holding units of the REIT on post-issue basis and (iii) a person or entity whose experience is being utilised by the sponsor for meeting with the eligibility conditions required under the SEBI REIT Regulations. Such eligibility conditions require that the sponsor or its associate(s) has a minimum of five years of experience in the development of real estate or fund management in the real estate industry, however, in the

event the sponsor is a developer, at least two projects of the sponsor are required to have been completed.

➤ *Certain additional conditions for investment in properties through special purpose vehicles and holding companies of a REIT:*

- The SEBI REIT Regulations permit a REIT to invest in properties through a special purpose vehicle, subject to certain conditions. One such condition is that no other shareholder or partner of the special purpose vehicle shall have any rights that prevents the REIT from complying with the provisions of the SEBI REIT Regulations and an agreement is required to be executed, prior to such investment, with such shareholders or partners confirming that they have no such right. The REIT Amendment Regulations have imposed an obligation on the applicant to include a clause in such agreement that provides for an appropriate mechanism for resolution of disputes between the REIT and other shareholders or partners in the special purpose vehicle. The amendment has also clarified that in case of any inconsistency between such agreements and the SEBI REIT Regulations, the provisions of the SEBI REIT Regulations shall prevail.
- The REIT Amendment Regulations have made a similar amendment in case the REIT chooses to invest in properties through its holding company. In such a case, no other shareholder or partner of the holding company shall have any rights that prevent the REIT or the holding company or any special purpose vehicle from complying with the terms of the SEBI REIT Regulations. The REIT Amendment Regulations have made it mandatory for the shareholders' or partnership agreement, if any, between such other shareholder or partner, to provide for an appropriate mechanism for resolution of disputes between the REIT and other shareholders or partners in the holding company and/or the special purpose vehicle. Further, in case of any inconsistency between such agreements and the SEBI REIT Regulations, the provisions of the SEBI REIT Regulations shall prevail.
- Prior to the notification of the REIT Amendment Regulations, an investment through special purpose vehicles or holding companies was subject to the manager, in consultation with the trustee, appointing the majority of the board of directors or the governing board of such special purpose vehicles or holding company. The amendment has now mandated that the manager, in consultation with the trustee, shall appoint at least such number of nominees on the board of directors or the governing board of such special purpose vehicle or the holding company, as applicable, which are in proportion to the shareholding or the holding interest of the REIT in such special purpose vehicle or holding company.
- The SEBI REIT Regulations include certain restrictions on investments of REIT assets. The REIT Amendment Regulations have permitted up to 20% of the value of REIT assets to be invested in unlisted equity shares of companies which derive not less than 75% of their operating income from real estate activity. However, such investments made in unlisted equity shares of a company, in under construction and/or completed and non-rent generating properties, shall be held by the REIT for a minimum period of three years from the date of completion or from the date of purchase, as applicable.

Additionally, the requirement that a minimum of 75% of the value of the assets of the REIT shall generate rent has now been omitted by the REIT Amendment Regulations.

Some of the significant amendments introduced by the InvIT Amendment Regulations are

- *Definition of “institutional investor”:* The InvIT Amendment Regulations have incorporated the definition of an institutional investor in the SEBI InvIT Regulations. An institutional investor has been defined to mean a (a) qualified institutional buyer and (b) family trust or systematically important NBFCs registered with the Reserve Bank of India or intermediaries registered with SEBI, all with net-worth of more than ₹ 500 crore, as per their last audited financial statements. An InvIT is permitted to raise funds from institutional investors from the private placement route.
- *Requirement to file a “final placement document”:* The InvIT Amendment Regulations have specified the requirement to file a final placement memorandum with SEBI within ten working days of listing of the units. Prior to the amendment, the SEBI InvIT Regulations only expressly required the filing of a placement document with SEBI five days prior to opening of the issue.
- *Additional conditions for investment by InvIT in infrastructure projects through special purpose vehicles or holding company:* The SEBI InvIT Regulations permit an InvIT to invest in infrastructure projects through special purpose vehicles or its holding companies, subject to no other shareholder or partner of such special purpose vehicles or holding companies (as the case may be) having any rights that prevent the InvIT from complying with the provisions of the SEBI InvIT Regulations. The InvIT Amendment Regulations have now mandated the inclusion of an appropriate mechanism for resolution of disputes between the InvIT and other shareholders or partners in the special purpose vehicle or holding company in a shareholders’ or partnership agreement. The amendment has further clarified that in case of any inconsistency between such agreements and the SEBI InvIT Regulations, the provisions of the SEBI InvIT Regulations shall prevail.
- *Submission of report on the audited accounts:* The deadline for submission of the report of the audited accounts of the InvIT to the stock exchanges has been extended to within 60 days from the end of the relevant financial year.

Some of the significant amendments introduced that are common between the InvIT Amendment Regulations and REIT Amendment Regulations

- *Disclosure in the litigation section of offer document or placement memorandum of the REIT/InvIT:* The SEBI REIT Regulations and SEBI InvIT Regulations required the disclosure of outstanding material litigations and regulatory actions against the REIT/InvIT, its sponsor(s), managers, or any of their associates and sponsor group(s), the trustee and valuer, if any, in the past five years. The InvIT and REIT Amendment Regulations clarify that all outstanding litigations and regulatory actions against the entities mentioned hereinabove are required to be disclosed and the limitation of a “five year” period has now been deleted. This change certainly clears up the ambiguity regarding the meaning of “outstanding litigation” since a litigation that is outstanding and deemed to be material is now required to be disclosed. The five year timeframe in this regard is now immaterial and has accordingly been excluded since it only created confusion.

- *Disclosure in the Valuation Report:* The SEBI REIT Regulations and SEBI InvIT Regulations have been amended to exclude material litigations that have been closed (including tax litigations in relation to the assets) from being included in the valuation report of the REIT or InvIT, as the case may be. Additionally, in relation to the disclosure on property in the valuation report of the REIT, the requirement to include description of the age of the building, the site area, gross floor area and the net lettable floor area has now been omitted and only description of the developable area, leasable area, completed area and occupied areas is required to be disclosed.
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