

Navigating SEBI's recent amendments to the InvIT

Regulations: Key insights for investors

15 April 2025

Introduction

On 2 April 2025, the Securities and Exchange Board of India (SEBI) notified the SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2025 (Amendment), introducing key changes to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (SEBI InvIT Regulations). These amendments are aimed at streamlining compliance requirements and enhancing operational flexibility for Infrastructure Investment Trusts (InvITs).

The amendments were approved at SEBI's board meeting held on 18 December 2024 and stem from SEBI's ongoing effort to promote ease of doing business within the InvIT framework. They are based on the (a) public comments on a consultation paper issued by SEBI on 30 October 2024; and (b) recommendations from SEBI's Hybrid Securities Advisory Committee (HySAC).

This Ergo outlines and analyses certain key regulatory changes introduced through the Amendment and their anticipated impact on InvITs, their Sponsors, Investment Managers and Unitholders.

Key changes

Transfer of locked-in units of Sponsor and its Sponsor Group

SEBI has introduced provisos and explanations under Regulation 12 of the SEBI InvIT Regulations to clarify the treatment of locked-in units held by Sponsors and Sponsor Group entities. These amendments aim to enhance flexibility in managing Sponsor-level investments without compromising regulatory safeguards. The key clarifications are as follows:

- i. *Intra-group transfers permitted:* The locked-in units of a Sponsor and its Sponsor Group entities may be transferred among themselves, provided the lock-in continues to apply to the transferee for the remainder of the original lock-in period.
- ii. *No further transfer until lock-in expires:* The transferee for such locked-in units may not further transfer the units until the expiry of the applicable lock-in period.
- iii. *Transfers upon change in sponsorship:* In case of change in Sponsor or conversion to Self-Sponsored Investment Manager, locked-in units of the erstwhile Sponsor and its Sponsor Group entities may be transferred to the new Sponsor or the Self-Sponsored Investment Manager, respectively, subject to compliance with a fresh period of minimum unitholding requirements after the transfer.

These clarifications bring welcome flexibility for Sponsors and Sponsor Groups, particularly in cases involving restructuring or realignment of Sponsor holdings. The ability to transfer locked-in units within the Sponsor Group, or to an incoming Sponsor, reduces friction in capital management while mitigating the risk of mis-selling or passive name-lending.

Changes to the investment conditions for InvITs

Regulation 18 of the SEBI InvIT Regulations governs the conditions for investments by InvITs, either directly or through holding companies (HoldCo) and/or its special purpose vehicles (SPVs). The extant framework mandates, a minimum of 80% of the value of InvIT assets to be invested in completed and revenue-generating infrastructure projects, with the remaining 20% being invested in, *inter alia*, under-construction infrastructure projects and specified equity and debt securities, each subject to applicable conditions.

SEBI has now permitted the InvITs to invest in the following additional instruments as part of the 20% investment bucket, subject to fulfilment of associated conditions:

- i. *Unlisted Equity Shares*: Investment in unlisted equity shares of such companies (a) which are engaged in providing project management and incidental services related to infrastructure development, exclusively to the InvIT, its HoldCo and SPVs; and (b) ownership of which is held by the InvIT, its HoldCo and/or SPVs. This allows InvITs to invest in ecosystem entities that support project execution and operations.
- ii. *Select Liquid Mutual Funds*: Investment in units of liquid mutual fund schemes is permitted, provided that (a) the credit risk value is at least 12, and (b) the scheme falls under class A-I in the potential risk class matrix, as specified by SEBI. This narrows the scope of acceptable mutual fund investments to low-risk, high-quality instruments.
- iii. *Interest Rate Derivatives*: InvITs may now invest in interest rate derivatives, including (a) interest rate futures; (b) forward rate agreements; and (c) interest rate swaps. These instruments may assist InvITs in managing interest rate risk, especially in relation to floating-rate borrowings or refinancing strategies.

These changes reflect SEBI's intent to ensure that the InvITs maintain a disciplined and purpose-aligned investment profile, while allowing for greater flexibility in risk management and operational structuring. By refining the categories of permissible investments and introducing interest rate hedging instruments, SEBI has moved toward a more mature regulatory framework that supports both investor protection and portfolio optimisation.

Expanded Role and Responsibilities of the Trustee – Introduction of Regulation 9(23)

Chapter III of the SEBI InvIT Regulations outlines the rights and responsibilities of stakeholders of an InvIT. Pursuant to the Amendment, SEBI has introduced sub-regulation (23) under Regulation 9, significantly expanding the scope of the Trustee's obligations.

This amendment moves beyond prescriptive provisions by introducing core governance principles that the Trustee must uphold, such as transparency, accountability, compliance oversight, due diligence, and effective supervision of the Investment Manager. The aim is to establish a more principles-based governance framework that enhances trust and investor confidence in InvITs.

Introduction of Schedule X – Indicative Responsibilities

To support this shift, SEBI has issued Schedule X, which sets out an indicative list of additional responsibilities for the Trustees. These responsibilities are meant to be illustrative, not exhaustive, and the Trustee is expected to undertake additional measures where necessary to uphold the overarching governance principles. Some of the notable additions include:

1. *Trustee's role in managing assets*: SEBI has, *inter alia*, indicated that the Trustee should conduct regular physical inspections of the InvIT assets.

It can be assumed that it is an extension to the requirement of full valuation of every InvIT asset, at least once every financial year, including the physical inspection of every infrastructure project.

2. *Trustee's role in regulatory compliance and reporting requirements*: SEBI has, *inter alia*, indicated that the Trustee shall provide periodic confirmations to SEBI that the Trustee has not engaged in transactions involving the units of the InvIT that it oversees.

While this reporting requirement did not exist earlier, the Amendment does not specify the format of confirmation or the extent of the Trustee's involvement in transactions that should be reported.

3. *Trustee's role in due diligence*: SEBI now requires the Trustee to exercise due diligence in relation to the appointment of the directors on the board of directors of the Investment Manager (IM Board), ensure test checks of service contracts and report any special developments to the Unitholders of the InvIT.

SEBI has also enhanced the due diligence obligations of the Trustee, in terms of, *inter alia*, (a) obtaining audit and secretarial compliance reports, (b) reviewing the activity of the InvIT on a quarterly basis and submitting a report on the same before their board of directors, and (c) communicating in writing to the Investment Manager of the deficiencies and monitoring the necessary measures being taken to rectify the deficiencies.

These duties represent a significant increase in Trustee accountability, marking the first time Trustees are being tasked with such direct involvement in the operational and compliance aspects of the InvIT.

The other responsibilities indicated by SEBI, mostly, are in tandem with the obligations of the Trustee under the extant provisions of the SEBI InvIT Regulations. Further, SEBI has allowed a period of 18 (eighteen) months from the date of publication of the Amendment, to comply with Regulation 9(23) of the SEBI InvIT Regulations and the Trustee is allowed to engage external consultants, in this regard. While further clarity from SEBI is awaited regarding retrospective application during the transition period, the amendment itself is a welcome move in terms of good governance practices and the equitable accountability of all the stakeholders in relation to an InvIT.

Other key amendments

Corporate Governance

SEBI has clarified the timeline for compliance in case the composition of the IM Board is rendered non-compliant by virtue of a vacancy. If the vacancy arises due to expiry of the director's term, the position must be filled on or before the date of such expiry. For vacancies arising from any other reason, the IM Board must fill the vacancy within three months from the date it arises. This timeline aligns with the requirements applicable to listed companies under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Additionally, SEBI has revised the scope of mandatory disclosures to the IM Board. Now, the minimum information placed before the IM Board must include quarterly results of the InvIT and its operating divisions or business segments, rather than those of the Investment Manager alone. This enhances board-level visibility into the performance of the underlying InvIT assets.

Distribution

A new clause (bb) has been introduced under Regulation 18(6), clarifying the calculation of net distributable cash flows. In addition to cash flows received from HoldCos (directly or through SPVs), InvITs must now include cash flows from all InvIT assets for the purposes of determining net distributable income.

Conclusion

The amendments to the SEBI InvIT Regulations, akin to the amendments to the SEBI (Real Estate Investment Trusts) Regulations, 2014 (SEBI REIT Regulations), have been testament to SEBI's attempt to build a coherent ecosystem for both equity as well as hybrid instruments. These reforms mark a deliberate move toward harmonising the regulatory landscape, aligning InvITs and REITs more closely with the applicable requirements to equity securities under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the SEBI Listing Regulations, to the extent possible.

By relaxing restrictions in relation to the InvIT and its units, and by increasing the accountability of the parties to the InvIT, SEBI is making tangible strides towards encouraging investors to extend investments into hybrid instruments. Notably, aligning the compliance framework for the Investment Managers with that of listed companies offers operational clarity and promotes regulatory parity, which may ultimately lead to improved compliance standards and investor protection.

As India's capital markets continue to mature and the investor base expands, these amendments encourage investments in hybrid instruments (which unlike equity investments, allow fractional

investments by the smaller retail investors). Aligning the applicable laws for the equity instruments and the hybrid instruments makes it easier for an investor to diversify its investment portfolio. Accordingly, the amendments are necessary to build stronger laws for these developing investment tools that encourage businesses to flourish in the Indian financial markets. In sum, these amendments represent an important step toward strengthening the legal and regulatory foundations for InvITs, encouraging capital formation, and supporting the broader goal of making India a robust and investor-friendly financial market.

- *Aayush Mohata (Partner) and Sarjana Das (Senior Associate)*



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