

REITs to be eligible financial instrument under FEMA

Background

- In order to promote funding of the infrastructure sector, the Indian Finance Minister in his Budget speech in July 2014 proposed the introduction of Real Estate Investment Trusts (REITs) and a modified REITs structure, i.e. Infrastructure Investment Trusts (InvITs). The Securities and Exchange Board of India (SEBI) notified the much awaited REIT/ InvITs regulations in September 2014.
- The actual investment in REITs has not occurred as the Foreign Direct Investment policy, Foreign Exchange Management Act, 1999 and the regulations framed thereunder did not permit foreign investment in completed rent-yielding real estate projects. Consequently, entities registered and regulated under the REITs/ InvITs Regulations notified by SEBI were not able to access foreign investments.

Key amendment

- The press release states that the intent to introduce REITs is to reduce the pressure on the Indian banking system which is the primary source of funding to the real estate sector, to help free up existing funds of banks and to encourage construction activities.
- The Union Cabinet, via a press release, has now announced its approval of REITs being considered as an eligible financial instrument/ structure under the exchange control regulations to attract long-term finance from foreign and domestic sources, including NRIs making available fresh equity to the real estate sector.
- The press release only makes reference to REITs, and there is no specific mention of InvITs. This could result in uncertainties as to whether foreign investment would be allowed in InvITs.

The press release should be followed by a formal circular/notification amending the law, and hopefully, it should be clarified that foreign investment is permitted in both, REITs and InvITs.

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