



India's new real estate and infrastructure trusts: The way forward

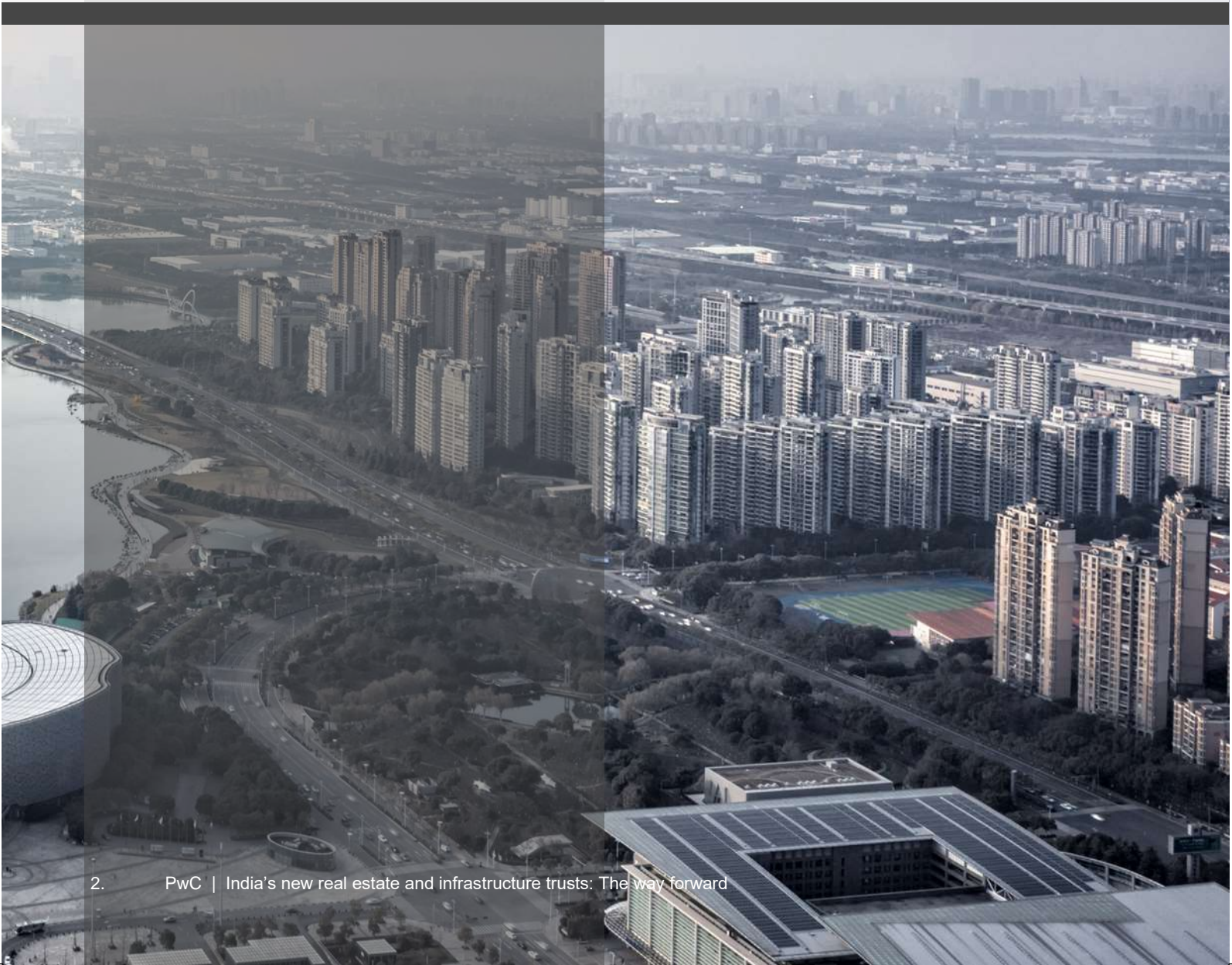
Fifth edition

July 2019



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Preface



Preface

Infrastructure and real estate are the two most critical sectors in any developing economy.

A well-developed infrastructural set-up propels the overall development of a country. It also facilitates a steady inflow of private and foreign investments, and thereby augments the capital base available for the growth of key sectors in an economy, as well as its own growth, in a sustained manner. A robust real estate sector, comprising sub-segments such as housing, retail, hospitality and commercial projects, is fundamental to the growth of an economy and helps several sectors develop significantly through the multiplier effect.

However, both these sectors need a substantial amount of continuous capital for their development.

Currently, India's real estate sector is the second largest employer in the country after agriculture and is slated to grow at a steady pace over the next decade. At the same time, the infrastructure sector, which includes segments such as energy, transport, water and sanitation, communication, and social and commercial infrastructure, is the focus area for key policymakers, banks and corporates to formulate and implement regulations. This is expected to ensure the time-bound creation of world-class infrastructure in the country. India's real estate industry has witnessed a paradigm shift from traditional finance to an era of structured finance, private equity and public offering.

Given the importance of these two sectors in the country and the paucity of public funds available to stimulate their growth, it is imperative that additional channels of financing are put in place.

Real estate investment trusts (REITs) and Infrastructure investment trusts (InvITs) are investment vehicles that can be used to attract investment in the infrastructure and real estate sectors, and also relieve the burden on formal banking institutions. Regulations governing REITs and InvITs were introduced in India in 2014 and have been amended over a period of time in an endeavour to align them with stakeholders' expectations.

This report aims to provide an overview of the market for REITs and InvITs in India, and the benefits that accrue to various stakeholders by investing in these investment vehicles. It also elaborates on regulations governing the structure of these instruments in India and compares REIT markets across major countries in the world.

I hope this report is a useful reference point for you on India's REIT and InvIT regulations and that you enjoy reading it.

Regards,

Gautam Mehra

Leader, Tax and Regulatory Services

PwC India

Preface

On 1 April 2019, the very first Indian REIT was listed from Embassy Blackstone and was oversubscribed 2.5 times. This has been a culmination of efforts from industry stakeholders, APREA, the government, and the capital markets regulator, Securities and Exchange Board of India (SEBI) and our trust in REITs as a product that can offer higher income returns than fixed-income investment and remains relatively stable through periods of fluctuating economic cycles.

This represents a new asset class and could pave the way for many more REITs in India that will unlock the potential of the India's real estate industry and open up the avenues for upcoming asset classes like co-living, co-working, and student housing amongst others.

REITs in India, if encouraged for individual retail investors, can change the nature of property investment, giving individual retail investors easy access to high-value property, which was a domain previously reserved for large institutional investors.

SEBI's creation of a robust REIT framework and the Embassy REIT paves the way for many international investors to the tremendous opportunities offered by the fastest-growing large economy in the world. Moreover, Asian REITs account for more than 15% of listed real estate exposure in Asia with possibilities galore.

APREA as an industry association along with its partners and members and through educational programmes will ensure wider understanding and acceptability for investing in REITs in India.

This is the fifth edition of the REITs and InvITs primer, which gives an overview of regulations and taxes. We thank PwC India for providing support and revising this document, encapsulating the changes that are announced impacting the regulations.

Sigrid Zialcita

CEO

Asia Pacific Real Estate Association

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Introduction



Introduction

Since the turn of the century, infrastructure has been considered the sunshine sector in India, and has played a pivotal role in helping the country emerge as one of the fastest growing economies in the world. Moreover, the public private partnership (PPP) model introduced by the Indian government in the sector has attracted domestic as well as foreign investment and stimulated the economy.

The global financial crisis in 2008, coupled with factors such as the weak macroeconomic and inflationary environment in India, a policy gridlock, delays in land acquisition and environment clearances, and political instability, had led to the sluggish growth of the sector in the recent past. However, since 2014, it has been witnessing a revival on account of several reform measures undertaken by the Indian government. The liberalisation of foreign direct investment (FDI) rules for the real estate sector, opening up of the domestic fund industry to foreign investment and the enactment of the Real Estate (Regulation and Development) Act, 2016, have brought vigour and vitality to this industry.

Furthermore, the Indian government's strong resolve to provide housing for all by 2022 and the development of smart cities have led to increasing activity in this sector. The real estate sector in India is expected to reach a market size of USD 1 trillion by 2030.¹ With a majority Government having been re-elected at the federal level in May 2019, we can expect even stronger growth on this front.

Keeping in mind the necessity for additional capital requirements in the sector, the Securities and Exchange Board of India (SEBI) took an innovative step and introduced Infrastructure Investment Trusts Regulations, 2014 (InvIT Regulations), for infrastructure projects. These regulations have been in effect since 26 September 2014, and are expected to alleviate the burden on the banking system by making available fresh and patient capital for the infrastructure sector.

The real estate sector is closely related to infrastructure and is fundamental to its growth. And given the capital-intensive nature of this sector and the limited options available to real estate developers and owners for raising funds, REITs offer a way forward.

In general terms, a REIT is an investment vehicle that owns and operates real estate-related assets, and allows individual investors to earn income produced through ownership of commercial real estate without actually having to buy any assets. Typically, the income-producing real estate assets owned by a REIT include office buildings, shopping malls, apartments, warehouses and mortgaged property.

REITs were first introduced in the US in the early 1960s and have since then been adopted as a preferred investment mode across the world. Over the years, they have constructively changed the way in which the real estate market operates, benefitting investors as well as real estate developers.

In India, SEBI introduced its draft REIT regulations in 2007. Over the years, the regulator has done a commendable job of structuring these regulations by closely partnering with important stakeholders, government bodies, investors and real estate developers in the country, and bringing them in sync with globally recognised norms. After considerable modifications, Real Estate Investment Trusts Regulations, 2014 (REIT Regulations), were enacted in India on 26 September 2014. The listing of India's maiden REIT in April 2019 has broken the ice in the Indian REIT industry. India's maiden REIT offering closed on 1 April 2019 at INR 314.10 per unit on the stock exchange, up by 4.7% from its issue price of INR 300 per unit². The encouraging response and good listing has paved the way for many real estate enterprises with a substantially large portfolio of rent-yielding properties to set up their own Indian REIT.

SEBI has devised detailed guidelines governing the markets for investments, covering the following:

- Eligibility of the sponsor (the person who sets up the REIT or InvIT), the manager of the trust and the trustee
- Investment conditions such as the ratio of the value of income-generating assets as well as other assets
- Policies and requirements with respect to distribution of dividends, minimum capital required for an initial public offer (IPO), listing requirements, key responsibilities of the parties to the trust, etc.

It is interesting to note that the regulatory regime governing these investment vehicles in India is similar to those in other developed and developing countries, especially with respect to distribution policies, capital requirements, etc.

¹ IBEF. (2019). Indian real estate industry. Retrieved from <https://www.ibef.org/industry/real-estate-india.aspx>

² Business Today article. Retrieved from <https://www.businesstoday.in/current/corporate/story/333117.html>

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REITs and InvITs: Key advantages



REITs and InvITs: Key advantages

Over the last decade, REITs and InvITs have developed into a mature market, providing easy access to high-quality assets and enabling a stable return on investments. The number of countries offering REITs as an investment vehicle has increased to 38 with a total market capitalisation of almost USD 1.7 trillion. Countries such as Australia, Belgium, Canada, France and Germany are said to have 'established REIT markets'. The recent popularity of these investment channels is driven by the multiple benefits they offer multiple stakeholders.

Stakeholders and parameters		Benefits
Developers	Liquidity	<p>REITs and InvITs facilitate the following:</p> <ul style="list-style-type: none"> • An increase in entry and exit opportunities for developers, asset owners and financial investors, enabling them to monetise their assets (real estate or projects) • Availability of last-mile funding for stalled projects
	Business	<ul style="list-style-type: none"> • Transformation of business from an asset-heavy to asset-light model • Focus on core competencies, and segregation of operations and infrastructure • Capital-raising avenues for developers of small companies
Investors	Retail investors	<ul style="list-style-type: none"> • Facilitation of easy entry and exit in the real estate sector • Small retail investors able to participate in asset classes that are normally unaffordable for them • Additional income generating and stable investment avenues offered for retirement planning • Diversification of investment holdings enabled to help financial and strategic investors manage risk • Risk management strengthened by allowing holding of multiple assets to reduce concentrated asset risk • Fragmentation of real estate asset holdings with multiple owners avoided, leading to focussed high-quality asset maintenance • Forced strata sale of assets at discounted valuation discouraged
	Broad-based institutional investors	<ul style="list-style-type: none"> • Facilitation of easy entry and exit for existing financial investors • Alternative financing offered • Low-risk investments offered to attract long-term investors such as insurance and pension funds

Stakeholders and parameters		Benefits
Macroeconomy	Capital markets	<ul style="list-style-type: none"> • Development of primary and secondary capital markets by the establishment of a perpetual structure for raising capital at a reduced cost from long-term patient investors • Replacement of bank debt with long-term equity capital • Decrease in the financing burden on banks by reducing exposure to real estate/infrastructure, thereby enabling the creation of additional capital for other sectors
	Corporate governance	<ul style="list-style-type: none"> • Improvement in transparency, disclosure standards and professionalism within the sector • Informed decision-making enabled for investors
	Government	<ul style="list-style-type: none"> • Augmentation of the government's revenues • Increased financing for critical sectors, including transportation and energy, and a boost to its vision for 100 smart cities
	Societal benefits	<p>REITs and InvITs augment direct and indirect employment opportunities through the following:</p> <ul style="list-style-type: none"> • Fund management services • Project management and operation • Property management and operation • Valuation services • Trusteeship services • Assurance and other professional services

Various characteristics of the Indian economy are conducive to the growth of these markets in the country, the significant ones being a growth rate of over 6.5%.³ This, coupled with other factors such as availability of land, has led to a significant rise in the interest taken by private equity firms in the Indian real estate sector in particular. To illustrate this further, between 2009 and October 2018, Indian real estate sector attracted institutional investments worth USD 30 billion. Private equity and venture capital investments in this sector reached USD 4.47 billion in 2018 and USD 546 million in January–February 2019.⁴

³ Ministry of Finance. (2018). Economic Survey 2017-2018. Retrieved from <https://mofapp.nic.in/economicsurvey/economicsurvey/index.html>

⁴ IBEF. (2019). Indian real estate industry. Retrieved from <https://www.ibef.org/industry/real-estate-india.aspx>

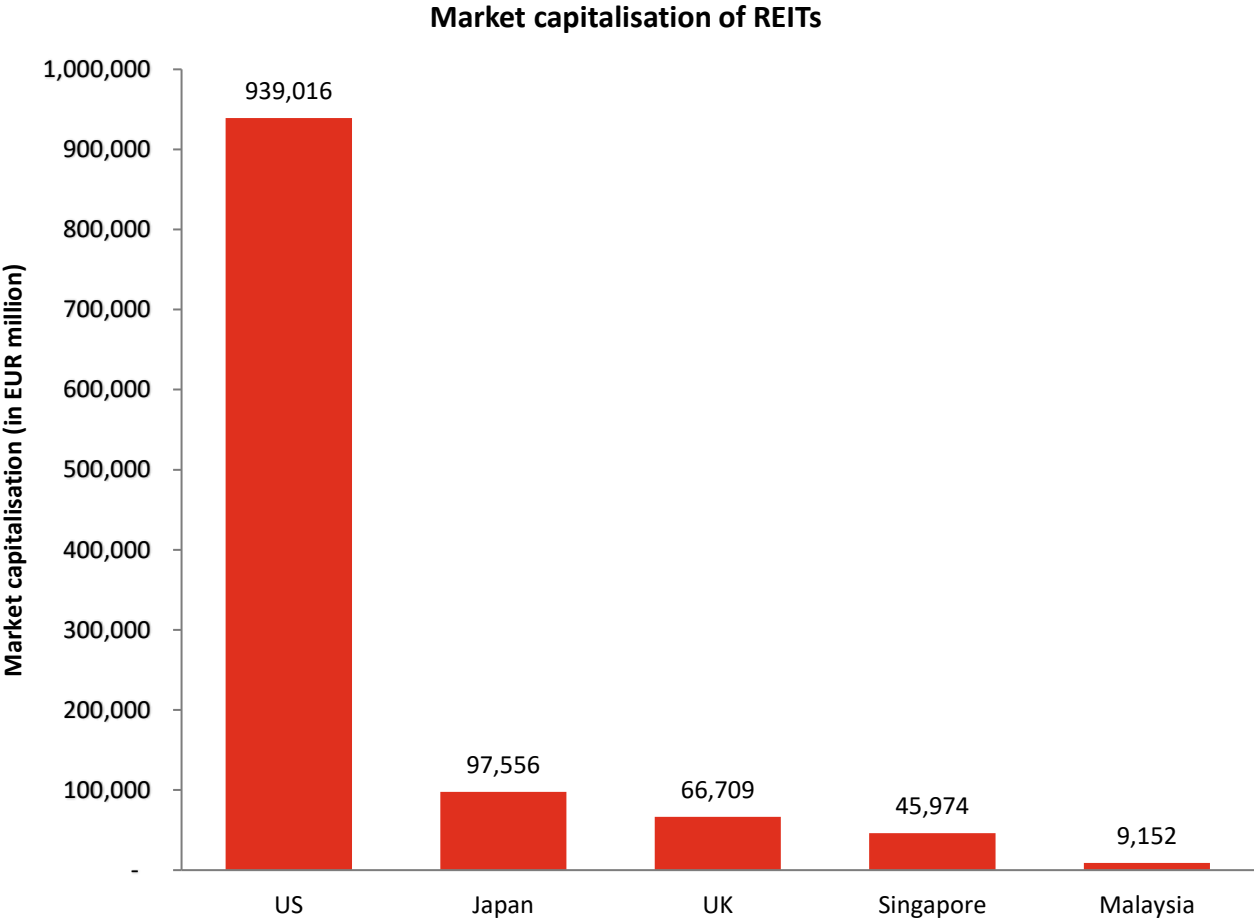
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Cross-country REIT markets



Cross-country REIT markets

Since the inception of REITs in the US in the 1960s, several countries around the world, developed as well as emerging markets, have introduced these instruments in their jurisdictions. The table below highlights similarities and differences in five countries—the US, Japan, the UK, Singapore and Malaysia. While there are many similarities in the basic structure of this investment vehicle—for instance, with respect to the distribution policy on returns—its growth varies across these countries. The US and Australia, which were the first two to introduce REITs, have witnessed high growth in their REIT markets, possibly due to the tax reforms they introduced. Market capitalisation in some countries, including Malaysia, where the REIT market (Property Trust Funds in 1989) started late, is relatively untapped, compared to other countries such as Singapore. While the market is nascent and still evolving in India, key guidelines—for instance, with respect to distribution of income—are the same as in other jurisdictions.



Source: EPRA Reporting, Global REIT Survey 2018

Country	Inception	Number of listed REITs	Market capitalisation (in USD million [in EUR million [#]])	Requirements	Key highlights
USA	1960	200	1,069,815 [~939,016]	<ul style="list-style-type: none"> No capital requirements No listing requirements Minimum 100 shareholders No restrictions on ownership by foreign investors No legal restrictions on leverage At least 90% of ordinary taxable income to be distributed Permitted to invest in non-US real estate 	<ul style="list-style-type: none"> REIT Modernization Act, 2001, which emphasised creation of REIT subsidiaries.
Japan (J-REIT)	2000	61	111,145 [~97,556]	<ul style="list-style-type: none"> Minimum share capital of JPY 100 million (~USD 9,31,643⁵) No listing requirements Number of units expected to be held by the '10 largest J-REIT shareholders' at the time of initial listing needs to be 75% or less of the total Number of investors (other than the '10 largest J-REIT shareholders') to be at least 1,000 A J-REIT to pay out dividends of over 90% of its distributable profits 	<ul style="list-style-type: none"> Provides for two different types of investment vehicles – investment trusts and investment corporations (<i>toshi hojin</i>)
UK	2007	52	76,001 [~66,709]	<ul style="list-style-type: none"> Minimum share capital of GBP 700,000 (~USD 890,612⁶) It must be a tax resident in the UK Mandatory listing on a stock exchange recognised by UK tax authorities A UK REIT cannot be 'close' or under a few investors' control (not to apply for the first 3 years) No restrictions on ownership by non-resident investors (but limitations imposed on companies' shareholdings, if any) At least 90% rental profits to be paid out 	<ul style="list-style-type: none"> Reforms to relax listing requirements; provisions implemented to enable a UK REIT to invest in another UK REIT, three-year grace period for REITs to become widely held and not be 'close', abolition of entry charge

⁵ Exchange rate of USD 1 = JPY 107.337 as on 23 June 2019. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=100%2C000%2C000&From=JPY&To=USD>

⁶ Exchange rate of USD 1 = GBP 0.7860 as on 23 June 2019. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=700%2C000&From=GBP&To=USD>

Country	Inception	Number of listed REITs	Market capitalisation (in USD million [in EUR million [#]])	Requirements	Key highlights
Singapore (S-REIT)	1999	35	52,378 [~45,974]	<ul style="list-style-type: none"> Regulated by the Securities and Futures Act (Cap. 289) Minimum market capitalisation of SGD 300 million (~USD 221.33 million⁷) No listing requirement in principle; however, listing is required for tax concessions At least 25% of share capital to be held by a minimum of 500 public shareholders in the case of S-REITs denominated in SGD No restrictions on ownership of non-resident investors and on foreign assets At least 90% of taxable income (generally refers to rental income from property in Singapore) to be paid out to investors for the S-REIT to be eligible for 'tax transparency' treatment 	<ul style="list-style-type: none"> S-REIT tax regime designed to offer concessions for S-REITs in the form of tax transparency treatment (i.e. flow through treatment) for specified income—e.g. income from management/holding of immovable property, including rental and ancillary income (excluding income on exit) in Singapore, exemption from tax for certain foreign sourced income that is remitted to Singapore
Malaysia	1989	18	10,427 [~9,152]	<ul style="list-style-type: none"> Regulated by the Securities Commission of Malaysia (SC) Minimum fund size of MYR 100 million (~USD 24.09 million⁸) No mandatory listing requirements Only REITs registered with SC to be listed on Bursa Malaysia No requirement regarding number of investors No restrictions on ownership by non-resident investors At least 90% of total income to be distributed Repatriation to be made in foreign currency other than the currency of Israel 	<ul style="list-style-type: none"> Growing market in REITs, although pace is slow

Exchange rate of EUR 1 = USD 1.1394 as on 23 June 2019. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=1&From=EUR&To=USD>

⁷ Exchange rate of USD 1 = SGD 1.3555 as on 23 June 2019. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=300%2C000%2C000&From=SGD&To=USD>

⁸ Exchange rate of USD 1 = MYR 4.1509 as on 23 June 2019. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=100%2C000%2C000&From=MYR&To=USD>

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REIT / InvIT regulations: An overview



A detailed analysis of regulations relating to REITs and InvITs will help those interested in taking advantage of these investment vehicles.

REIT regulations

A. Key aspects

1. Eligibility

Sponsor (person who sets up a REIT)

- No maximum limit on the number of sponsors
- Concept of 'sponsor group' included in the REIT Regulations
- Consolidated net worth of sponsors to be at least INR 1,000 million (~USD 14.36 million⁹), with each sponsor's net worth being at least INR 200 million (~USD 2.87 million)
- Sponsor or its associates to have minimum experience of five years in the development of real estate or real estate fund management
- Track record of at least two completed projects for a developer sponsor

Manager (company, LLP or body corporate)

- Minimum net worth of INR 100 million (~USD 1.44 million)
- Manager or its associates to have minimum experience of five years in fund management or advisory or property management in the real estate sector or real estate development
- A minimum of two key personnel with minimum five years of experience in fund management, advisory or property management in the real estate sector or real estate development
- The manager has not less than half of its directors/governing board as independent and not directors/managers of the manager of another REIT.

Trustee

- Registered with SEBI, and not an associate of the sponsor(s) or manager

2. Key investment conditions

Asset-related conditions

- At least 80% of the value of REIT assets to be invested in completed and rent and/or income-generating real estate, with a lock-in period of three years from the purchase date
- A maximum of 20% of the total value of REITs can be from:
 - Under construction properties with a lock-in period of three years after completion and completed but non-rent generating properties with a lock-in period of three years from the date of purchase
 - Listed or unlisted debt of real estate companies (other than investment in debt of Hold Co/SPV)
 - Mortgage-backed securities
 - Equity shares of listed companies in India, generating at least 75% of their operating income from real estate activities

⁹ Exchange rate of USD 1 = INR 69.6530 as on 23 June 2019 has been used for the purpose of converting INR to USD in 'REIT/InvIT regulations: An overview'. (Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=1&From=USD&To=INR>)

A. Key aspects

- Unlisted equity shares of companies deriving at least 75% of their operating income from real estate activities (investment through unlisted equity shares in under construction properties to be locked in for three years after completion and in completed but non-rent generating properties to be locked in for three years from the date of purchase)
- Government securities
- Unutilised floor space index (FSI) and transferable development rights (TDR) with respect to existing investments
- Cash or money market instruments

Additional conditions

- Direct holding of real estate assets in India or through a special purpose vehicle (SPV) or a two-level structure through a holding company (Hold Co)
 - Investment through a Hold Co should be subject to the following requirements:
 - Ultimate holding interest of the REIT in the underlying SPVs to be at least 26%
 - Other shareholders / partners of the Hold Co/SPV should not restrict the REIT, Hold Co or SPV from complying with the REIT regulations, and an agreement has been entered into with such shareholders/partners to that effect. Such an agreement to also provide for a dispute resolution mechanism between REIT and the shareholders/partners
 - The manager, in consultation with the trustee, shall appoint at least such number of nominees on the board of a Hold Co and/or SPV which are in proportion to the holding interest of the REIT / Hold Co in the Hold Co / SPV
 - In every meeting of a Hold Co and/or SPV, the voting of the REIT shall be exercised
 - Investment not permitted in vacant land, mortgages or agricultural land (with certain exceptions)
 - At least 51% of the consolidated revenue of the REIT, Hold Co and SPV to be from rental, leasing and letting out of assets, or incidental revenue
 - Investment in other REITs or lending (except lending to Hold Co/SPV) not permitted
 - Unitholder's approval required for disposal of a REIT's/Hold Co's/SPV's assets or interest in the SPV if it exceeds 10% of the value of the REIT assets in a financial year
 - Co-investment permitted subject to conditions
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A. Key aspects

- | | |
|--------------------------------|--|
| 3. Distribution policy | <ul style="list-style-type: none">• Minimum of 90% of the net distributable cash flow of a REIT to be distributed to unitholders• Minimum net distributable cash flows to be distributed by a Hold Co to a REIT (subject to provisions of the Companies Act, 2013, or Limited Liability Partnership Act, 2008, where applicable):<ul style="list-style-type: none">– 100% of cash flows received from SPVs; and– 90% of the balance• An SPV to distribute a minimum of 90% of its net distributable cash flows to a REIT/Hold Co (subject to provisions of the Companies Act, 2013, or Limited Liability Partnership Act, 2008, as applicable).• A REIT is to distribute at least 90% of the sale proceeds arising from the sale of property or equity shares/interest in a Hold Co/SPV, unless reinvestment is proposed within a period of 1 year• Distribution to be undertaken at least once every six months |
| 4. Public offer | <ul style="list-style-type: none">• Minimum value of REIT assets: INR 5,000 million (~USD 71.79 million)• Slabs for minimum public float:<ul style="list-style-type: none">– If post-issue capital is less than INR 16,000 million (~USD 229.71 million): 25% of the post-issue capital or INR 2,500 million (~USD 35.89 million), whichever is higher– If post-issue capital is equal to or more than INR 16,000 million (~USD 229.71 million) but less than INR 40,000 million (~USD 574.28 million): Minimum INR 4,000 million (~USD 57.43 million)– If post-issue capital is equal to or more than INR 40,000 million (~USD 574.28 million): Minimum 10% of the post-issue capital– However, the public float in all cases shall be increased to a minimum of 25% of the post-issue capital within a period of three years from the date of listing• Minimum subscription amount: INR 50,000 (~USD 717.85) per applicant• Trading lot: 100 units |
| 5. Listing requirements | <ul style="list-style-type: none">• Mandatory listing within 12 working days of the IPO• Minimum public subscription: 90% of the fresh issue size• Minimum number of subscribers: 200 at the time of public offer (other than sponsors, its related parties and associates of the REIT). Further, a qualified institutional buyer shall be deemed to be a public subscriber even if it is a related party of the REIT. |
| 6. Strategic investor | <ul style="list-style-type: none">• A strategic investor means an infrastructure finance company registered as an NBFC, scheduled commercial bank, international multilateral financial institution, systemically important NBFC or FPIs who can invest, jointly or severally, a minimum of 5% or a maximum of 25% of the total offer size by the REIT.• Lock-in period – 180 days from date of listing of public issue• Draft offer document to mention details of strategic investor |

A. Key aspects

	<ul style="list-style-type: none">• The unit price for the strategic investor should be greater than or equal to the public issue price. If the strategic investor price is less than the public issue price, the strategic investor has to make an additional investment. If the strategic investor price is higher than the public issue price, no refund would be issued to him/her.• If public issue fails due to minimum subscription, the strategic subscription agreement has to be terminated
7. Leveraging	<ul style="list-style-type: none">• Aggregate consolidated borrowings and deferred payments of the REIT, Hold Co and SPV(s) net of cash and cash equivalents (not including refundable security deposits to tenants) to be capped at 49% of the value of the REIT's assets• Such net consolidated borrowings and deferred payments of the REIT, Hold Co and SPV(s) higher than 25% of the REIT's assets to be subject to the following:<ul style="list-style-type: none">– Credit rating (no minimum rating prescribed)– Approval of the unitholders (where the number of votes cast in favour are more than the number of votes cast against)
8. Related party transactions	<ul style="list-style-type: none">• Permission granted subject to the following:<ul style="list-style-type: none">– Arm's-length requirement being met– Specified disclosures made to unitholders and the stock exchange– Valuation reports or fairness opinions obtained from independent valuers in the case of specified transactions (for instance, buying and selling of assets)– Unitholder's approval required for the following:<ul style="list-style-type: none">• Acquisition or sale of properties/investments from or to related parties (whether directly or through the Hold Co/SPV), the total value of which in a financial year exceeds 10% of the value of the REIT; and• Borrowings from related parties in a financial year exceeding 10% of total consolidated borrowings of the REIT, Hold Co and SPV(s)
9. General purpose	<ul style="list-style-type: none">• Maximum 10% of the amount raised by a REIT by public issue of units can be used for 'general purposes', as mentioned in the offer document• Issue-related expenses not to be considered as a part of general purposes
10. Key rights and responsibilities	<p>Sponsor(s) and sponsor groups</p> <ul style="list-style-type: none">• Setting up a REIT and appointing a trustee• Transferring or undertaking to transfer assets, interests and rights in the Hold Co/SPV to the REIT before allotment of units to applicants

A. Key aspects

- Sponsors and sponsor group shall collectively hold:
 - Minimum of 25% of the total units of a REIT on a post-issue basis for a period of three years from initial offer (one year lock-in period for post-IPO holding in excess of 25%);
 - Minimum of 15% of the outstanding units of a listed REIT at all times; and
 - Each sponsor shall hold a minimum of 5% of the outstanding units of a REIT at all times
- Divestment of 15% continued holding subject to the following:
 - Completion of a three-year lock-in period from the listing date
 - Another sponsor acquiring the minimum holding with the prior approval of the unitholders or the unitholders being given an option to exit
 - Not to apply where divestment is by way of sale to an existing sponsor

Manager

- Ensuring that a REIT's, Hold Co's and SPV's assets have proper legal, binding and marketable titles and agreements
- Identifying and recommending investment opportunities
- Complying with the conditions and strategy mandated for the investment
- Appointing other service providers in consultation with trustee
- Undertaking lease and property management (directly or through agents)
- Ensuring that a REIT's assets are adequately insured
- Addressing unitholder's grievances and distribution-related issues
- Ensuring annual audit of a REIT's accounts by an auditor
- Overseeing developmental activities
- Providing activity and performance reports every three months to its board or governing board
- Ensuring adequate disclosure and timely submission of documents to the concerned stock exchange
- Maintaining records pertaining to activities of the REIT for a minimum period of seven years

Trustee

- Appointing a manager and executing his or her agreement
 - Overseeing the manager's activities and operations and obtaining compliance certificates on a quarterly basis
 - Reviewing related party transactions
 - Obtaining unitholders' approval on specified matters
-

B. Other aspects

1. Legal form

- A REIT is to be mandatorily set up as a trust
- No other form of entity (e.g. a company or LLP permitted)

2. Key definitions

Sponsor group

- Sponsor group includes:
 - Sponsor
 - Where the sponsor is a body corporate:
 - Entities / persons controlled by such body corporate
 - Entities / persons controlling such body corporate
 - Entities / persons controlled by entities/persons controlling such body corporate
- Where the sponsor is an individual:
 - immediate relatives of such individual (i.e. spouse of that person, parents, brother, sister or child of the person or of the spouse of the person)
 - entities/persons controlled by such individual

Completed property

- Property for which occupancy certificate has been granted by the relevant authority

Real estate or property

- Land and any permanently attached improvements made to it, whether leasehold or freehold, including buildings, sheds, fittings and any other assets incidental to the ownership of real estate
- Hotels, hospitals and convention centres, forming part of composite real estate projects, whether rent generating or income generating
- Common infrastructure for composite real estate projects, industrial parks and special economic zones (SEZs)
- Excluding mortgages and any asset considered as 'infrastructure', as defined by the Ministry of Finance

Related party

- The definition of 'related party' for REIT Regulations has been aligned with the definition provided in the Companies Act, 2013, and under applicable accounting standards and also includes:
 - Sponsor group(s), re-designated sponsor(s), manager and trustee; and
 - Promoters, directors and partners of the sponsor group(s), re-designated sponsor(s), manager and trustee

Hold Co

- A company or an LLP in which a REIT holds or proposes to hold at least 50% of the equity share capital/interest
- Not engaged in any activity other than holding of underlying SPVs / real estate assets

B. Other aspects

SPV

- A company or an LLP in which a REIT or Hold Co holds or proposes to hold an equity stake or interest of at least 50%
- 80% of the assets to be investment in properties which should be directly held by such an SPV
- Not allowed to be engaged in any activity other than holding and developing property and any incidental activity

3. Valuation

- Complete valuation of a REIT (in the prescribed format) to be undertaken at least once every financial year
- Valuer to have minimum experience of five years
- Valuer not to be an associate of the sponsor, manager/trustee
- Half-yearly valuation of REIT assets to be conducted for the half year ending 30 September
- Complete valuation to be undertaken for purchase or sale of property; unitholders' approval needed if:
 - The acquisition price is more than 110% of the valuation
 - The sale price is less than 90% of such valuation
- Two-year cooling-off period for the valuer after every four consecutive years of valuation being done of the same property
- Valuer's remuneration not to be linked to the value of the asset

4. Governance aspects

- Unitholders' meetings to be convened at least once every year within 120 days from the end of the financial year, with the gap between two meetings not exceeding 15 months
- Generally, a resolution to be considered as passed if unitholders casting votes in favour are more than those casting votes against it
- Certain specified matters (for instance, a change in the manager or sponsor, or delisting) to ensure that votes being cast in favour are at least 1.5 times the votes cast against
- Annual report to be provided to unitholders within three months from the end of the financial year; half-yearly report to be given within 45 days from 30 September
- Price-sensitive information as well as that having a bearing on operations or the performance of a REIT to be disclosed to the stock exchange

5. Others

- Multiple classes of REIT units not permitted
 - However, subordinate units carrying inferior rights may be issued to sponsor(s) and their associates
 - Parity to be maintained between unitholders (no preferential voting or other rights among unitholders)
-

InvIT regulations

A. Key aspects

1. Eligibility

Sponsor (person who sets up an InvIT)

- No maximum limit on the number of sponsors
- Consolidated net worth or net tangible asset of at least INR 1,000 million each (~USD 14.36 million)
- A minimum of five years' experience in infrastructure development or fund management in the infrastructure sector
- Track record of at least two completed projects in the case of a developer sponsor

Investment manager

- Minimum net worth or net tangible asset of INR 100 million (~USD 1.44 million)
- Minimum five years' experience in fund management or advisory or development activities in the infrastructure sector
- Minimum of two employees with the five years of experience mentioned above
- Minimum of one employee with at least five years' experience in sub-sector(s) relevant to the investment of the InvIT
- The investment manager has not less than half of its directors / governing board as independent and not directors/members of an investment manager of another InvIT.

Trustee

- Registered with SEBI and not related to the sponsor or investment manager

2. Key investment conditions

Asset-related conditions

- At least 80% of the value of a public InvIT to be invested in 'completed and revenue-generating' infrastructure projects
- At least 80% of the value of privately placed InvITs (listed as well as unlisted) to be invested in 'eligible infrastructure projects'
- A maximum of 20% of the total value of InvITs can be from:
 - Under construction infrastructure projects — directly or through an SPV (with an investment cap of 10% of the value of the InvIT)*
 - Listed or unlisted debt of the companies in the infrastructure sector (other than debt of Hold Co/SPV)
 - Equity of listed companies in India generating at least 80% of their income from the infrastructure sector
 - Government securities, money market instruments, liquid mutual funds or cash equivalents

***Additional investment flexibility for privately placed InvITs (listed as well as unlisted) to invest more than 10% of the value of InvIT assets in under construction projects. However, all privately placed InvITs are to raise funds through private placement from institutional investors and body corporates.**

A. Key aspects

Additional common conditions

- Direct holding of infrastructure projects in India or through a Hold Co / SPV but investment in PPP projects to be mandatorily made through an Hold Co / SPV
- Investment through a Hold Co to be subject to the following:
 - Ultimate holding interest of an InvIT in SPVs to be at least 26%
 - Other shareholders/partners do not restrict an InvIT, Hold Co/SPV from complying with the InvIT regulations, and an agreement has been entered into with such other shareholders/partners to that effect. Such an agreement to also provide for a dispute resolution mechanism between the InvIT and the shareholders/partners
 - Investment manager shall appoint majority of the board members of a Hold Co and SPV
 - In every meeting of a Hold Co/SPV, the voting of the InvIT shall be exercised
- Investment in other InvITs or lending not permitted (lending to Hold Co / SPV permitted)
- An InvIT is to hold the infrastructure assets (directly or through a Hold Co / SPV) for at least three years
- Co-investment permitted, subject to conditions

3. Distribution policy

- A minimum of 90% of the net distributable cash flows of an InvIT
- Minimum net distributable cash flows to be distributed by a Hold Co to an InvIT:
 - 100% of cash flows received from SPVs
 - 90% of the balance
- An SPV to distribute at least 90% of the net distributable cash flow to an InvIT/Hold Co (subject to the provisions of the Companies Act, 2013, or Limited Liability Partnership Act, 2008, as applicable)
- An InvIT is to distribute at least 90% of the sale proceeds arising from sale of infrastructure asset or equity shares/interest in a Hold Co/SPV, unless reinvestment is proposed within a period of one year
- Distributions to be disbursed at least once every six months in the case of publicly offered InvITs and at least once every year in privately placed InvITs

4. Fundraising through public offer of units

- Minimum value of InvIT assets: INR 5,000 million (~USD 71.79 million)
- Slabs for minimum offer size and public float:
 - If post-issue capital is less than INR 16,000 million (~USD 229,71 million): 25% of the post-issue capital or INR 2,500 million (~USD 35.89 million), whichever is higher
 - If post-issue capital is equal to or more than INR 16,000 million (~USD 229,71 million) but less than INR 40,000 million (~USD 574.28 million): Minimum INR 4,000 million (~USD 57.43 million)
 - If post-issue capital is equal to or more than INR 40,000 million (~USD 574.28 million): Minimum 10% of the post-issue capital

A. Key aspects

- However, the public float in all cases shall be increased to a minimum of 25% of the post-issue capital within a period of three years from the date of listing

- Minimum subscription amount: INR 0.1 million (~USD 14,357) per applicant
- Trading lot: Consists of 100 units
- Minimum number of unitholders (other than sponsors, its related parties and associates): 20 (each holding not more than 25% of the InvIT units)

5. Fundraising through private placement of listed units

- Minimum value of InvIT assets: INR 5,000 million (~USD 71.79 million)
- Minimum offer size: INR 2,500 million (~USD 35.89 million)
- Minimum subscription amount: INR 10 million (~USD 0.14 million) per applicant
- Trading lot: INR 10 million (~USD 0.14 million)
- Minimum unitholders (other than sponsors, their related parties and associates): 5 (each holding not more than 25% of the InvIT units)
- Maximum unitholders (other than sponsors, their related parties and associates): 1,000
- If a privately placed InvIT invests or proposes to invest 80% or more of the value of the InvIT assets in completed and revenue-generating projects:
 - Minimum investment from an investor shall be INR 250 million (~USD 3.59 million)
 - Trading lot shall be INR 20 million (~USD 0.29 million)

6. Listing requirements

- Mandatory listing within 12 working days of IPO and within 30 working days for privately placed units of listed InvITs
- Minimum subscription percentage in the case of public InvITs: 90% of the fresh issue size
- Retained oversubscription proceeds shall not be utilised towards 'general purposes' as defined in the offer document

7. Strategic investor

- A strategic investor means an infrastructure finance company registered as an NBFC, scheduled commercial bank, international multilateral financial institution, systemically important NBFC or FPIs who can invest, jointly or severally, a minimum of 5% or maximum of 25% of the total offer size by the InvIT.
- Lock-in period – 180 days from the date of listing of public issue
- Draft offer document to mention details of the strategic investor
- The unit price for the strategic investor should be greater than or equal to the public issue price. If the strategic investor price is less than the public issue price, the strategic investor is required to make an additional investment. If the strategic investor price is higher than the public issue price, no refund would be issued to the strategic investor.
- If public issue fails due to minimum subscription, the strategic subscription agreement has to be terminated.

A. Key aspects

- | | |
|---|---|
| 8. Fundraising through private placement of unlisted units | <ul style="list-style-type: none"> • Not eligible to be listed on recognised stock exchanges • Minimum investment from an investor shall be INR 10 million (~USD 0.14 million) • Nature of investors: Institutional investors and body corporates only • Maximum unitholders (other than sponsors, their related parties and associates): 20 • No cap on borrowings (subject to conditions as may be prescribed in the trust deed) • Relaxation from certain disclosure requirements applicable to privately placed listed InvITs specified |
| 9. Conversion of privately placed listed InvIT to unlisted InvIT | <ul style="list-style-type: none"> • Trustee and investment manager can choose to convert • Approval of unitholders required (at least 90% of unitholders by value). Additionally, exit to be provided to dissenting unitholders |
| 10. Leveraging (for listed InvITs) | <ul style="list-style-type: none"> • Aggregate net consolidated borrowing and deferred payments of the InvIT, Hold Co and SPV(s) to be capped at 70% of the value of InvIT assets • Aggregate net consolidated borrowings and deferred payments of the InvIT, Hold Co and SPV(s) could be higher than 25% but less than 49% of the value of InvIT assets, subject to the following: <ul style="list-style-type: none"> – Credit rating (no minimum rating prescribed) – Approval of unitholders (where the number of votes cast in favour is more than the number of votes cast against) • Aggregate net consolidated borrowings and deferred payments of the InvIT, Hold Co and SPV(s) could be higher than 49% of the value of InvIT assets, subject to the following: <ul style="list-style-type: none"> – Credit rating of AAA or equivalent – Utilise funds only for acquisition or development of infrastructure projects – Track record of at least 6 distributions on a continuous basis, post listing, in the years preceding the financial year in which the enhanced borrowings are proposed to be made – Approval of unitholders (75% of unitholders by value) – Valuation of InvIT assets shall be undertaken for the quarter ending June, September, and December |
| 11. Related party transactions | <ul style="list-style-type: none"> • Permitted subject to the following: <ul style="list-style-type: none"> – Transaction meeting arm's-length requirement – Specified disclosures made to unitholders and the stock exchange – Unitholders' approval is required for the following: <ul style="list-style-type: none"> • Acquisition or sale of properties/investment (whether directly or through a Hold Co or SPV), the total value of which in a financial year exceeds 5% of the value of InvIT assets • Borrowings from related parties in a financial year exceeding 5% of the total consolidated borrowings of the InvIT, Hold Co and SPV(s) |

A. Key aspects

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| General purpose | <ul style="list-style-type: none">• Maximum 10% of the amount raised by an InvIT by public issue of units could be used for 'general purposes', as mentioned in the offer document• Issue-related expenses shall not be considered as a part of general purposes |
|------------------------|---|

12. Key rights and responsibilities

Sponsor

- Setting up of an InvIT and appointment of a trustee
- Transferring or undertaking to transfer assets, interest and rights in the Hold Co/SPV to the InvIT prior to allotment of units to the applicants
- Minimum post-IPO holding to be at least 15% with:
 - Three-year lock-in period for 15% of the post-IPO holding
 - One-year lock-in period for the balance post-IPO holding
- Sponsors will be responsible to the InvIT for all acts, omissions and representations/covenants related to formation and transfer of assets/securities
- An InvIT / trustee shall have recourse to the sponsor for any breach with respect to the above
- Sponsor / associate of the sponsor shall act as project manager for a minimum period of three years, unless a suitable replacement is appointed by unitholders. However, this condition does not apply if the sponsors hold a minimum 25% stake on post-issue basis for at least three years from the date of listing

Investment manager

- Ensuring infrastructure assets have legally enforceable titles and material contracts are enforceable under the law
- Identifying and recommending investment opportunities
- Complying with investment conditions and strategy
- Overseeing project managers' activities
- Appointing other service providers in consultation with trustee(s)
- Ensuring InvIT assets are adequately insured
- Addressing unitholder's grievances and distribution made to them
- Ensuring audit of InvIT accounts by the auditor
- Providing an activity and performance report of the InvIT every three months to the board of directors or governing board, and undertaking other specified compliance measures
- Adequately disclosing and submitting documents to the stock exchange

Project manager

- Undertaking operation, management, maintenance and supervision of assets
- Undertaking project implementation in compliance with the terms of project implementation/project management agreement

A. Key aspects

Trustee

- Executing investment management agreement
- Overseeing manager's activities or operations, and obtaining a compliance certificate on a quarterly basis
- Reviewing related party transactions
- Appointing an investment manager and a project manager in identified circumstances
- Obtaining unitholder's approval in specified matters

B. Other aspects

1. Legal form

- InvIT to be mandatorily set up as trust
- No other form of entity (e.g. a company or LLP) permitted

2. Key definitions

Completed and revenue-generating project

- An infrastructure project that has achieved the commercial operations date (COD), has all the requisite approvals to commence operations and has been generating revenue from operations for at least one year

Eligible infrastructure project

- For PPP projects, the project is to be completed and revenue generating, or a project that is a pre-COD project. Also, infrastructure projects that have achieved COD but do not have a track record of revenue from operations for a period of at least one year are included in eligible projects
- In the case of other projects, the project is to have received all the requisite approvals and certification to commence construction

Hold Co

- A company or an LLP in which an InvIT holds or proposes to hold controlling interest and minimum 51% of the equity share capital/interest
- Not engaged in any activity other than holding of underlying SPVs/infrastructure projects

Infrastructure

- Includes all infrastructure sub-sectors, as defined vide notification of the Ministry of Finance (dated 14 November 2017) and to include any amendments thereof (please refer to the Annexure, List of infrastructure sub-sectors, for a list of infrastructure sub-sectors included in the notification)

Institutional investors

- Means (i) qualified institutional buyers; or (ii) family trusts, systematically important non-banking financial companies registered with the Reserve Bank of India or intermediaries registered with SEBI, having a net worth of INR 5,000 million (~USD 71.78 million)

B. Other aspects

PPP project

- An infrastructure project undertaken on a PPP basis between a public concession authority and a private SPV concessionaire (selected on the basis of open competitive bidding or a memorandum of understanding with relevant authorities)

Pre-COD project

- A project which has not achieved a commercial operation date under relevant agreements, and has the following:
- Completed at least 50% of the infrastructure project (as certified by an independent engineer)
- Expended at least 50% of the total capital cost

Project manager

- A person who is responsible for the execution and achievement of project milestones, in accordance with relevant project documents

Related party

- Definition of 'related party' for InvIT Regulations has been aligned with the definition provided in the Companies Act, 2013, and under applicable accounting standards and also includes:
- Sponsor(s), investment manager, project manager(s) and trustee; and
- Promoters, directors and partners of the above-mentioned persons

SPV

- A company or LLP in which an InvIT or Hold Co holds or proposes to hold the controlling interest and an equity stake or interest of at least 51% (however, there is an exception for PPP projects)
- 90% of the assets directly held by an SPV that is not engaged in any other activity

Under construction project

- Infrastructure project (PPP or otherwise) that has not achieved COD under the relevant project agreement or has achieved COD but does not have a track record of revenue from operations of one year

3. Valuation

- Complete valuation (in the prescribed format) to be undertaken at least once in a financial year
 - Valuer to have a minimum five years' experience in valuation of infrastructure assets and not related or associated to parties to the InvIT
 - Valuer to not be related to or associated with parties to the InvIT
 - Half-yearly valuation of InvIT assets of publicly offered InvIT to be conducted for half year, ending September 30
 - Complete valuation to be undertaken for the purchase or sale of property by a publicly offered InvIT; unitholders' approval required where:
 - The acquisition price is more than 110% of the valuation
 - The sale price is less than 90% of the valuation
 - Two-year cooling-off period for valuer after four consecutive years of valuation of the same project
 - Valuer's remuneration not to be linked to the asset value of the InvIT
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B. Other aspects

- | | |
|--------------------------------------|--|
| 4. Governance-related aspects | <ul style="list-style-type: none">• Unitholders' meetings to be convened at least once a year within 120 days of the end of the financial year, with the gap between two meetings not exceeding 15 months• Generally, resolution considered to be passed if unitholders casting votes in favour are more than the number casting votes against• Certain specified matters (e.g. change in manager, delisting) requiring the number of votes being cast in favour of to be at least 1.5 times the votes cast against• Annual report to be provided to unitholders within three months from the end of the financial year; half-yearly report to be provided within 45 days from the end of 30 September• Price-sensitive information as well as that having a bearing on the operation or performance of an InvIT to be disclosed to the stock exchange |
| <hr/> | |
| 5. Others | <ul style="list-style-type: none">• Multiple classes of InvIT units not permitted• However, subordinate units carrying inferior rights may be issued to the sponsor(s) and their associates• Parity to be maintained between unitholders, i.e. no preferential voting or other rights to be given to them |
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6

The way forward: Tax implications



The way forward: Tax implications

Taxation-related aspects at various levels in respect of REITs/InvITs are discussed below:

Level	Transaction	Taxation
Sponsor	Swapping of the shares of an SPV (a company) with REITs/InvITs units listed on the stock exchange	<ul style="list-style-type: none"> No tax implications at the time of the swap Deferral of Minimum Alternate Tax (MAT)[^] at the time of the swap
	Swapping of the share of an SPV (a company) with InvIT units not listed on the stock exchange	<ul style="list-style-type: none"> Taxable at the time of the swap Long-term capital gains at the rate of 20% Short-term capital gains at 30%/40%^{***}
	Swapping of assets or securities (other than shares in an SPV) with the units of REITs/InvITs	<ul style="list-style-type: none"> Taxable at the time of the swap Long-term capital gains at the rate of 20% Short-term capital gains at the rate of 30%
	On sale of units of REITs/InvITs on the stock exchange*	<ul style="list-style-type: none"> Long-term capital gains beyond INR 0.1 million, taxable at 10%^{**} Short-term capital gains at concessional tax rate of 15%^{**} MAT[^] to be levied at the time of actual sale
	On sale of units of InvIT not listed on the stock exchange	<ul style="list-style-type: none"> Long-term capital gains taxable at 20% Short-term capital gains taxable at 30%/40%^{***} MAT[^] to be levied at the time of actual sale
REIT / InvIT	Interest income	Not taxable However, REIT/InvIT to undertake tax withholding: <ul style="list-style-type: none"> Foreign investors: 5% Domestic investors: 10%
	Dividend	Dividend income should be exempt
	Rental income from property held directly by a REIT	Not taxable Withholding requirement: <ul style="list-style-type: none"> Foreign investors taxed at rates in force Domestic investors taxed at 10%
	Capital gains on sale of assets/shares of SPV	<ul style="list-style-type: none"> Taxable at the REIT/InvIT level at applicable rates, depending on the period of holding

Level	Transaction	Taxation
SPV¹⁰	Dividend distributed	<ul style="list-style-type: none"> Exempt from payment of dividend distribution tax (DDT), in respect of dividend declared, distributed or paid by the SPV to the REITs/InvITs, subject to the REITs/InvITs holding 100% stake in the SPV and dividend being distributed out of the profits of the SPV post-acquisition by the REITs/InvITs. Such a conditionality creates leakage on account of DDT in the case of investment by REITs/InvITs in an SPV through a Hold Co, wherein holding by the Hold Co is not 100%.
	Rental income from assets	<ul style="list-style-type: none"> Taxable at applicable rates
	Interest paid to REITs / InvITs	<ul style="list-style-type: none"> Deduction on interest available No withholding requirement
	Capital gains on sale of assets	<ul style="list-style-type: none"> Taxable at applicable rates, depending on period of holding
Unitholders	Interest income	<ul style="list-style-type: none"> Foreign investors: 5% (withheld at REIT level) Domestic investors: at applicable rates (credit for tax withheld at 10%)
	Dividend	<ul style="list-style-type: none"> Dividend income should be exempt¹¹
	Capital gains on sale of assets/shares of SPV	<ul style="list-style-type: none"> Not taxable
	Rental income from property held directly by REIT	<ul style="list-style-type: none"> Taxable at applicable rates[#]
	On sale of units of REITS / InvITs on the stock exchange*	<ul style="list-style-type: none"> Long-term capital gains beyond INR 0.1 million, taxable at 10%** Short-term capital gains at concessional tax rate of 15%** MAT[^] to be levied

*The date of purchase and the cost of the shares of an SPV will be considered to compute capital gains in the hands of a sponsor at the time of transfer of units.

** The rates above are subject to payment of securities transaction tax (STT).

*** Applicable in case of a non-resident.

Based on the current tax regime, investors are taxable on distribution of rental income by a REIT letting out property directly. The quantum and manner of taxation of such income in the hands of investors are unclear and need to be clarified.

^ MAT will be chargeable at the rate of 18.5% (plus applicable surcharge and cess) for Indian companies.

Notes

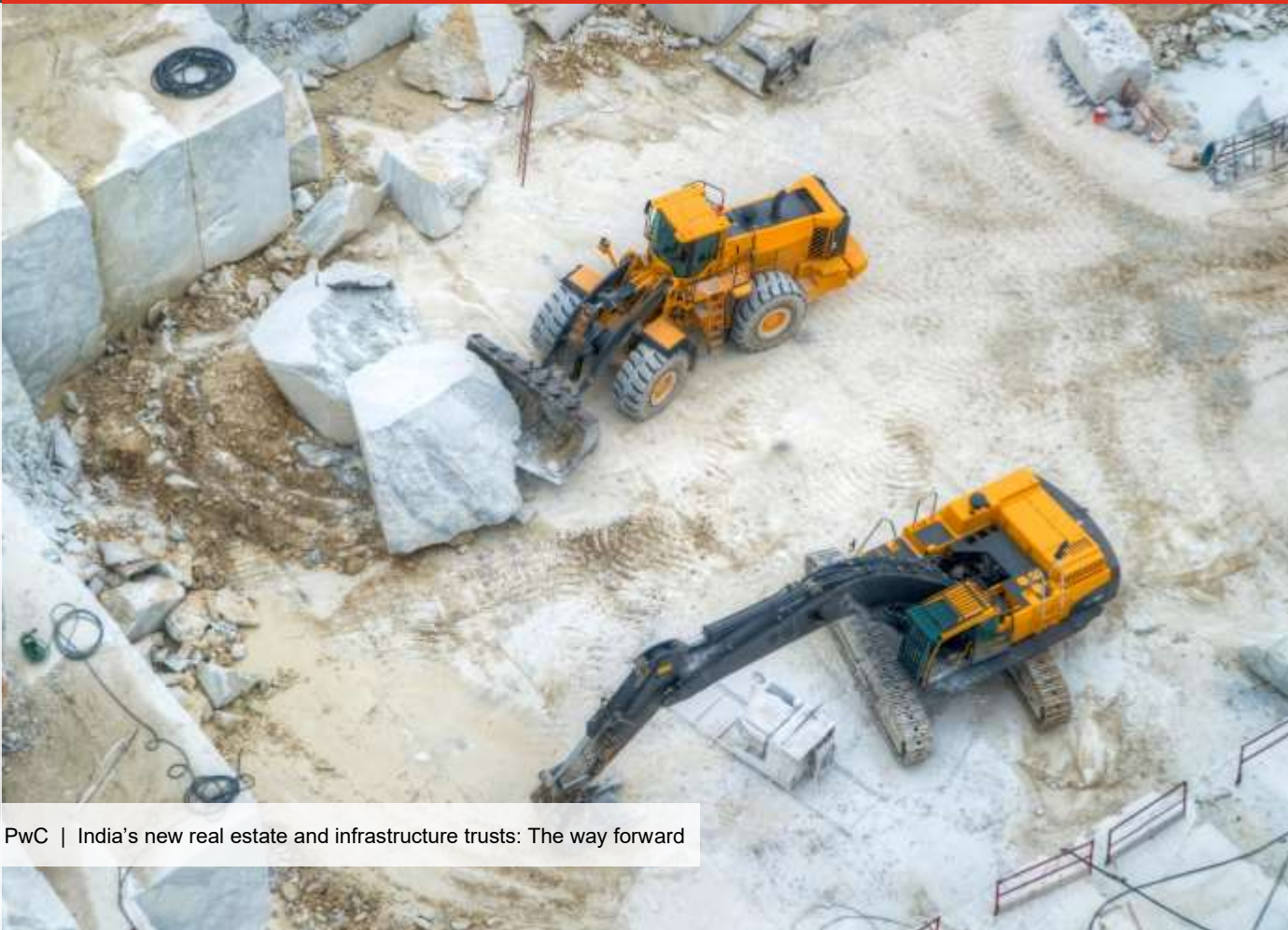
- All rates quoted in this document are exclusive of surcharge, as may be applicable, and health and education cess. All the tax rates mentioned herein would have to be increased by applicable surcharge, i.e. for Financial Year 2018–19, 7% for Indian companies with taxable income below INR 100 million and 12% for taxable income exceeding INR 100 million and 2% for foreign companies with income below INR 100 million and 5% for those exceeding INR 100 million. Such tax liability to be further increased by health and education cess of 4%.
- The holding period of units is to be more than 36 months in order for them to be considered as long-term capital gains.

¹⁰ The concept of a Hold Co has not been recognised in the Indian income tax law as yet.

¹¹ There could be a risk of dividend in excess of INR 1 million being taxed at 10%. Clarity is required on the language in the Indian Income-tax Act, 1961.

7

Transfer pricing

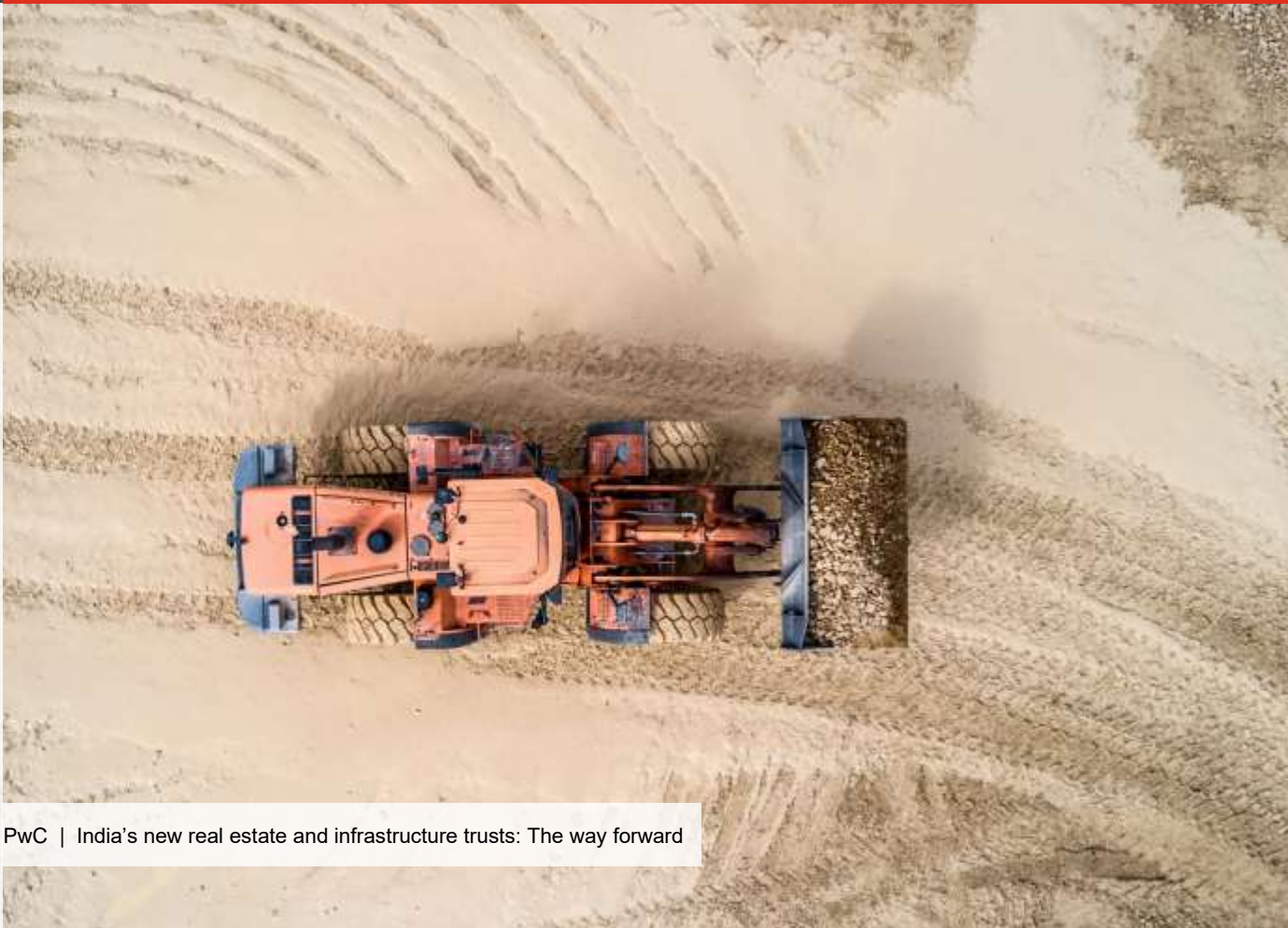


Transfer pricing

- SEBI regulations on REITs and InvITs mandate that all related party transactions should be at arm's length. As per the regulations, the related party definition is very wide. Further, significant compliance and disclosure requirements have been prescribed for transactions entered into with related parties under REIT and InvIT regulations.
- Under SEBI regulations for REITs, specific guidance for valuation has been provided for related party transactions of purchase/sale of properties. However, no guidance is available for other transactions, such as leasing, remuneration to the manager and pricing of debt/securities. In case of InvITs, no guidance is provided for any category of transactions. In this regard, reliance can be placed on the guidance for arm's length pricing emanating from other regulations, such as the Indian Income-tax Act, 1961.
- Specific certification from a chartered accountant will be required for related party transactions in cases of conflict of interest. The onerous disclosure and compliance requirements will require the manager to ensure that all related party transactions are at arm's length and that the disclosures have been complied with.

8

Ind AS for REITs and InvITs



Ind AS for REITs and InvITs

Adoption of Indian Accounting Standards (Ind AS) by companies had a significant impact on their financial statements, since Ind AS are relatively more prescriptive and elaborate in many areas, compared to the generally accepted accounting principles in India (previous Indian GAAP) earlier followed by the companies. At a fundamental level, Ind AS focus on substance, rather than the legal aspect, and the risks and rewards of the underlying transactions. The standards break away from legal structure-based accounting to a more substance-driven process. Adoption of Ind AS has resulted in accounting that more closely reflects the underlying business rationale and the true economics of transactions. The extent of the impact varied across industries. One industry that has been effected is the real estate and construction industry in the country.

We have summarised the key likely impacts on financial reporting of real estate and construction entities, which could necessitate significant changes under Ind AS.

Consolidation

REITs or InvITs can invest either directly or indirectly through SPVs, i.e. a company or LLP, in real estate assets. Ind AS are likely to change how sponsors/unitholders (non-sponsors) and asset managers assess REITs or InvITs for consolidation as well as consolidation of such SPVs by REITs or InvITs.

Principles relating to consolidated financial statements under Ind AS are set out in Ind AS 110, 'Consolidated financial statements'. Ind AS 110 has a single definition of control and sets out requirements for an entity on its preparation of consolidated financial statements, defines its principles of control, and explains how it should apply the principles of control and comply with the accounting requirements for preparing consolidated financial statements.

Under Ind AS, control exists and consolidation is only required if an investor exerts power over an investee, is exposed to variable returns from its involvement with the investee, and uses its power over the investee to affect its returns.

Ind AS 110 provides limited scope of exception for parents that are 'investment entities'. If an entity is an investment entity under Ind AS 110, it is prohibited from consolidating its subsidiaries with one exception, i.e. to consolidate a subsidiary that is not itself an investment entity and that provides services for the entity's investment-related activities. An entity qualifies as an investment entity only when the following conditions are met:

- It obtains funds from one or more investors and provides these to an investor (or investors) in the form of investment management services.
- It makes a commitment to its investor(s) that its business purpose is to only to invest funds for returns from capital appreciation, investment income or both.
- It measures and evaluates the performance of all its investments based on their fair value.

Investment-related activities include investment management services, investment advisory services and administrative support. Such services may form a substantial part of a business and may be provided to third parties as well. This will not disqualify an entity from being an investment entity.

Under Ind AS 110, if an entity qualifies as an investment entity, it is required to account for its subsidiaries at their fair value through profit or loss (except as mentioned above), in accordance with Ind AS 109 (Financial instruments), and to prepare separate financial statements.

Under Ind AS, this guidance may result in the consolidation of entities that may not have been previously consolidated under previous Indian GAAP, and may also result in the deconsolidation of certain entities. Depending on the facts relating to and circumstances of specific entities, certain special purpose structures or vehicles may no longer remain outside a consolidated group, which could significantly affect the reported net worth and performance of certain groups.

In other words, sponsors along with their asset management entities (not qualifying as investment entities) will have to evaluate whether they control REITs or InvITs, and if so, whether this could trigger consolidation, either at the sponsor or at asset management entity level. Furthermore, it would also need to be evaluated whether REITs or InvITs qualify as 'investment entities' under Ind AS, in order to avail the benefit of not consolidating their investments in underlying SPVs through which they hold their real estate or infrastructure assets.

Joint arrangements

A joint arrangement necessitates a contract where at least two parties agree to share control of the activities undertaken under the arrangement. Unanimous consent on decisions taken on relevant activities between the parties sharing control is a requirement to comply with the definition of joint control.

Joint arrangements can be shared operations or joint ventures (JVs). The classification is based on principle and depends on the parties' exposure in relation to the arrangement. When this only extends to the net assets of the arrangement, it is a JV.

In contrast, joint operators have rights to assets and obligations for liabilities. Joint operations are often not structured through separate vehicles. When a joint arrangement is separated from the parties and included in a separate vehicle, it can either be a joint operation or a JV. In such cases, further analysis is required on the legal form of the separate vehicle, the terms and conditions included in the contractual agreement, and sometimes, other facts and circumstances as well. This is because in practice, the latter two can override the principles derived from the legal form of the separate vehicle.

Joint operators account for their rights to assets and obligations for liabilities and JVs for their interest by using the equity method of accounting.

Indian GAAP previously required JVs to be consolidated proportionately, whereas under Ind AS 111 (Joint arrangements), with certain exceptions, JVs are accounted under the equity method of accounting.

Many companies are affected by this change, since they moved from proportionate consolidation to the equity method of accounting. This effectively changes the gross total of their reported assets and liabilities, and other performance-related measures, although it may not change reported net assets and net results.

The process of structuring joint arrangements—for example, to develop and construct property—can be complicated. As a result, it is important for sponsors, REITs and InvITs to understand not only the legal structure but also the contractual terms of their arrangements in order to assess the likely impact.

Leases

REITs or InvITs own income-producing real estate assets such as office buildings, shopping malls, apartments, warehouses and mortgages, and mainly earn revenue by leasing space or selling property holdings. Under Ind AS 17, leases cover a wider range of transactions as compared to Indian GAAP. It also provides more explicit guidance on leasing of land and buildings. Ind AS 17 requires that the land and building elements of leases are considered separately for their classification, unless the land element is immaterial. Minimum lease payments are allocated between the land and building elements in proportion to the relative fair values of leasehold interests in the land element and the building elements of the lease at its inception. This can be a particularly time-consuming process, since companies are likely to require well-informed advice to help them value land and buildings. If lease payments cannot be allocated reliably between these two elements, the entire lease will be classified as a finance lease.

Furthermore, any sale and leaseback transaction between a sponsor and the REITs or InvITs of underlying assets will need to be evaluated. Primarily, it will have to be seen whether any upfront recognition of potential gain on transfer of such assets from the sponsor to REITs or InvITs can continue or will have to be deferred over the term of the lease. In addition, elimination of unrealised profits (to whatever extent applicable) will have to be factored in if the REITs or InvITs are either fully consolidated or 'equity accounted' as joint ventures or associates in sponsors' consolidated financial statements.

Ind AS 116, 'Leases' – a new era of lease accounting

On 30 March 2019, the Ministry of Corporate affairs (MCA) notified Ind AS 116, 'Leases', the new lease accounting standard which is effective for annual reporting periods beginning on or after 1 April 2019. The new standard has replaced Ind AS 17 and related appendices. The new lease accounting standard will fundamentally change accounting for lease transactions and is likely to have significant business implications. Almost all leases will be recognised on the balance sheet, with a right-of-use asset and financial liability. The amortisation of the right of use asset and the accretion of interest on the financial liability will likely result in the recognition of higher expenses in profit or loss during the earlier life of a lease.

When it comes to leasing transactions, the vast majority of entities in the real estate industry will be the lessors. Whilst the new standard leaves lessor accounting unchanged, it will have a significant impact on the industry's customer base, its tenants (lessees). For example, the retail industry is likely to be one of the most affected by the new standard, given the significant use of rented premises for their stores. Historically, tenants have accounted for such leases as operating leases, recognising rental payments as an operating expense on a straight line basis and with no significant balance sheet impact. The new leasing standard will not only have an impact on tenants' balance sheets but also on operating costs, with a split of the expense between operating and finance costs.

From a lessor perspective, it is important to have an awareness of these impacts for tenants as they may influence market behaviour towards a preference for shorter term or more flexible leases with more types of contingent payment terms to minimise the amount recognised as lease liabilities.

Key features of Ind AS 116, 'Leases':

- The lessee has to recognise a right-of-use asset and a lease liability for almost all lease contracts with exemptions for short-term leases and leases of low-value assets.
- The lessee has to present interest expense (on lease liability) and depreciation charge (for right-of-use asset) separately.
- Enhanced disclosure requirements

Further, the definition of a lease is different from the current standard, i.e. Ind AS 17, 'Leases', and might result in some contracts being treated differently in the future. Ind AS 116 includes detailed guidance to help companies assess whether a contract contains a lease or a service, or both. Under the current guidance and practice, there is not a lot of emphasis on the distinction between a service or an operating lease, as this often does not change the accounting treatment.

Revenue recognition

On 28 March 2018, the MCA notified Ind AS 115, 'Revenue from contracts with customers', effective for accounting periods beginning on or after 1 April 2018. This new standard replaces Ind AS 18, 'Revenue', and Ind AS 11, 'Construction contracts' and related appendices, including the Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable) (the 'Guidance Note'). The objective of the new revenue standard is to provide a single, comprehensive revenue recognition model for all contracts with customers to improve comparability within industries, across industries and across capital markets.

Ind AS 115 introduces new requirements to move to a more conceptual approach. The core principle of Ind AS 115 is that an entity will recognise revenue to depict the transfer of goods or services to customers at an amount that the entity expects to be entitled to in exchange for those goods or services. This core principle is described in a five-step model framework:

1. identify the contracts with customers,
2. identify the separate performance obligation,
3. determine the transaction price of the contract,
4. allocate the transaction price to each of the separate performance obligations, and
5. recognise the revenue as each performance obligation is satisfied.

The complexity of applying this approach and of producing the detailed disclosures required by the new standard in the real estate sector may require modifications to existing accounting systems and, in some cases, entities may conclude that they should develop new systems and processes.

Real estate companies in India that were reporting under Ind AS followed accounting prescribed under the Guidance Note issued by the ICAI. The objective of the Guidance Note is to recommend the accounting treatment to be followed by the companies dealing in real estate as sellers or developers and covers all forms of transactions in real estate. According to the Guidance Note, an entity can start recognising revenue on a percentage of completion basis only when:

- a. 25% of the construction and development cost of the project has been incurred,
- b. 25% of the saleable project area is secured by contract, and
- c. 10% of the contract consideration as per the agreement of sale has been realised.

As Ind AS 115 does not refer to the Guidance Note, this results in a change in the recognition of revenue and profit for real estate companies. Real estate companies will need to consider:

- whether revenue should be recognised over time or at a point in time;
- the extent to which distinct goods or services are supplied, which should be accounted for separately;
- whether particular costs relating to obtaining a contract must be capitalised;
- whether revenue must be adjusted for the effects of the time value of money;
- how to account for contract modifications; and
- the impact of new guidance where pricing mechanisms include variable amounts.

The new standard requires significantly more disclosures relating to revenue and entities will need to ensure that appropriate processes are in place to gather the information. The new standard may also have an impact on an entity's budgeting and reporting process, IT systems, internal control systems, employee key performance indicators (KPIs) and bonuses. It may also have tax implications in many circumstances. Hence, early identification of the implications of the new standard is imperative.

Financial instruments

India has adopted the equivalent standard of IFRS 9—the standard for financial instruments—early. This standard has a wide-ranging impact on companies and provides extensive guidance on the identification, classification, recognition and measurement of financial instruments. It also provides guidance on the derecognition of financial instruments and hedge accounting, and includes extensive disclosure requirements.

Classification, recognition and measurement principles, as well as certain disclosure requirements for financial instruments, are addressed in the following three standards:

- Ind AS 107 (Financial instruments: Disclosure), which includes disclosure requirements
- Ind AS 32 (Financial instruments: Presentation), which distinguishes debt from equity and provides guidance on netting of financial instruments
- Ind AS 109 (Financial instruments), which includes classification, recognition, measurement, hedge accounting and impairment-related requirements

The objective of these three standards is to establish the requirements for all aspects of accounting for financial instruments.

Investment in debt instruments

Ind AS 109 includes three categories for classifying debt instruments—amortised cost, fair value through other comprehensive income (FVOCI) and fair value through profit or loss (FVPL). This classification is driven by an entity's business model for managing financial assets and the characteristics of its contractual cash flow.

Investment in equity instruments

Investments in equity instruments will be measured at their fair value. This is a big change from the practice followed under the previous Indian GAAP. Equity instruments are defined as those that comply with the definition of 'equity' from the perspective of the issuer, as defined in Ind AS 32. Equity instruments held for trading will be classified at FVPL. For all other equities, the management will be able to irrevocably decide on initial recognition on an instrument-by-instrument basis, to present the changes in fair value in other comprehensive income (OCI) rather than on profits or losses. If this is done, all changes in fair value, excluding dividends that are a return on investment, will be included in OCI. There will neither be any recycling of amounts from OCI to profit and loss (e.g. on sale of an equity investment) nor will there be any impairment-related requirements. However, an entity may transfer its cumulative gain or loss within its equity.

Debt/equity/compound financial instruments

Under Ind AS, classification of financial instruments as either debt or equity is based on the substance of the contractual arrangement underlying the instrument rather than its legal form. For example, a redeemable preference share, which is economically similar to a bond/debenture, will be accounted for as a liability rather than an equity, even though it is legally the issuer's share.

Other instruments may not be as straightforward. An analysis of the terms of each instrument (in light of detailed classification-related requirements) is necessary, particularly since some financial instruments have both liability and equity features.

Treatment of interest, dividends, losses and gains in an income statement follows the classification of the related instrument. If a preference share is classified as a liability, its coupon (preference dividend) is shown as the interest cost. However, the discretionary coupon on an instrument, which is treated as equity, is shown as distribution within equity.

The impact can be significant for REITs or InvITs or their underlying SPVs that use such compound instruments in financing their operations, and affect their capitalisation profile, reported earnings, net worth and debt covenants, as well as increased disclosure requirements emanating from new financial instrument standards.

Therefore, it is clear that the introduction of Ind AS to REITs or InvITs or their underlying SPVs, sponsors or asset management companies could significantly affect financial statements, depending on the complexities involved in each case.

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Conclusion



Conclusion

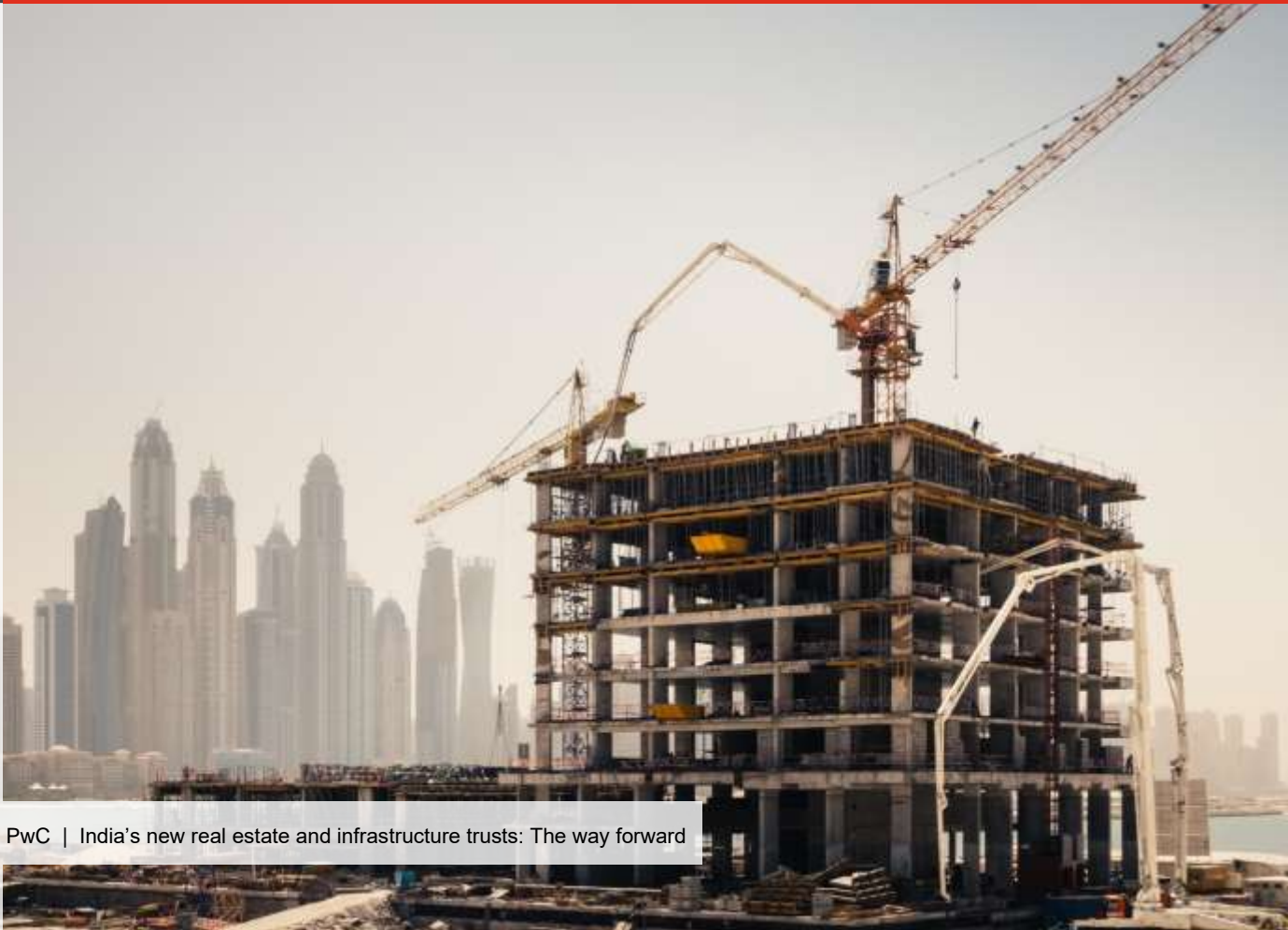
The REIT market has evolved substantially in several countries and these investment vehicles have gained immensely in terms of their market capitalisation. A primary condition for the growth of these markets, as demonstrated by the experience of different countries, is their ability to customise regulations governing these investment vehicles in conformity with domestic market conditions.

In the near future, we expect REITs to increase the depth of the Indian property market through a sound regulatory framework which ensures transparency and high governance standards, and promotes regular monitoring of their performance.

The market for REITs and InvITs is relatively nascent in India. However, with various enabling factors such as the growth of the economy and the middle class population, and a concomitant need for housing and infrastructure, we are positive that the market for these investment vehicles will witness considerable growth in the near future.

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Annexure: List of infrastructure sub-sectors



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S. No.	Category	Infrastructure sub-sectors
1.	Transport	<ul style="list-style-type: none"> Roads and bridges Ports¹³ Shipyards¹⁴ Inland waterways Airport Railway track including electrical and signalling system, tunnels, viaducts, bridges Railway rolling stock along with workshop and associated maintenance facilities Railway terminal infrastructure, including stations and adjoining commercial infrastructure Urban public transport (except rolling stock in the case of urban road transport) Logistics infrastructure¹⁵
2.	Energy	<ul style="list-style-type: none"> Electricity generation Electricity transmission Electricity distribution Oil pipelines Oil/gas/liquefied natural gas (LNG) storage facility¹⁶ Gas pipelines¹⁷
3.	Water and sanitation	<ul style="list-style-type: none"> Solid waste management Water supply pipelines Water treatment plants Sewage collection, treatment and disposal system Irrigation (dams, channels, embankments, etc.) Storm water drainage system Slurry pipelines

¹² Notification F. No. 13/3/2017-INF dated 19 April 2018

¹³ Includes capital dredging

¹⁴ Shipyard' is defined as a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways and/or ship lifts, and which is self-sufficient for carrying on shipbuilding/repair/breaking activities.

¹⁵ 'Logistics infrastructure' means and includes a multimodal logistics park comprising an inland container depot (ICD) with a minimum investment of INR 500 million and a minimum area of 10 acres, a cold chain facility with a minimum investment of INR 150 million and a minimum area of 20,000 square feet, and/or a warehousing facility with a minimum investment of INR 250 million and a minimum area of 1 lakh square feet.

¹⁶ Includes strategic storage of crude oil

¹⁷ Includes city gas distribution network

S. No.	Category	Infrastructure sub-sectors
4.	Communication	<ul style="list-style-type: none"> • Telecommunications (fixed network)¹⁸ • Telecommunications towers • Telecommunications and telecom services
5.	Social and commercial infrastructure	<ul style="list-style-type: none"> • Education institutions (capital stock) • Sports infrastructure¹⁹ • Hospitals (capital stock)²⁰ • Tourism infrastructure, viz. (i) three-star or higher category classified hotels located outside cities with a population of more than 1 million (ii) ropeways and cable cars • Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, SEZs, tourism facilities and agriculture markets • Post-harvest storage infrastructure for agricultural and horticultural produce, including cold storage • Terminal markets • Soil-testing laboratories • Cold chain²¹ • Affordable housing²²

¹⁸ Includes optic fibre/wire/cable networks, which provide broadband/Internet

¹⁹ Includes provision of sports stadia and infrastructure for academics for training/research in sports and sports-related activities.

²⁰ Includes medical colleges, paramedical training institutes and diagnostic centres.

²¹ Includes cold room facility for farm-level pre-cooling, for preservation or storage of agricultural and allied produce and marine products and meat.

²² 'Affordable housing' is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area[®] of not more than 60 square metres.

[®] 'Carpet area' shall have the meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

Notes

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About APREA

APREA is a non-profit organisation that represents the property investment industry in AsiaPac.

Its members include prominent real estate stakeholders, including pension, insurance and sovereign wealth funds, investment managers, family offices and developers.

APREA's focus is cross-border real estate investment – inbound and outbound – across AsiaPac.

APREA's main goals are to:

- Make it easier to invest across AsiaPac by working with governments to open up, expand and improve the region's real estate markets help members connect to cross-border opportunities and business partners forge a more informed, efficient, respected and transparent marketplace
- APREA's members operate across 18 countries and more than 100 property markets.
- APREA currently hosts chapters in China, India, Japan, Australia, Malaysia, the Philippines, Singapore and Hong Kong.

For further information, visit <http://www.aprea.asia/>

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MA/June 2019-18057