



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

Sixth edition

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Table of contents

1.	Preface	3
2.	Introduction	6
3.	REITs and InvITs: Key advantages	9
4.	Cross-country REIT markets	12
5.	REIT regulations: An overview	16
6.	InvIT regulations: An overview	24
7.	The way forward: Tax implications	33
8.	Transfer Pricing	37
9.	Ind AS for REITs and InvITs	39
10.	Conclusion	44
11.	Annexure: List of infrastructure sub-sectors	46



1

Preface



Preface

Infrastructure and Real Estate are among 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 of sub-segments such as housing, retail, hospitality and commercial projects, as well as the new niche sub-segments of senior housing and affordable housing projects are 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 long-term 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 to formulate and implement robust regulations; and for banks, corporates and various sovereign wealth fund and pension funds to undertake long-term investments. 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.

In view of 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.

The Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InvIT) 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 REIT and InvIT were introduced in India in 2014 and have been amended over a period of time in an endeavour to align them with stakeholders' expectations and attract investors, perhaps even more so in the current economic environment.

Today, after years of deliberation, there are six listed InvITs and two REITs in the market, apart from other unlisted ones, with the recent REIT offering listing at an 11% premium to its offer price

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.

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

Regards,

Gautam Mehra

Leader, Tax and Regulatory Services
PwC India

Bhairav Dalal

Real Estate Tax Leader, Tax and Regulatory Services
PwC India

Preface

Market capitalisation of Asia Pacific (APAC) Real Estate markets has grown over 400% in the last 15 years. APAC REITs have outperformed broader markets in the past 20 years and the increasing participation of institutional investors has followed. While 2020 has been challenging so far, we believe that every crisis presents opportunities.

According to the GPR/APREA Composite Index, APAC REITs outperformed the broader market in May 2020, even as countries in the region stepped up their efforts against COVID-19. Whilst the pandemic has hindered businesses, India's first REIT, the Embassy REIT, has clocked in with total returns of 25% to turn in a spectacular year.

The institutionalisation of India's Real Estate sector has continued apace and APREA remains proud to be associated with this journey. India's second REIT – the Mindspace Business Parks REIT – backed by K Raheja Corporation and Blackstone, was oversubscribed by 13 times when the issue closed on 29 July 2020. Despite the trying times, the reception to Mindspace's REIT IPO continued to show the conviction and confidence of institutional investors in India's growth story. The Mindspace REIT listed at an 11% premium on 7 August 2020.

The Securities and Exchange Board of India (SEBI) and the Ministry of Finance have been most supportive in fostering growth, and have continued to make timely and incisive amendments to provide the perfect climate for both REITs and InvITs to flourish. REITs' payouts have remained relatively stable across economic cycles, often at higher rates than investment-grade fixed-income investments and is a significant development in India's Real Estate capital markets.

SEBI's creation of a robust REIT and InvIT framework continues to pave the way for many international investors to tap the tremendous opportunities offered by Real Estate in India. By allowing REITs/InvITs to raise debt at competitive rates from foreign investors,

thereby enhancing returns through lower cost of capital, will lead to wider participation of institutional investors.

SEBI and the Ministry of Finance has recently made several key amendments that have been captured and explained in this primer:

- Sponsors are no longer required to maintain a 15% stake in a REIT after the three-year lock-in period.
- Mutual funds and insurance companies are now included in the classification of strategic investors.
- The regulations provide the mechanics for de-classification of sponsors.
- The tax rate adopted by a Special Purpose Vehicle (SPV) will have an impact on the taxability of dividends in the hands of investors.

APREA continues to engage with the authorities on this front. As an industry association, APREA, along with its partners and members, continues to champion the growth and prosperity of the Real Estate asset class across the Asia Pacific. To further evolve a more efficient tax and compliance regime for investing in REITs and InvITs in India remains a core objective of the organisation.

We are pleased to present the sixth edition of the REITs and InvITs primer, which updates on recently announced regulations and changes in taxation. We remain indebted to PwC India for their unwavering support and invaluable contributions, who have generously given their time and lent their expertise to encapsulate the impact of these regulatory changes.

Sigrid Zialcita

CEO

Asia Pacific Real Estate Association

2

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 significant domestic and 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, led to the sluggish growth of the sector. However, since 2014, the country 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 infused 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 the sector. India's Real Estate sector is expected to reach a market size of US\$1 trillion by 2030.¹ However, with the economy likely to be recovering from the current pandemic, the possibility of this expectation becoming a reality, though certain, may be somewhat delayed. Furthermore, the asset mix in investors' portfolios will now be different due to the paradigm shift from traditional asset classes such as offices and residential spaces to data centres and logistics, which are likely to become the favoured asset classes.

Keeping in mind the requirement for additional capital in the sector, SEBI took an innovative step and introduced Infrastructure Investment Trusts Regulations, 2014 (InvIT Regulations) for Infrastructure projects in 2014. These regulations have been in effect since 26 September 2014 and are expected to alleviate the burden on the banking system by making available the requisite capital in the Infrastructure sector.

The Real Estate sector is closely related to the Infrastructure sector, which is fundamental for the former's growth. In view of the capital-intensive nature of this sector and the limited options available to Real Estate developers and owners to raise 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 an income from 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 around the world. Over the years, they have constructively changed the way in which the Real Estate market operates, and benefitted 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, bringing them in sync with globally recognised norms. After considerable modifications, the Real Estate Investment Trusts Regulations, 2014 (REIT Regulations) were enacted in India on 26 September 2014. The listing of Embassy Office Parks in April 2019 has broken the ice in the Indian REIT industry. This was followed by the listing of the Mindspace REIT in August 2020 and a couple of more REITs in the pipeline.

The encouraging response and positive listing of Embassy and Mindspace REITs have paved the way for many Real Estate enterprises with substantially large portfolios of rent-yielding properties to set up their own Indian REITs. This has also boosted the confidence of investors in REITs.

SEBI has devised detailed guidelines governing markets for investments. These include 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, the minimum capital required for Initial Public Offers (IPOs), listing requirements, the key responsibilities of parties to the trust, etc.

¹ IBEF. (2020). Indian Real Estate industry. Retrieved from <https://www.ibef.org/industry/real-estate-india.aspx>

Since the formulation of the REIT regulations and the time these were notified in 2014, SEBI seems to have adopted an all-inclusive approach in developing these robust regulations to align them not only in synch with international standards but also on the basis of the business requirements of industry players. Continuous policy reforms in the Real Estate sector have taken India to the 34th position in the Global Real Estate Transparency Index (GRETl) 2020.² This ranking, coupled with the successful listing of REITs, is expected to contribute to the growing confidence of global funds and encourage them to invest in India.

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

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



² As per JLL's survey dated 7 July 2020 retrieved from https://www.jll.co.in/en/trends-and-insights/research/global-real-estate-transparency-index?utm_source=eloqua&utm_medium=orgemail&utm_campaign=ap-corp&elq_mid=43679&elq_cid=2669369

3

REITs and InvITs: Key advantages



REITs and InvITs: Key advantages

Over the last decade, REITs and InvITs have grown 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 41 with the latest addition of Portugal and pilot programme being launched by China with a total market capitalisation of almost US\$1.77³ trillion. Countries including Australia, Canada, France, Spain, Hong Kong and Germany are purported to have 'established REIT markets'. The recent popularity of these investment channels is driven by the numerous benefits they offer multiple stakeholders.

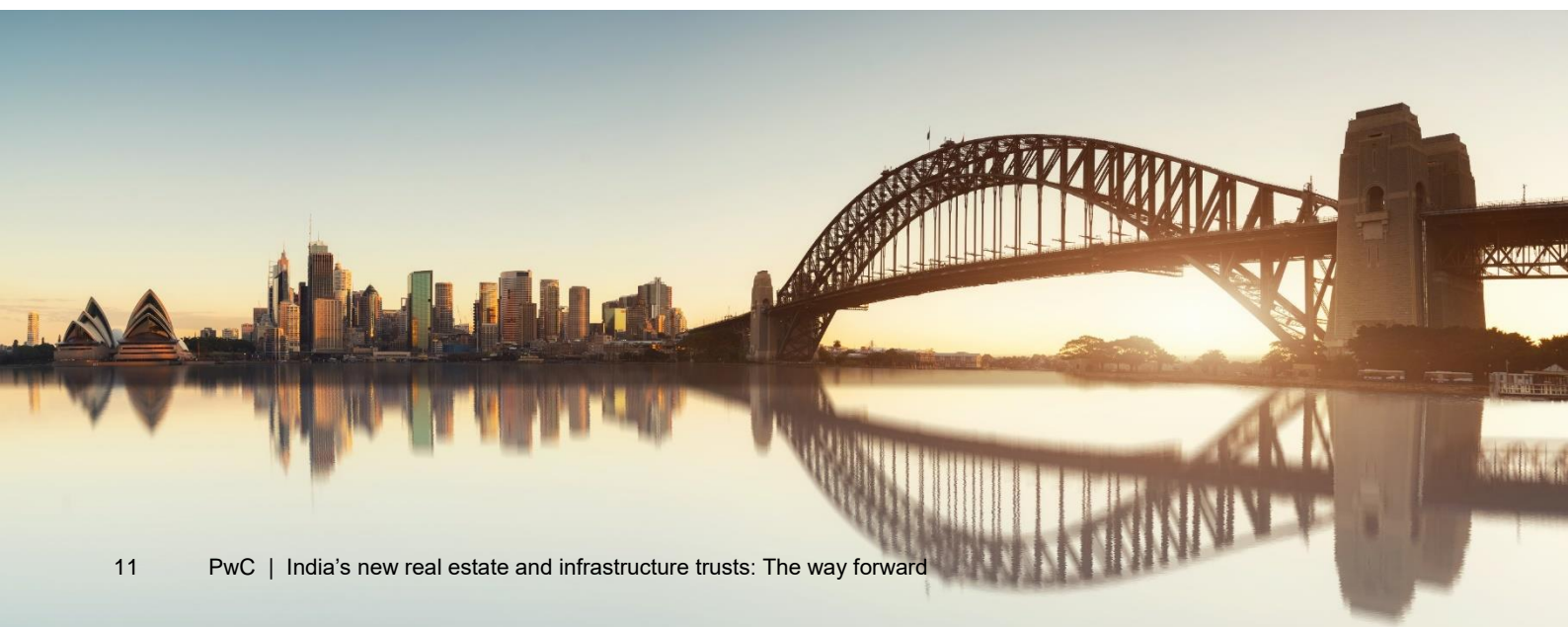
Stakeholders and parameters		Benefits
Developers	Liquidity	REITS and InvITs facilitate the following: <ul style="list-style-type: none"> • An increase in entry and exit opportunities for developers, asset owners and financial investors, enabling them to monetise their assets (Real Estate or projects) • 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 • A 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 • Enabling small retail investors to participate in asset classes that are normally unaffordable for them • Additional income generating and stable investment avenues offered for retirement planning • Enablement of diversification of investment holdings to help financial and strategic investors manage risk • Strengthening of risk management by allowing holdings of multiple assets to reduce their concentrated asset risk • Fragmentation of Real Estate asset holdings with multiple owners avoided, leading to focussed high-quality asset maintenance • Discouragement of forced strata sale of assets at a discounted valuation
	Broad-based institutional investors	<ul style="list-style-type: none"> • Facilitation of easy entries and exits for existing financial investors • Alternative financing offered • Low-risk investments offered to attract long-term investors such as insurance and pension funds

³ As per EPRA Global REIT Survey 2020

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 • A reduction in the financing burden on banks by the exposure to Real Estate/Infrastructure being decreased, leading to the creation of additional capital for other sectors
	Corporate governance	<ul style="list-style-type: none"> • Improvement in transparency, disclosure standards and professionalism in the sector • Informed decision-making enabled for investors
	Government	<ul style="list-style-type: none"> • Augmentation of the Government's revenues • Increased finance provided for critical sectors, including Transportation and Energy, and a boost being given to the Government's 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 the markets mentioned above in the country, the significant ones seeing a growth rate of over 5%. This, coupled with other factors such as availability of land, has led to a significant rise in the interest taken by private equity companies and foreign investors in the Indian Real Estate sector.

In order to give an impetus to broad-based institutional investors, such as sovereign wealth funds and pension funds that satisfy requisite conditions, tax laws have introduced a specific exemption for interest, dividends and long-term capital gains arising on long-term investments, *inter alia*, in the units of InvITs.



4

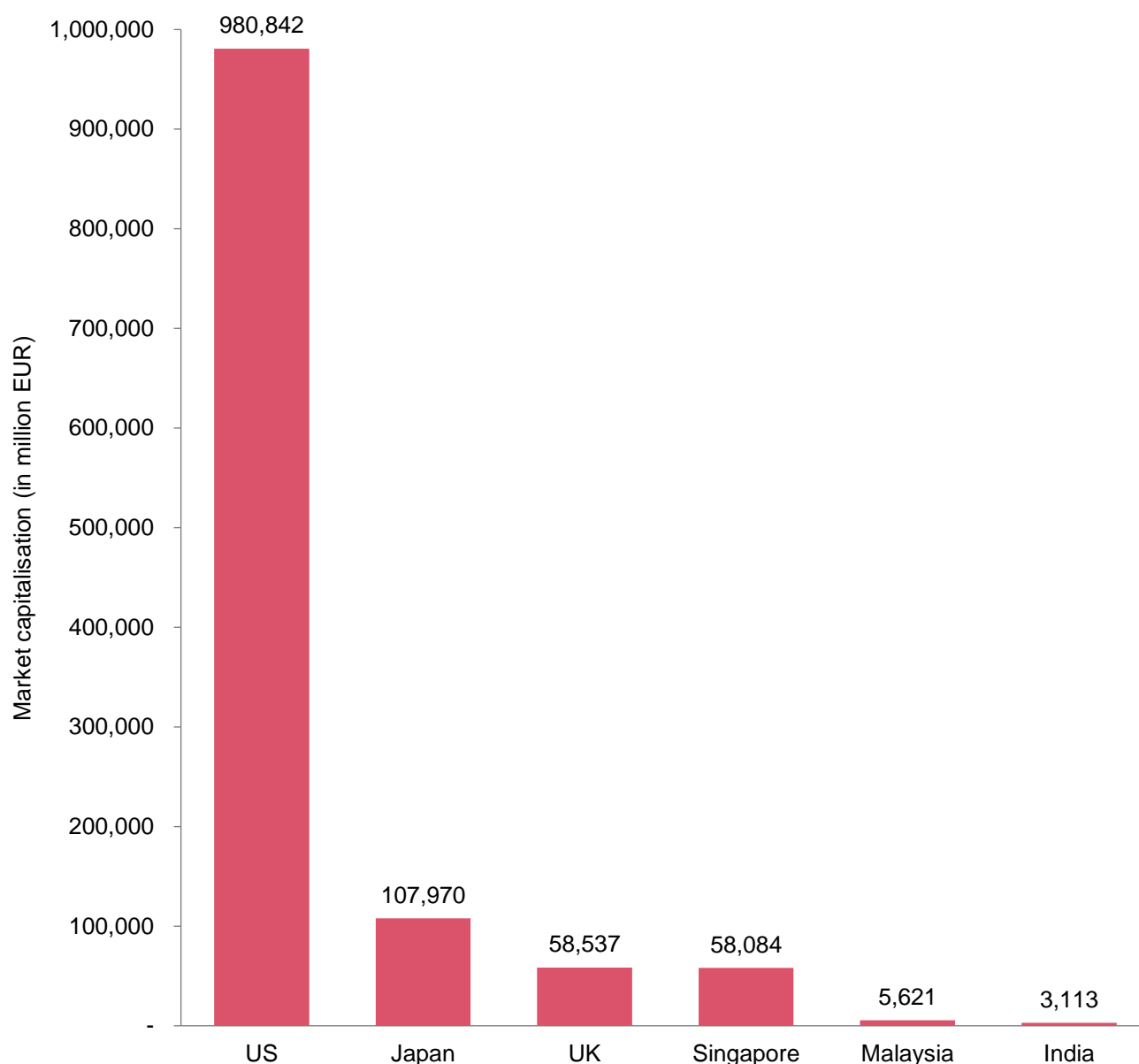
Cross-country REIT markets



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 such 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—growth varies across these countries. The US and Australia, which were the first two to introduce REITs, have witnessed a high growth in their REIT markets, possibly due to the tax reforms they have 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.

Market capitalisation of REITs



Source: EPRA Reporting, Global REIT Survey 2020

Country	Inception	Number of listed REITs	Market capitalisation (in USD million [in EUR million [#]])	Requirements	Key highlights
USA	1960	191	1,162,239 [~980,842]	<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 	REIT Modernization Act, effective 2001, emphasised creation of REIT subsidiaries. Various stock classifications (i.e., different classes of shares such as common stock and preferred stock) are allowed.
Japan (J-REIT)	2000	66	127,938 [~107,970]	<ul style="list-style-type: none"> Minimum share capital of JPY 100 million (~US\$942,056⁴) 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 in listed J-REIT A J-REIT to pay out dividends of over 90% of its distributable profits 	Provides for two different types of investment vehicles – investment trusts and investment corporations (<i>toshi hojin</i>). As of 1 June 2019 all current publicly listed J-REITs are investment corporations.
UK	2007	53	69,393 [~58,537]	<ul style="list-style-type: none"> Minimum share capital of GBP700,000 (~US\$895,248⁵) if listed on London Stock Exchange It must be a tax resident in the UK Mandatory listing on any 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 specifically applicable on ownership by non-resident investors At least 90% of exempt rental profits to be paid out 	From 6 April 2019, changes have been made that exempt REITs from Corporation Tax on sale of shares in UK property-rich companies

⁴ Exchange rate of US\$1 = JPY106.1508 as on 11 September 2020. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=100%2C000%2C000&From=JPY&To=USD>

⁵ Exchange rate of US\$1 = GBP0.7819 as on 11 September 2020. 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	36	68,826 [~58,084]	<ul style="list-style-type: none"> Minimum market capitalization of SGD300 million (~US\$219.52 million⁶) No listing requirement in principle; however, listing on Singapore exchange 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 foreign assets Single-tier leverage limit of 50% At least 90% of taxable specified income to be paid out to investors for S-REIT to be eligible for 'tax transparency' treatment 	A REIT may qualify for tax exemption on certain foreign-sourced income that is remitted into Singapore from investment in foreign assets.
Malaysia	1989	17	6,661 [~5,621]	<ul style="list-style-type: none"> Minimum fund size of MYR100 million (~US\$24.08 million⁷) No mandatory listing requirements Only REITs registered with SC permitted to be listed on Bursa Malaysia No requirement regarding number of investors No restrictions on non-resident investors' ownership No restrictions on acquisition of foreign assets Total borrowings not to exceed 50% of total asset value At least 90% of total income to be distributed for tax transparency rules to apply 	There is no Capital Gains tax in Malaysia except for real Property Gains Tax (ranging from 10% to 30%, depending on period of holding)

Exchange rate of EUR1=US\$1.1849 as on 11 September 2020 retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=1&From=EUR&To=USD>

⁶ Exchange rate of US\$1 = SGD1.3666 as on 11 September 2020; retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=300%2C000%2C000&From=SGD&To=USD>

⁷ Exchange rate of US\$1 = MYR4.1525 as on 11 September 2020 retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=100%2C000%2C000&From=MYR&To=USD>

5

REIT regulations: An overview



REIT regulations

A.	Key aspects
1.	<p data-bbox="225 322 344 353">Eligibility</p> <div data-bbox="496 322 1445 719"> <p>Sponsor (person who sets up a REIT)</p> <ul style="list-style-type: none"> No maximum limit on number of sponsors Concept of 'sponsor group' included in REIT Regulations Consolidated net worth or net tangible assets of sponsors to be at least INR1,000 million (~US\$13.59 million⁸), with each sponsor's net worth being at least INR200 million (~US\$2.72 million) Sponsor or its associates to have minimum experience of five years in development of Real Estate or Real Estate fund management <ul style="list-style-type: none"> In addition, requirement of track record of at least two completed projects for a developer sponsor </div> <div data-bbox="496 736 1445 1182"> <p>Manager (company, LLP or body corporate)</p> <ul style="list-style-type: none"> Minimum net worth or net tangible assets of INR100 million (~US\$1.36 million) Manager or its associates to have minimum experience of five years in fund management, advisory or property management in the Real Estate sector or in Real Estate development Requirement of 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 More than 50% of the directors/governing board of the Manager to be independent and to not be directors/members of a Manager of any other REIT </div> <div data-bbox="496 1200 1445 1317"> <p>Trustee</p> <ul style="list-style-type: none"> To be registered with SEBI, and not an associate of the sponsor(s) or manager </div>
2.	<p data-bbox="225 1348 424 1406">Key investment conditions</p> <div data-bbox="496 1348 1445 1868"> <p>Asset-related conditions</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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 companies or body corporate in Real Estate sector - other than investment in debt of Hold Co/ Special Purpose vehicle ('SPV') Mortgage-backed securities Equity shares of listed companies in India, generating at least 75% of their operating income from Real Estate activities </div>

⁸ Exchange rate of US\$ 1 = INR73.5575 as on 11 September 2020 has been used for the purpose of converting INR to US\$ in 'REIT/InvIT regulations: An overview'. (Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=1&From=INR&To=USD>)

A.	Key aspects
	<ul style="list-style-type: none"> – 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 <p>Additional conditions</p> <ul style="list-style-type: none"> • Direct holding of real estate assets in India or through a SPV or two-level structure through a holding company (Hold Co) • Investment through a Hold Co or SPV to be subject to the following requirements: <ul style="list-style-type: none"> – Ultimate holding interest of the REIT in the underlying SPVs should be at least 26% in the case of investment through a Hold Co – Other shareholders/partners of the Hold Co/SPV should not restrict the REIT, Hold Co or SPV from complying with REIT Regulations, and an agreement has been entered into with such shareholders/partners to this effect. Such an agreement should also provide for a dispute resolution mechanism between the REIT and the shareholders/partners. – The manager, in consultation with the trustee, should appoint at least such number of nominees on the board of a Hold Co and/or SPV that 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, voting of the REIT should be exercised. • Investment is 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, excluding gains arising from disposal of properties, should be from rental, leasing and letting out of assets, or incidental revenue. • Investment in other REITs or lending (except lending to a Hold Co/SPV) is not permitted, except in the case of investment in debt securities. • An unitholder's approval is 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's assets in a financial year. • Co-investment is permitted, subject to conditions.
3.	<p>Distribution policy</p> <ul style="list-style-type: none"> • Minimum of 90% of the net distributable cash flow of a REIT is to be distributed to unitholders. • Minimum net distributable cash flows are to be distributed by a Hold Co to a REIT (subject to the provisions of the Companies Act, 2013, or Limited Liability Partnership Act, 2008, where applicable) in the case of: <ul style="list-style-type: none"> – 100% of cash flows received from SPVs – 90% of the balance

A.	Key aspects
	<ul style="list-style-type: none"> • An SPV is to distribute a minimum of 90% of its net distributable cash flows to a REIT/Hold Co (subject to the 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 sale of property or equity shares/interest in a Hold Co/SPV, unless reinvestment is proposed within a period of one year. • Distribution is to be undertaken at least once every six months.
4.	<p>Public offer</p> <ul style="list-style-type: none"> • Minimum value of REIT assets: INR5,000 million (~US\$67.97 million) • Slabs for minimum public float (excluding investment by Sponsor and Manager or their associates): <ul style="list-style-type: none"> – If post-issue capital is less than INR16,000 million (~US\$217.52 million): 25% of the post-issue capital or INR2,500 million (~US\$33.98 million), whichever is higher – If post-issue capital is equal to or more than INR16,000 million (~US\$217.52 million) but less than INR40,000 million (~US\$543.79 million): minimum INR4,000 million (~US\$54.37 million) – If post-issue capital is equal to or more than INR40,000 million (~US\$543.79 million): minimum 10% of the post-issue capital – However, the public float in all cases is to be increased to a minimum of 25% of the post-issue capital within a period of three years from the date of listing. • Maximum subscription from investors (including their related parties and associates) not to be more than 25% of unit capital unless 75% approval in value from other investors has been obtained post listing • Minimum subscription amount: INR50,000 (~US\$679.74) per applicant • Trading lot: 100 units
5.	<p>Listing requirements</p> <ul style="list-style-type: none"> • Mandatory listing within 12 working days of the IPO closure • 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) • A qualified institutional buyer to be deemed to be a public subscriber even if it is a related party of the REIT
6.	<p>Strategic investor⁹</p> <ul style="list-style-type: none"> • A strategic investor is an infrastructure finance company registered as an NBFC, scheduled commercial bank, international multilateral financial institution, systemically important NBFC*, FPIs, Mutual Funds, or insurance companies. • The strategic investor can invest, jointly or severally, a minimum of 5% and a maximum of 25% of the total offer size by the REIT. • Lock-in period is for 180 days from date of listing of public issue. • Draft offer document should mention details of strategic investor.

⁹ SEBI Circular no SEBI/HO/DDHS/CIR/P/2018/10

*NBFCs whose asset size is of INR5,000 million or more as per last audited balance sheet are considered as systemically important NBFCs

A.	Key aspects
	<ul style="list-style-type: none"> The unit price of the strategic investor should be greater than or equal to the public issue price. If the strategic investor's price is less than the public issue price, the former 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 or her. If a public issue fails due to a minimum subscription, the strategic subscription agreement has to be terminated.
7.	<p>Leveraging</p> <ul style="list-style-type: none"> A REIT may issue debt securities that are to be listed on a recognised stock exchange. The aggregate consolidated borrowings and deferred payments of a REIT, Hold Co and SPV(s) (net of cash and cash equivalents, not including refundable security deposits to tenants) are to be capped at 49% of the value of the REIT's assets. The net consolidated borrowings and deferred payments of the REIT, Hold Co and SPV(s) higher than 25% of the REIT's assets are 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.	<p>Related party transactions</p> <ul style="list-style-type: none"> Permission is 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 two independent valuers in the case of specified transactions (for instance, buying and selling of assets) Unitholder's approval is 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 a Hold Co/SPV), the total value of which in a financial year exceeds 10% of the value of the REIT Borrowings from related parties in a financial year exceeding 10% of total consolidated borrowings of the REIT, Hold Co and SPV(s)
9.	<p>General purpose</p> <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 are not to be considered as a part of general purposes.

A.	Key aspects	
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 Real Estate assets, interests and rights in the Hold Co/SPV to the REIT before allotment of units to applicants • Sponsors and sponsor group to collectively hold: <ul style="list-style-type: none"> – A minimum of 25% of the total units of a REIT on a post-issue basis for a period of three years from an initial offer – One year lock-in period for post-IPO holding in excess of 25% • Each sponsor is to hold a minimum of 5% of the outstanding units of a REIT at all times. <p>Declassification of sponsor</p> <ul style="list-style-type: none"> • Where a REIT has been listed on a stock exchange for a period of three years, upon application, the status of the sponsor can be declassified, provided: <ul style="list-style-type: none"> – The unit holding of the sponsor, along with associates, does not exceed 10%. – The manager is not controlled by such a sponsor or associates. – The sponsor or its associates are not fugitive economic offenders. – The approval of the unitholders has been obtained. <p>Manager</p> <ul style="list-style-type: none"> • 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 <p>Trustee</p> <ul style="list-style-type: none"> • Appointing a manager and executing investment management 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 to be mandatorily set up only as a trust
2.	Key definitions	<p>Sponsor group</p> <ul style="list-style-type: none"> A sponsor group includes: <ul style="list-style-type: none"> A sponsor Where the sponsor is a body corporate: <ul style="list-style-type: none"> Entities/Persons controlled by the body corporate Entities/Persons controlling the body corporate Entities/Persons controlled by entities/persons controlling the body corporate Where the sponsor is an individual: <ul style="list-style-type: none"> The immediate relatives of the individual (i.e., spouse, parents, brother, sister or child of the person or the spouse of the person) Entities/persons controlled by the individual <p>Completed property</p> <ul style="list-style-type: none"> Property for which an occupancy certificate has been granted by a relevant authority <p>Real estate or property</p> <ul style="list-style-type: none"> 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, excluding mortgages Hotels, hospitals and convention centres forming a 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) These exclude any other asset considered as 'infrastructure', as defined by the Ministry of Finance (refer to the Annexure). <p>Related party</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> Sponsor group(s), inducted sponsor(s), a manager and trustee; and Promoters, directors and partners of the sponsor group(s), inducted sponsor(s), manager and trustee <p>Hold Co</p> <ul style="list-style-type: none"> 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	
		<p>SPV</p> <ul style="list-style-type: none"> • A company or 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 that 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	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> – The acquisition price is more than 110% of the valuation – The sale price is less than 90% of the valuation • To have a 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 value of the asset
4.	Governance aspects	<ul style="list-style-type: none"> • 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 to be passed if unitholders casting votes in favour of the matter are more than those casting votes against it • Certain specified matters (for instance, a change in the manager, or delisting) to ensure that votes being cast in favour are at least 1.5 times the votes cast against it • Approval of 75% (in value) unit holders not connected to the transaction required for change in sponsor, induction of a sponsor or a change in control of the sponsor • 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 with a bearing on operations or the performance of a REIT to be disclosed to the stock exchange
5.	Others	<ul style="list-style-type: none"> • Multiple classes of REIT units not permitted • No schemes to be launched • 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)

6

InvIT regulations: An overview



InvIT regulations

A.	Key aspects
1.	<div data-bbox="225 322 347 353">Eligibility</div> <div data-bbox="496 322 991 353"> Sponsor (person who sets up an InvIT) <ul style="list-style-type: none"> No maximum limit on the number of sponsors Consolidated net worth or net tangible asset of at least INR1,000 million each (~US\$13.59 million) A minimum of five years' experience in Infrastructure development or fund management in the Infrastructure sector <ul style="list-style-type: none"> In addition, track record of at least two completed projects in the case of a developer sponsor </div> <div data-bbox="496 663 756 694"> Investment manager <ul style="list-style-type: none"> Minimum net worth or net tangible asset of INR100 million (~US\$1.36 million) Minimum five years' experience in fund management or advisory or development activities in the Infrastructure sector In case where the investment manager does not have five years' experience, a combined experience of full-time directors, partners, or employees of investment manager is of more than 30 years in fund management, advisory services or development in Infrastructure sector. <ul style="list-style-type: none"> in order to compute the combined experience, only experience of full-time directors, partners, or employees of investment manager with experience of more than five years will be considered. Minimum of two employees with the five years of experience in fund management, advisory services or development in Infrastructure sector Minimum of one employee with at least five years' experience in sub-sector(s) relevant to the investment of the InvIT More than 50% of the directors/governing board as of the Manager / to be independent and not to be directors / members of a Manager of any other InvIT </div> <div data-bbox="496 1361 592 1393"> Trustee <ul style="list-style-type: none"> Registered with SEBI and not related to the sponsor or investment manager </div>



A.	Key aspects	
2.	Key investment conditions	<p>Asset-related conditions</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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 or body corporate 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 <p>*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.</p> <p>Additional common conditions</p> <ul style="list-style-type: none"> Direct holding of Infrastructure projects in India or through a Hold Co/SPV but investment in PPP projects to be mandatorily made through a Hold Co/SPV Investment through a Hold Co or SPV to be subject to the following: <ul style="list-style-type: none"> Ultimate holding interest of an InvIT in SPVs to be at least 26% in case of investment through a Hold Co 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	<ul style="list-style-type: none"> A minimum of 90% of the net distributable cash flows of an InvIT to be distributed to unitholders Minimum net distributable cash flows to be distributed by a Hold Co to an InvIT: <ul style="list-style-type: none"> 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)

A.	Key aspects
	<ul style="list-style-type: none"> • 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 for privately placed InvITs
4.	<p>Fundraising through public offer of units</p> <ul style="list-style-type: none"> • Minimum value of InvIT assets: INR5,000 million (~US\$67.97 million) • Slabs for minimum offer size and public float (excluding investment by Sponsor and Manager or their associates): <ul style="list-style-type: none"> – If post-issue capital is less than INR16,000 million (~US\$217.52 million): 25% of the post-issue capital or INR2,500 million (~US\$33.98 million), whichever is higher – If post-issue capital is equal to or more than INR16,000 million (~US\$217.52 million) but less than INR40,000 million (~US\$543.79 million): Minimum INR4,000 million (~US\$54.37 million) – If post-issue capital is equal to or more than INR40,000 million (~US\$543.79 million): Minimum 10% of the post-issue capital – The public float in all cases to 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: INR0.1 million (~US\$1359.48) per applicant – Trading lot: Consists of 100 units – Minimum number of unitholders (other than sponsors, its related parties and associates): 20 – Maximum subscription from investors (including their related parties and associates) not to be more than 25% of unit capital unless 75% approval from other investors has been obtained post listing
5.	<p>Fundraising through private placement of listed units</p> <ul style="list-style-type: none"> • Minimum value of InvIT assets: INR5,000 million (~US\$ 67.97million) • Minimum offer size: INR2,500million (~US\$ 33.98 million) • Minimum subscription amount: INR10 million (~US\$0.13 million) per applicant • Trading lot: INR10 million (~US\$0.13 million) • Minimum unitholders (other than sponsors, their related parties and associates): 5 • Maximum unitholders (other than sponsors, their related parties and associates): 1,000 • Maximum subscription from investors (including their related parties and associates) not to be more than 25% of unit capital unless 75% approval from other investors has been obtained post listing • 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: <ul style="list-style-type: none"> – Minimum investment from an investor to be INR250 million (~US\$3.39 million) – Trading lot to be INR20 million (~US\$0.27 million)

A.	Key aspects	
6.	Fundraising through private placement of unlisted units	<ul style="list-style-type: none"> • No mandatory requirement to be listed on recognised stock exchanges • Minimum investment from an investor to be INR10 million (~US\$0.13 million) • Nature of investors: Institutional investors and body corporates only • Maximum unitholders (other than sponsors, their related parties and associates): 20(no limit on maximum subscription) • No cap on borrowings (subject to conditions, as may be prescribed in the trust deed) • All conditions as applicable to a privately placed listed InvIT to apply; relaxation from certain regulations and disclosure requirements applicable to privately placed listed InvITs are specified
7.	Listing requirements	<ul style="list-style-type: none"> • Mandatory listing within 12 working days of IPO closure for publicly offered units of listed InvIT • Mandatory listing within 30 working days of allotment 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 not to be utilised for 'general purposes', as defined in the offer document
8.	Conversion of privately placed listed InvIT to unlisted InvIT	<ul style="list-style-type: none"> • Trustee and investment manager allowed to choose to convert InvIT • Approval of unitholders required (at least 90% of unitholders by value); exit to be provided to dissenting unitholders
9.	Strategic investor¹⁰	<ul style="list-style-type: none"> • A strategic investor is an infrastructure finance company registered as an NBFC, scheduled commercial bank, international multilateral financial institution, systemically important NBFC* or FPIs, mutual funds, or insurance companies. • The strategic investor can invest, jointly or severally, a minimum of 5% and a maximum of 25% of the total offer size by the InvIT. • Lock-in period is for 180 days from the date of listing of a public issue. • Draft offer document should mention the 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 former 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 him or her. • If a public issue fails due to a minimum subscription, the strategic subscription agreement has to be terminated.
10.	Leveraging (for listed InvITs)	<ul style="list-style-type: none"> • An InvIT may issue debt securities that are to be listed on a recognised stock exchange. • The aggregate net consolidated borrowing and deferred payments of an InvIT, Hold Co and SPV(s) are to be capped at 70% of the value of the InvIT assets.

¹⁰ SEBI Circular no SEBI/HO/DDHS/CIR/P/2018/10

*NBFCs whose asset size is of INR5000 million or more as per last audited balance sheet are considered as systemically important NBFCs

A.	Key aspects
	<ul style="list-style-type: none"> The 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 six 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 are to 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 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)
12.	General purpose <ul style="list-style-type: none"> A maximum of 10% of the amount raised by an InvIT by public issue of units can be used for 'general purposes', as mentioned in the offer document Issue-related expenses are not to be considered as a part of general purposes
13.	Key rights and responsibilities <p>Sponsor</p> <ul style="list-style-type: none"> Setting up of an InvIT and appointment of a trustee Transferring or undertaking to transfer infrastructure 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: <ul style="list-style-type: none"> Three-year lock-in period for 15% of the post-IPO holding One-year lock-in period for the post-IPO holding in excess of 15% Sponsors to be responsible to the InvIT for all acts, omissions and representations/covenants related to formation and transfer of assets/securities An InvIT/trustee to have recourse to the sponsor for any breach with respect to the above The sponsor/associate of the sponsor to act as project manager for a minimum period of three years, unless a suitable replacement is appointed by unitholders <ul style="list-style-type: none"> This condition not to apply if the sponsors hold a minimum 25% stake on a post-issue basis for at least three years from the date of listing

A.	Key aspects	
	Key rights and responsibilities (Cont'd)	<p>Declassification of sponsor</p> <ul style="list-style-type: none"> Where an InvIT has been listed on a stock exchange for a period of three years, on application the status of the sponsor can be declassified provided: <ul style="list-style-type: none"> The unit holding of such sponsor along with associates does not exceed 10% The Investment manager is not controlled by the sponsor or associates The Approval of unitholders has been obtained <p>Investment manager</p> <ul style="list-style-type: none"> 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 <p>Project manager</p> <ul style="list-style-type: none"> Undertaking operation, management, maintenance and supervision of assets Undertaking project implementation in compliance with the terms of project implementation/project management agreement <p>Trustee</p> <ul style="list-style-type: none"> Executing an 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 only as trust
2.	Key definitions	<p>Completed and revenue-generating project</p> <ul style="list-style-type: none"> 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 <p>Eligible infrastructure project</p> <ul style="list-style-type: none"> 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 to be included in eligible projects In the case of other projects, project to have received all the requisite approvals and certification to commence construction <p>Hold Co</p> <ul style="list-style-type: none"> 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 Is not engaged in any activity other than holding of underlying SPVs/infrastructure projects <p>Infrastructure</p> <ul style="list-style-type: none"> Includes all infrastructure sub-sectors, as defined vide notification of the Ministry of Finance (dated 14 November 2017) and include any amendments thereof (please refer to the Annexure for the list of infrastructure sub-sectors) <p>Institutional investors</p> <ul style="list-style-type: none"> 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, with a net worth of INR5,000 million (~US\$67.97 million) <p>PPP project</p> <ul style="list-style-type: none"> 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) <p>Pre-COD project</p> <ul style="list-style-type: none"> A project that does not achieved a commercial operation date under relevant agreements and has achieved the following: <ul style="list-style-type: none"> Completed at least 50% of the infrastructure project (as certified by an independent engineer) Expended at least 50% of the total capital cost <p>Project manager</p> <ul style="list-style-type: none"> A person who is responsible for the execution and achievement of project milestones, in accordance with relevant project documents <p>Related party</p> <ul style="list-style-type: none"> The definition of 'related party' for InvIT Regulations has been aligned with the definition provided in the Companies Act, 2013, as well as under applicable accounting standards and includes: <ul style="list-style-type: none"> Sponsor(s), investment manager, project manager(s) and trustee Promoters, directors and partners of the above-mentioned entities

B.	Other aspects	
		<p>SPV</p> <ul style="list-style-type: none"> • 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 <p>Under construction project</p> <ul style="list-style-type: none"> • 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 generating revenue from its operations of one year
3.	Valuation	<ul style="list-style-type: none"> • 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 is not related to or associated with parties to the InvIT • Valuer not to 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 30 September • Complete valuation to be undertaken for purchase or sale of property by a publicly offered InvIT; unitholders' approval required where: <ul style="list-style-type: none"> – The acquisition price is more than 110% of the valuation – The sale price is less than 90% of the valuation • To have a 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
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 of the matter are more than the number casting votes against • Certain specified matters (for instance, a change in the manager or delisting) requiring the number of votes being cast in favour of to be at least 1.5 times the votes cast against • Approval of 75% (in value) unit holders not connected to the transaction required for change in sponsor, induction of a sponsor or a change in control of the sponsor • 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
5.	Others	<ul style="list-style-type: none"> • Multiple classes of InvIT units not permitted • No schemes to be launched • 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

7

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	<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 assets or securities (other than shares in an SPV) with the units of REITs/InvITs	Taxable at the time of the swap: <ul style="list-style-type: none"> Long-term capital gains at the rate of 10^{***}/20% Short-term capital gains at the rate of 30%/40^{***}
	On sale of units of REITs/InvITs on the stock exchange*	<ul style="list-style-type: none"> Long-term capital gains beyond INR0.1 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 a 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 (from SPV)	Not taxable at REIT/InvIT level Withholding Tax requirement at REIT/InvIT level: <ul style="list-style-type: none"> Foreign investors: 5% Domestic investors: 10%
	Dividend income <i>Where the SPV has adopted the lower tax regime accorded under section 115BAA of the Act</i>	Not taxable at REIT/InvIT level Withholding Tax requirement at REIT/InvIT level: <ul style="list-style-type: none"> Foreign investors: 10% Domestic investors: 10%
	Dividend income <i>Where the SPV has not adopted the lower tax regime accorded under section 115BAA of the Act</i>	Dividend income should be exempt No withholding tax requirement at the REIT/ InvIT level
	Rental income from property held directly by a REIT	Not taxable at the REIT/InvIT level Withholding Tax requirement: <ul style="list-style-type: none"> Foreign investors: at rates in force Domestic investors: at the rate of 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
SPV ¹¹	Dividend distributed to REIT/InvIT	<ul style="list-style-type: none"> Dividend Income should be exempt in hands of REIT/InvIT Withholding Tax requirement at SPV level: at the rate of 10%
	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 (in the nature of interest from SPV)	<ul style="list-style-type: none"> Foreign investors: 5% (withheld at REIT/ InvIT level) Domestic investors: at applicable rates (credit for tax withheld at the rate of 10%)
	Dividend income <i>where the SPV has adopted the lower tax regime accorded under section 115BAA of the Act</i>	<ul style="list-style-type: none"> Foreign investors: 20% (credit for tax withheld at 10%) Domestic investors: at applicable rates (credit for tax withheld at 10%) ****
	Dividend income <i>where the SPV has not adopted the lower tax regime accorded under section 115BAA of the Act</i>	<ul style="list-style-type: none"> Not taxable in the hands of unit holders
	Capital gains on sale of assets/shares of SPV by REIT/InvIT	<ul style="list-style-type: none"> Not taxable in the hands of unitholders
	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 INR0.1 million, taxable at 10%** Short-term capital gains at concessional tax rate of 15%** MAT[^] to be levied
	On sale of units of InvIT not listed on a 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

*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).

*** Is applicable in the case of a foreign company.

[^] MAT will be chargeable at the rate of 15% (plus applicable surcharge and cess) for domestic companies that have not opted for the lower tax of 22% under section 115BAA of the Act.

[#] 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.

**** Where unitholder being a domestic company distributes the dividend income received *inter alia* from a REIT/ InvIT during the year on or before the specified date (i.e. one month prior to the due date of filing Income-tax returns for the relevant financial year), the amount of dividend distributed to be reduced to arrive at the taxable income of the domestic company.

¹¹ The concept of a Hold Co has not been specifically recognised in the Indian income tax law as yet.

Notes

1. All tax rates quoted in this document are exclusive of surcharge, as may be applicable, and health and education cess. All the tax rates mentioned herein to be increased by the applicable surcharge, i.e., for Financial Year 2020-21:
 - a. For domestic companies at the rate of 7%, with taxable income above INR10 million and up to INR100 million and 12% for taxable income exceeding INR100 million
 - b. For foreign companies at the rate of 2%, with income above INR10 million and up to INR100 million and 5% for those exceeding INR100 million
 - c. The tax liability to be further increased by health and education cess of 4%
2. Withholding Tax to be increased by the applicable surcharge and health and education cess of 4%.
3. REIT/InvIT units held for more than 36 months to be classified as long-term capital assets



8

Transfer Pricing



Transfer Pricing

- SEBI's regulations on the REIT and InvIT mandate that all Related Party Transactions should be at arm's length. As per the regulations, the definition 'related party' is very wide. Furthermore, significant compliance and disclosure requirements have been prescribed for transactions entered with related parties under REIT and InvIT Regulations.
- Under SEBI's regulations for REIT, specific guidance for valuation has been provided for Related Party Transactions of purchase or sale of properties. However, no guidance is available for other transactions, including leasing, remuneration to the manager and pricing of debt or securities. In the 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 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 the event of conflict of interest. The disclosure and compliance requirements will require the manager to ensure that all Related Party Transactions are at arm's length and that disclosure-related requirements have been complied with.



9

Ind AS for REITs and InvITs



Ind AS for REITs and InvITs

The Indian Accounting Standards (Ind AS) are relatively more prescriptive and elaborate in many areas, compared to generally accepted accounting principles in India (previous Indian GAAP) that were earlier followed by companies. At the fundamental level, Ind AS focus on substance rather than the legal aspect, and the risks and rewards of underlying transactions. The standards break away from legal structure-based accounting to a more substance-driven process. Accounting under Ind AS reflects the underlying business rationale and true economics of transactions. The extent of their impact varies across industries. An industry that has been affected significantly is the India's Real Estate and Construction industry.

We have summarised the key likely impact on financial reporting of Real Estate and Construction entities, which could necessitate significant changes to be made under Ind AS.

Consolidation

A REIT or InvIT 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 a REIT or InvIT.

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. It defines the principles of control, explains how an entity should apply the principles of control and comply with accounting requirements to prepare 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 a limited scope of exception from consolidation 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 for the purpose of providing those investor (or investors) with investment management services.
- It makes a commitment to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income or both.
- It measures and evaluates the performance of substantially all its investments based on their fair value.

Investment-related activities include investment management services, investment advisory services and administrative support. These services may constitute 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). If an investment entity only has subsidiaries that are measured at fair value through profit or loss, it presents separate financial statements as its only financial statements, i.e., consolidated financial statements, are not prepared.

Guidance under Ind AS 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 the circumstances of specific entities, certain special purpose structures or vehicles may no longer remain outside a consolidated group. This 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 need to evaluate whether they control a REIT or InvIT, and if so, whether this could trigger consolidation, either at the sponsor or the asset management entity level. Furthermore, it also needs to be evaluated whether the REIT or InvIT qualifies as an 'investment entity' under Ind AS in order to avail the benefit of not consolidating its 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 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 joint operations or joint ventures (JV). 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 generally classified as a JV.

In contrast, joint operators have rights to assets and obligations for liabilities relating to a joint arrangement. Joint operations are often not structured through separate vehicles. When a joint arrangement is separated from the parties and is 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.

Previously, Indian GAAP required JVs to be consolidated proportionately, whereas under Ind AS 111 'Joint Arrangements', with certain exceptions, JVs are accounted for under the Equity Method of accounting.

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

The process of structuring joint arrangement, for example, to develop and construct property, can be complicated. Consequently, it is important for sponsors, REITs and InvITs to understand not only the legal structure, but also the contractual terms of their arrangements, and where relevant other facts and circumstances 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.

Ind AS 116, 'Leases' has fundamentally changed accounting for lease transactions, particularly for lessees, and is likely to lead to significant business-related implications. Almost all leases will be recognised on the balance sheet, with a right-of-use asset and financial liability. Amortisation of the right of use asset and accretion of interest on the financial liability is likely to result in recognition of higher expenses in profit or loss during the earlier life of a lease.

When it comes to leasing transactions, the majority of entities in the Real Estate industry will be the lessors. While the new standard leaves lessor accounting unchanged, compared to previous lease standard Ind AS 17, 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, in view of 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 impact on the balance sheet. The new leasing standard will not only have an impact on tenants' balance sheets but also on their operating costs, with the expense being split between depreciation and finance costs.

From a lessor's perspective, it is important to be aware of this impact for tenants as they may influence market behaviour towards a preference for shorter term or more flexible leases with various 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 the interest expense (on lease liability) and the depreciation charge (for right-of-use asset) separately.
- Enhanced disclosure requirements

Furthermore, the definition of a lease, compared to the previous lease standard, might result in some contracts being treated differently. Ind AS 116 includes detailed guidance to help companies assess whether a contract contains a lease or a service, or both.

Revenue Recognition

Ind AS 115, 'Revenue from contracts with customers', provides a single, comprehensive revenue- recognition model for all contracts with customers. The core principle of Ind AS 115 is that an entity will need to recognise revenue to depict the transfer of promised goods or services to customers at an amount that the entity expects to be entitled to in exchange for such goods or services.

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 costs relating to obtaining a contract must be capitalised;
- Whether revenue must be adjusted for the effect of the time value of money
- How to account for contract modifications;
- The impact of new guidance where pricing mechanisms include variable amounts

The 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 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 under many circumstances.

Financial instruments

The standards on financial instruments have a wide-ranging impact on companies and provide extensive guidance on identification, classification, recognition and measurement of financial instruments. They also provide guidance on derecognition of financial instruments and hedge accounting, and include extensive disclosure requirements.

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

- Ind AS 107 (Financial Instruments: Disclosures), which includes disclosure-related 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 investments in 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 an instrument's contractual cash flows.

Investment in equity instruments

Investments in equity instruments are to be measured at their fair value on a recurring basis. 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 as 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 in profit or loss. 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 or loss (e.g., on sale of an equity investment) nor 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 or debenture, will be accounted for as a liability rather than an equity by the issuer, even though it is legally the issuer's share capital.

Classification of 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 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, InvITs or their underlying SPVs that use such compound financial 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, the introduction of Ind AS to REITs, InvITs, their underlying SPVs, sponsors or asset management companies could significantly affect financial statements, depending on the complexities of each case.



10

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.

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 REIT and InvIT market 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 as well as infrastructure, we are positive that the market for these investment vehicles will witness considerable growth at a continued pace, as we have seen with recent REITs and InvITs.



11

Annexure: List of infrastructure sub-sectors



Annexure: List of infrastructure sub-sectors¹²

S. No.	Category	Infrastructure sub-sectors
1.	Transport and Logistics	<ul style="list-style-type: none"> Roads and bridges Ports¹³ Shipyards¹⁴ Inland waterways Airports Railway tracks, 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 Bulk Material Transportation Pipelines¹⁶
2.	Energy	<ul style="list-style-type: none"> Electricity generation Electricity transmission Electricity distribution Oil, gas and liquefied natural gas (LNG) storage facility¹⁷
3.	Water and sanitation	<ul style="list-style-type: none"> Solid waste management Water treatment plants Sewage collection, treatment and disposal systems Irrigation (dams, channels, embankments, etc.) Storm water drainage systems

¹² Notification F. No. 13/1/2017-INF dated 24 August 2020

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 INR500 million and a minimum area of 10 acres, a cold chain facility with a minimum investment of INR150 million and a minimum area of 20,000 square feet, and/or a warehousing facility with a minimum investment of INR250 million and a minimum area of 1 lakh square feet.

¹⁶ Includes Oil, Gas, Slurry, Water supply and Iron Ore Pipelines

¹⁷ Includes strategic storage of crude oil

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 Affordable rental Housing Complex²³

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.

²³ 'Affordable Rental Housing Complex' means a project (having at least 40 Dwelling Units[#] or equivalent Dormitory Units^{##} or mix with max 1/3rd built up in double bedroom dwelling units) to be used for rental purpose only for urban migrant/poor (EWS/LIG categories) for a minimum period of 25 years with basic civic infrastructure facilities (viz. water, sanitation, sewage, road, electricity) along with necessary social/commercial infrastructure and the initial rent fixed by Local Authority/ Entities based on local survey of surrounding area.

[#] 'Dwelling Units' means a unit comprising of double bedroom (of up to 60 square metres carpet area[@]) or single bedroom (of up to 30 square meters carpet area[@]) with living room, kitchen, toilet and bathroom.

^{##} 'Dormitory Units' means 3 dormitory bed with common kitchen, toilet, and bathroom in 30 square meter carpet area[@]

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

About APREA

The Asia Pacific Real Estate Association (APREA) is a leading pan-Asian association made up of investors, investment and asset managers, developers, REITs, pension, insurance and sovereign wealth funds, family office platforms, and respected service providers. APREA's focus is cross-border real estate investment, and promotion of real estate as a preferred investment asset class across Asia Pacific and beyond.

APREA represents its relentless commitment to the Asia Pacific's real estate industry with an emphasis on advocacy, investment, continuous improvement, innovation, and high-quality member service. APREA as the regional real estate association across the Asia Pacific region covers eight main chapters: Australia, Singapore, China, India, Japan, Hong Kong, Malaysia, and the Philippines.

APREA works closely with the regulators in different countries across the Asia Pacific region to improve the fundamental rules of the real estate industry, in order to develop a business-friendly environment for its members.

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Contact us

Gautam Mehra

Leader, Tax and Regulatory Services
PwC India
guatam.mehra@pwc.com

Bhairav Dalal

Partner, Tax and Regulatory Services
PwC India
bhairav.dalal@pwc.com

pwc.in

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