



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

DEPARTMENT OF DEBT AND HYBRID SECURITIES – POD II

CONSULTATION PAPER ON PROPOSALS FOR REITs AND INVITs

OCTOBER 2024



CONTENTS

Particulars	Page no.
Objective	3
Part – A: Ease of Doing Business Measures	5-47
Permitting transfer of locked-in units of sponsor and sponsor group for REITs and InvITs	5
Definition of Common Infrastructure under REIT Regulations	12
Alignment of NRC composition for REITs, InvITs and SM REITs with LODR Regulations	16
Amendment of Governance Norms for reporting of quarterly results – InvITs	18
Allowing REITs and InvITs to deal in Interest Rate Derivatives for Hedging	20
Review of conditions for enhanced borrowings beyond 49% by InvITs	24
Providing a Timeline for filling up of vacancy in the office of the Board of Directors of Manager of REIT (including SM REITs) / Investment Manager of InvIT	28
Clarification on requirement of Credit Rating to be obtained by REITs, InvITs and SM REITs for borrowings	32
Inclusion of fixed deposits as cash and cash equivalents for computation of leverage for REITs, InvITs and SM REITs	35
Expanding the asset base for REITs and SM REITs	38
Part – B: Investor Protection Measures	48-64
Review of investment in unlisted equity shares by REITs	48
Review of investment in liquid mutual funds – REITs and InvITs	51
Roles and responsibilities of trustee for REITs, InvITs and SM REITs	54
Public Comments	65

Timeline to Respond

Comments on the Consultation paper (CP) may be sent by November 13, 2024

1. **OBJECTIVE AND BACKGROUND**

1.1. The objective of this consultation paper is to seek comments / views / suggestions from the public on certain proposals related to REITs, SM REITs and InvITs.

1.2. The proposals made in the consultation paper are based on the inputs received from various forums as listed below:

1.2.1. Recommendations of working group for review of compliance requirements and ease of doing business for REITs and InvITs

1.2.2. Representations received from Indian REITs Association

1.2.3. Representations received from Bharat InvITs Association and

1.2.4. Recommendations of Hybrid Securities Advisory Committee (“HySAC”).

1.3. The matters consulted in this paper are categorized in two parts, as under:

Part - A: Ease of Doing Business Measures

(a) Permitting transfer of locked-in units amongst sponsor and sponsor group for REITs and InvITs

(b) Definition of Common Infrastructure under REIT Regulations

(c) Alignment of NRC composition of Managers/Investment Managers for REITs, InvITs and SM REITs with LODR Regulations

(d) Amendment of Governance Norms for reporting of quarterly results Reporting – InvITs

(e) Allowing REITs, SM REIT Schemes and InvITs to deal in Interest Rate Derivatives for Hedging

(f) Review of conditions for enhanced borrowings beyond 49% by InvITs

(g) Timeline for filling up of vacancy in the office of the Board of Directors of Manager of REIT (Including SM REIT Schemes) / Investment Manager of InvIT

(h) Clarification on requirement of Credit Rating to be obtained by REITs, InvITs and SM REIT Schemes for borrowings

(i) Inclusion of fixed deposits as cash and cash equivalents for computation of leverage for REITs, InvITs and SM REIT Schemes

- (j) Expanding the asset base for REITs and SM REIT Schemes

Part - B: Investor Protection Measures

- (k) Review of investment in unlisted equity shares by REITs
- (l) Review of investment in liquid mutual funds - REITs and InvITs
- (m) Roles and responsibilities of trustee for REITs, InvITs and SM REIT Schemes

1.4. The detailed proposals related to aforementioned items are mentioned in paragraphs 2 to 14 of this consultation paper.

PART – A: EASE OF DOING BUSINESS MEASURES

2. PERMITTING TRANSFER OF LOCKED-IN UNITS AMONGST SPONSOR AND SPONSOR GROUP FOR REITS AND INVITS

2.1. BACKGROUND:

2.1.1. In order to enhance the ease of doing business for the sponsor and sponsor group of a REIT/ InvIT, a representation was received from Indian REITs Association (IRA) and Bharat InvITs Association (BIA) (collectively referred to as “industry associations”) to extend the flexibility available to promoter(s) of listed companies regarding transfer of locked-in shares under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”) to the sponsor(s) of REITs and InvITs as well.

2.1.2. The representation also submitted that this flexibility will allow the sponsor(s) and members of the sponsor group(s) to manage their investments/ holdings internally whilst fulfilling the objective of ensuring continuous ‘skin in the game’ of sponsor(s)/ members of the sponsor group(s) of the REIT / InvIT.

2.2. EXTANT REGULATORY PROVISION:

2.2.1. Regulation 11(3) of the REIT Regulations specifies the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) of a REIT. Similarly, Regulation 12(3) and 12(3A) of the InvIT Regulations specifies the minimum unitholding requirement applicable to sponsor(s) and sponsor group(s) of an InvIT.

2.2.2. Regulation 11(3A) of the REIT Regulations reads as under:

“The units required to be held in terms of sub-regulation (3) shall be locked in and shall not be encumbered:

.....”

Similarly, Regulation 12(5) of the InvIT Regulations reads as under:

“The units required to be held in terms of sub-regulation (3) and (3A) shall be locked in and shall not be encumbered:

.....”

2.2.3. With regard to the guidelines for preferential issue of units by a REIT, para 10.6.1. of Chapter 10 of the Master Circular for REITs dated May 15, 2024 *inter-alia* requires as under:

“The units allotted to sponsor(s) and sponsor group shall be locked-in for a period of three years from the date of trading approval granted for the units:

Provided that units not more than twenty-five percent of the total unit capital of the REIT shall be locked-in for three years from the date of trading approval:

Provided further that units allotted in excess of twenty-five percent of the total unit capital of the REIT shall be locked-in for one year from the date of trading approval.

.....”

Similar provisions are specified in Para 7.6.1. of Chapter 7 of the Master Circular for InvITs dated May 15, 2024.

2.2.4. Regulation 14(1) and Regulation 16(1) of the ICDR Regulations *inter-alia* specifies the minimum promoters’ contribution in case of initial public offer on main board by a company and lock-in requirement applicable on specified securities held as minimum promoters’ contribution respectively. Further, Regulation 22 of the ICDR Regulations (dealing with transferability of locked-in specified securities) reads as under:

“Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 2011,

the specified securities, except SR equity shares, held by the promoters and locked-in as per regulation 16, may be transferred to another promoter or any person of the promoter group or a new promoter and the specified securities held by persons other than the promoters and locked-in as per regulation 17, may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

Provided that the lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.”

- 2.2.5. Regulation 167(1) of the ICDR Regulations *inter-alia* specifies the lock-in requirement applicable on securities allotted under a preferential issue to the promoters and promoter group of a listed issuer. Further, Regulation 168(1) of the ICDR Regulations (dealing with transferability of locked-in specified securities) reads as under:

“Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 2011, specified securities held by promoters and locked-in in terms of sub-regulation (1) of regulation 167, may be transferred among the promoters or the promoter group or to a new promoter or persons in control of the issuer:

Provided that the lock-in on such specified securities shall continue for the remaining period with the transferee.”

2.3. SUBMISSION OF INDIAN REITS ASSOCIATION (IRA) AND BHARAT INVITS ASSOCIATION (BIA)

- 2.3.1. It has been submitted by the industry associations to specify that any units held by the sponsor(s) and members of the sponsor group(s) pursuant to Regulation 11(3) of the REIT Regulations / Regulation 12(3) and 12(3A) of the InvIT Regulations and paragraph 10.6 of the Master

Circular for REITs / paragraph 7.6 of the Master Circular for InvITs may be transferred to other sponsor(s), members of the sponsor group(s), inducted sponsor(s) or self-sponsored Manager, as applicable. However, the lock-in on such units shall continue for the remaining period with any subsequent transferee(s) and such transferee(s) shall not be eligible to transfer the units to persons other than sponsor(s), members of the sponsor group(s), inducted sponsor(s) or self-sponsored Manager, as applicable, till the lock-in period stipulated under Regulation 11(3) of REIT Regulations / Regulation 12(3) and 12(3A) of InvIT Regulations or paragraph 10.6 of Master Circular for REITs / paragraph 7.6 of Master Circular for InvITs has expired.

2.4. RECOMMENDATION OF HYSAC

2.4.1. It may be noted that Regulation 22 of the ICDR Regulations permit transfer of specified securities (i.e. equity shares and convertible securities) held by the promoters and locked in under Regulation 16 (i.e. lock-in applicable at the time of Initial Public Offer) to another promoter or any person of the promoter group or a new promoter subject to:

2.4.1.1. compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”);

2.4.1.2. the lock-in continuing for the remaining period with the transferee; and

2.4.1.3. such transferee not being eligible to transfer the specified securities till the expiry of the lock-in period prescribed under the SEBI ICDR Regulations.

2.4.2. Similarly, Regulation 168 of the ICDR Regulations permit transfer of specified securities held by promoters and locked in under Regulation 167(1) (i.e. lock-in applicable at the time of preferential allotment) to another promoter or any member of the promoter group or a new

promoter or persons in control of the issuer company subject to compliance with the Takeover Regulations and the lock-in on the specified securities continuing for the remaining period with the transferee.

2.4.3. In the context of REITs and InvITs, although the minimum unitholding requirement under Regulation 11(3) of the REIT Regulations and Regulations 12(3) and 12(3A) of the InvIT Regulations is applicable to the sponsor(s) and sponsor group(s) and the Regulations require such units to be locked in, the Regulations does not provide for inter-se transfer of such locked-in units amongst the sponsor(s) and sponsor group(s), unlike ICDR Regulations wherein transfer of locked-in units is permitted between promoters and promoter group entities subject to certain conditions.

2.4.4. Similarly, in case of preferential issue of units by a REIT/InvIT, lock-in requirements have been specified with respect to units allotted to the sponsor and sponsor group but the Master Circular for REITs and InvITs does not provide for inter-se transfer of such locked-in units amongst the sponsor(s) and sponsor group(s), unlike ICDR Regulations wherein transfer of locked-in units is permitted between promoters and promoter group entities subject to certain conditions.

2.4.5. Considering the above, HySAC recommended that the units locked-in and held by the sponsor(s) and sponsor group(s) under Regulation 11(3) of the REIT Regulations and paragraph 10.6 of the Master Circular for REITs may be transferred to another sponsor, member of sponsor group, inducted sponsor or self-sponsored Manager (as applicable) subject to the condition that lock-in on such units shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer the units till the lock-in period stipulated under the Regulations / Master Circular has expired.

2.4.6. It was also recommended by HySAC that similar provisions be implemented for InvITs.

2.5. Further, it has been noted that the REIT Regulations and InvIT Regulations permit multiple sponsors in case of a REIT / InvIT. In order to maintain the capital commitment in relation to locked-in units by a particular sponsor as disclosed at the time of initial offer and to prevent any risk of name-lending and mis-selling, it is proposed that locked-in units held by a particular sponsor and/or its sponsor group entities shall be permitted to be transferred only within such sponsor and its own sponsor group entities and not to the other sponsor and their group entities. The same can be illustrated as under:

REIT /InvIT ABC has two sponsors i.e. Sponsor 1 and Sponsor 2. Sponsor 1 or its group entities shall be allowed to transfer its locked-in units only within Sponsor 1 and its own sponsor group entities. Sponsor 1 shall not be allowed to transfer locked-in units held by it to Sponsor 2 or their group entities.

2.6. PROPOSAL

2.6.1. Accordingly, in order to improve the ease of doing business, it is proposed to specify that locked-in units held by a sponsor and any member of its sponsor group under the REIT Regulations and InvIT Regulations may be transferred within the sponsor group entities subject to the condition that lock-in on such units shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer the units till the lock-in period stipulated under the regulations has expired.

Further, in case of a REIT / InvIT with multiple sponsors, to prevent any risk of name-lending and mis-selling, it is proposed that the locked in units held by a particular sponsor and/or its sponsor group can be

transferred only within such sponsor and its own sponsor group entities, and not to the other sponsor and their group entities.

Consultation 1: Permitting transfer of locked-in units amongst sponsor and sponsor group for REITs and InvITs

Kindly provide your comments along with supporting rationale on the following:

- 1) Whether units held by a sponsor and members of its sponsor group which are required to be locked-in, shall be permitted to be transferred within the sponsor group?
- 2) In case of a REIT / InvIT with multiple sponsors, whether the locked in units held by a particular sponsor and/or its sponsor group entities be transferable only within such sponsor and its own sponsor group entities, and not to the other sponsor or their group entities.

3. DEFINITION OF COMMON INFRASTRUCTURE UNDER REIT REGULATIONS

3.1. BACKGROUND

3.1.1. It has been submitted that in order to allow REITs to provide green power to the occupants of the properties owned by REITs and also contribute on environmental and sustainability business initiatives and growth, along with enhancing the ease of doing business for REITs, it may be clarified that REITs are allowed to set up, invest in and acquire assets that provide common infrastructure facilities and amenities servicing one or more REIT portfolio assets such as captive power plants, district/retail heating and cooling systems, water treatment/processing plants and waste treatment/processing plants. The rationale for the same is as under –

3.1.1.1. REITs in India typically invest in commercial property located in urban areas, including office parks, city-center buildings and retail malls. These projects are typically in the nature of 'composite' real estate projects, i.e., comprising offices, food courts, retail spaces, recreation areas and other facilities, such that each office park or city-center building operates as a standalone project that is able to provide 'infrastructure-like' facilities to its occupiers.

3.1.1.2. India has set a target to reduce the carbon intensity of the nation's economy by less than 45% by the end of the decade, achieve 50 percent cumulative electric power installed by 2030 from renewables, and achieve net-zero carbon emissions by 2070¹. India aims for 500 GW of renewable energy installed capacity by 2030².

3.1.1.3. Globally, supporting United Nations Sustainable Development Goals Target 7.3, to double energy efficiency by 2030, energy

¹ [Press Release: Press Information Bureau](#)

² [500GW Nonfossil Fuel Target | Government of India | Ministry of Power](#)

efficiency has proven to be among the highest priorities for REITs, as well as their investors and occupiers.

- 3.1.1.4. Increasingly, prospective occupiers have internal ESG targets and now insist on provision of green energy. A REIT's ability to provide green power has become a significant consideration for most prospective occupiers without which the building / project may not even be considered in the evaluation process.

3.2. EXTANT REGULATORY PROVISION

- 3.2.1. Regulation 2(1)(zi) of REIT Regulations defines "real estate" or "property" as under:

"means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage:

Provided that any asset falling under the purview of 'infrastructure' as defined vide Notification of Ministry of Finance dated October 07, 2013 including any amendments or additions made thereof shall not be considered as 'real estate' or 'property' for the purpose of these regulations;

Notwithstanding the above, following captured within the abovementioned definition of infrastructure shall be considered under "real estate" or "property"-

- i. hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating;*
- ii. common infrastructure" for composite real estate projects, industrial parks and SEZ."*

- 3.2.2. The word "common infrastructure" is not defined in the REIT Regulations.

3.3. PROPOSAL

3.3.1. In order to promote ease of doing business amongst REITs, it is proposed to clarify that facilities and amenities such as power plants, district/retail heating and cooling systems, water treatment/ processing plants and waste treatment/processing plant servicing one or more REIT assets would be considered as common infrastructure as per Regulation 2(1)(zi) of REIT Regulations even if such facilities are not co-located within any single project, by nature of their requirements and specifications.

3.3.2. Further it is proposed to clarify that the abovementioned facilities and amenities must be exclusively supplied and consumed by the REIT assets. However, in case of power plants, any excess power not consumed by the REIT assets may be supplied to state utility/grid in accordance with the relevant central and state regulations and the credits or payments received applied towards the REIT assets.

3.3.3. The aforementioned proposals were placed for deliberations at HySAC. Based on the recommendation of HySAC, it is proposed to define common infrastructure as under to provide clarity as to what constitutes common infrastructure and provide additional flexibility to REIT to use green source of energy and use sustainable methods for conservation of environment:

3.3.4. Proposed Definition of 'Common Infrastructure':

“common infrastructure” shall include the facilities or amenities such as power plants, district/retail heating and cooling systems, water treatment /processing plants and waste treatment/ processing plants which exclusively supply or cater to, or are exclusively consumed by, the REIT, its HoldCo(s) or SPV(s), irrespective of whether such facilities or amenities are co-located or not within any single project, by nature of their requirements and specifications.

Provided that in case of power plants, any excess power not consumed by the REIT, its HoldCo(s) or SPV(s) may be supplied to state utility/grid

in accordance with the relevant central and state regulations and the credits or payments received are applied towards the REIT, its HoldCo(s) or SPV(s).

Provided further that in case of other facilities or amenities, any excess or surplus capacity/production/units not consumed by the REIT, its HoldCo(s) or SPV(s) may be utilized outside the REIT, its HoldCo(s) or SPV(s), subject to and in accordance with applicable central and state regulations, provided that any credits or payments received are applied towards the REIT, its HoldCo(s) or SPV(s).”

Consultation 2: Definition of Common Infrastructure under REIT Regulations

- 1) Whether the definition of “common infrastructure” proposed in paragraph 3.3.4 above is appropriate?

4. **ALIGNMENT OF NOMINATION AND REMUNERATION COMMITTEE (NRC) COMPOSITION OF MANAGERS/INVESTMENT MANAGERS FOR REITs (INCLUDING SM REITs) and INVITs WITH LODR REGULATIONS**

4.1. **BACKGROUND**

4.1.1. Regulation 19(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 'LODR Regulations', dealing with the establishment of Nomination and Remuneration Committee (NRC), prescribes that NRC must consist of at least three non-executive directors out of which at least two-third to be independent directors.

4.1.2. However, with regards to Managers / Investment Managers of REITs including SM REITs and InvITs, the current regulatory framework, as per Explanation (v) under Regulation 26A of the REIT Regulations and Regulation 26G of the InvIT Regulations, interprets "non-executive director" as "independent director," thereby requiring that all members of the Nomination and Remuneration Committee (NRC) of REITs and InvITs be independent directors.

4.1.3. This creates a divergence between the LODR Regulations and specific provisions for Managers / Investment Managers of REITs and InvITs regarding the representation of independent directors on NRC.

4.2. **EXTANT REGULATORY PROVISION:**

4.2.1. Regulation 19(1) of LODR Regulations reads as below:

"The board of directors shall constitute the nomination and remuneration committee as follows:

(a) the committee shall comprise of at least three directors;

(b) all directors of the committee shall be non-executive directors; and

(c) at least two-thirds of the directors shall be independent directors."

4.2.2. Explanation (v) under the Regulation 26A of the REIT Regulations and Regulation 26G of the InvIT Regulations reads as follows:

"Explanation - For the purposes of this regulation, unless the context otherwise requires, the provisions under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, shall be interpreted as under, –

...

(v) the expression "non-executive director" wherever it occurs, shall be read as "independent director";"

4.3. PROPOSAL AND RATIONALE:

4.3.1. The above explanation clause implies that all NRC members be independent directors. It is proposed to modify the above provision thereby allowing for a mix of independent and non-executive directors in line with LODR Regulations. The same may be carried out by revising Explanation (v) of 26A of REIT Regulations and 26G of InvIT Regulations as under:

"(v) the expression "non-executive director" wherever it occurs, shall be read as "independent director" except Regulation 19(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations."

4.3.2. The proposed changes will also align the composition of NRCs in Managers/ Investment Managers of REITs including SM REITs and InvITs with the composition applicable for listed companies.

Consultation 3: Inclusion of Non-Executive Directors in the Nomination and Remuneration Committee (NRC) of Managers/Investment Managers of REITs, InvITs and SM REITs

1) Whether the proposed modification to bring the composition of NRCs in managers/investment managers of REITs, SM REITs and InvITs in line with provisions applicable for listed companies is appropriate?

5. **AMENDMENT OF GOVERNANCE NORMS FOR QUARTERLY RESULTS REPORTING - InvITs**

5.1. **BACKGROUND**

5.1.1. The governance norms as per Paragraph (c) of Part A of Schedule VII of the InvIT Regulations currently mandate that the quarterly results for the investment manager and its operational divisions or business segments are placed before the investment manager's board. This provision doesn't directly address the reporting requirements for the results of InvITs.

5.2. **EXTANT REGULATORY PROVISION:**

5.2.1. Extract from Part A of Schedule VII (Governance Norms) of the InvIT Regulations reads as follow:

"The following minimum information to be placed before Board of Directors of the investment manager:

.....

(c)Quarterly results for the investment manager and its operating divisions or business segments."

5.3. **PROPOSAL AND RATIONALE:**

5.3.1. It is proposed to amend the governance norms to require that the quarterly results specifically pertain to the InvITs rather than their investment managers, which is actually the intent of the regulations. This amendment aims to ensure that quarterly reporting directly reflects the performance and financial health of the InvITs

5.3.2. The above will also bring InvIT regulations in alignment with the REIT regulations wherein the corresponding provision clearly mention about the quarterly results of REIT (and not the Manager)

Consultation 4: Amendment of Governance Norms for Quarterly Results

Reporting - InvITs

- 1) Whether the proposed amendment to governance norms that requires placing of quarterly results, specifically pertaining to InvITs, before the Board of directors of the investment manager is appropriate and adequate?

6. ALLOWING REITs, SM REIT Schemes and InvITs TO DEAL IN INTEREST RATE DERIVATIVES FOR HEDGING

6.1. BACKGROUND

6.1.1. SEBI has received requests from industry association and market participants to permit usage of Rupee interest rate derivatives ("IRDs") for purposes of hedging.

6.2. EXTANT REGULATORY PROVISION:

6.2.1. InvIT Regulations do not include any instrument to hedge the interest rate risk on the existing borrowings or future borrowings through interest rate swaps.

6.3. SUBMISSIONS RECEIVED FROM INDUSTRY ASSOCIATIONS

6.3.1. Interest rate derivatives, such as swaps, futures and options, may enable InvITs to hedge against fluctuations in interest rates. This is particularly beneficial for infrastructure projects characterised by extended financing durations. The diversification may augment the overall risk-return balance.

6.3.2. In this regard, RBI issued "Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019" ("R-IRD Directions") containing the directions applicable to Rupee interest rate derivatives transactions undertaken on recognized stock exchanges and Over the Counter (OTC) markets, including on electronic trading platforms (ETPs).

6.3.2.1. Paragraph 3(1) of the Directions reads as follows:

"Any person resident in India and any non-resident, to the extent specified in these Directions, is eligible to participate in IRDs. All regulated entities shall participate in IRDs with the permission of and subject to the terms and conditions, if any, fixed by their respective regulators."

6.3.2.2. Paragraph 2 (xxvi) of the Directions defines regulated entities as:

“Regulated entity means any person, other than an individual or HUF, whose activities are regulated by any one of the financial regulators in India viz., Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority (PFRDA), National Housing Bank (NHB) and National Bank for Agriculture and Rural Development (NABARD).”

6.3.2.3. Accordingly, in terms of the R-IRD Directions, an InvIT shall be considered a regulated entity as it is regulated by SEBI. Further, it may be noted that, the directions provide that to enable a regulated entity to participate in IRDs, permission from the relevant regulator is required to participate.

6.3.3. Further, it may be noted that mutual fund schemes are permitted to participate in IRDs (including Forward Rate Contracts and Interest Rate Swaps).

Paragraph 7.6 of the Master Circular for Mutual Funds that deals with Trading in Interest Rate Derivatives reads as below:

“Mutual Fund schemes are permitted to undertake transactions in Forward Rate Agreements and Interest Rate Swaps with banks, PDs & FIs as per applicable RBI Guidelines, mutual funds can also trade in interest rate derivatives through the Stock Exchanges subject to requisite disclosures in the SID.”

6.3.4. Further, in terms of the R-IRD Directions issued by the RBI,

- 6.3.4.1. Paragraph 6 permits market makers to offer the following products to retail users - (a) Forward Rate Agreements; (b) Interest Rate Swaps; and (c) European Interest Rate Options. In addition, non-retail users are permitted to participate in swaptions and structured derivative products (excluding leveraged derivatives).
- 6.3.4.2. Retail Users includes all eligible participants in IRD markets other than non-retail users.
- 6.3.4.3. Accordingly, InvITs, by virtue of being eligible participants in IRDs are also permitted to participate in (a) Forward Rate Agreements; (b) Interest Rate Swaps.
- 6.3.5. As per InvIT Regulations, an InvIT is permitted to borrow funds up to 49% or 70% of the value of the InvIT Assets, subject to certain conditions. Accordingly, it is important for InvITs to be able to hedge interest rate risks that the InvIT may be exposed to on their current and future borrowings to ensure stability in its cash flows ultimately leading to safeguarding of unitholders' interest.
- 6.3.6. Additionally, allowing InvITs to participate in IRDs, Forward Rate Contracts and Interest Rate Swaps, will also allow InvITs to reduce the negative impact on the cash flows generated by the InvIT and distributions to the unitholders in the event of high interest rates
- 6.3.7. Furthermore, internationally it is understood that REITs are not prohibited from entering into derivatives.

6.4. PROPOSAL AND RATIONALE:

- 6.4.1. In view of the above, it is proposed to permit InvITs to participate in Interest Rate Derivatives, Forward rate Contracts and Interest Rate Swaps, subject to relevant disclosure in the Annual Report, solely with an objective of hedging an underlying interest rate risk.
- 6.4.2. Further in this regard, for valuation the InvITs shall follow the norms applicable and practiced by Mutual Fund industry.

6.4.3. The abovementioned proposal on permitting InvITs to deal in IRDs solely for the benefit of hedging risks by the InvITs is also relevant in case of REITs, hence it is proposed to specify similar provisions for REITs and SM REIT Schemes appropriately in the REIT Regulations³.

Consultation 5: Allowing REITs SM REIT Schemes and InvITs to deal in Interest Rate Derivatives for Hedging

- 1) Whether the proposal to permit InvITs, REITs and SM REIT Schemes to participate in Interest Rate Derivatives, solely for hedging interest rate risk, is appropriate?

³ Under the SEBI (Real Estate Investment Trusts) Regulations, 2014, the leverage permitted to REITs, including Small and Medium REIT (SM REIT) Schemes, is capped at 49% of the value of the REIT assets. If the leverage exceeds 25%, there must be explicit approval from more than 50% of the total votes cast for the resolution.

7. REVIEW OF CONDITIONS FOR ENHANCED BORROWINGS BEYOND 49% BY InvITS

7.1. BACKGROUND

7.1.1. InvIT Regulations provides that the aggregate consolidated borrowings and deferred payments of the InvIT, Holdco and the SPV(s), net of cash and cash equivalents cannot exceed seventy per cent of the value of the InvIT assets. Regulation 20(3) of the InvIT Regulations requires fulfilling of additional conditions in case the aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents exceeds twenty-five percent of the value of the InvIT assets.

7.1.2. Further, in case enhanced borrowing beyond forty-nine percent is to be made, Regulation 20(3) of the InvIT Regulations, inter alia, requires track record of atleast six distributions, on a continuous basis, post listing, in the year preceding the financial year in which the enhanced borrowings are proposed to be made.

7.1.3. In this regard, SEBI has received request from industry association to clarify that the conditions associated with increase in the consolidated borrowings beyond forty-nine percent of the value of the assets of the InvIT.

7.2. EXTANT REGULATORY PROVISION:

7.2.1. Regulations 20(3) of the InvITs Regulations reads as under:

"If the aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents exceed twenty five per cent. of the value of the InvIT assets, for any further borrowing,

a) upto forty nine percent, an InvIT shall -

(i) obtain credit rating from a credit rating agency registered with the Board; and

(ii) seek approval of unitholders in the manner as specified in Regulation 22.

b) above forty nine percent, an InvIT shall -

(i) obtain a credit rating of "AAA" or equivalent for its consolidated borrowing and the proposed borrowing, from a credit rating agency registered with the Board;

(ii) utilize the funds only for acquisition or development of infrastructure projects;

(iii) have a track record of at least six distributions, in terms of sub-regulation (6) of regulation 18, on a continuous basis, post listing, in the years preceding the financial year in which the enhanced borrowings are proposed to be made;

(iv) obtain the approval of unitholders in the manner specified in sub-regulation (5A) of regulation 22."

7.2.2. Hence, it may be noted that at present the InvIT Regulation requires completion of six distributions in the financial year preceding the year in which the enhanced borrowing is proposed.

7.3. SUBMISSIONS RECEIVED FROM INDUSTRY ASSOCIATIONS

7.3.1. As per Regulation 20 (3) (b) of the InvIT Regulations, InvITs can borrow more than 49% of the value of the InvIT assets only for project acquisitions/developments. The increase in leverage is aimed to assist the InvITs expand their asset base by providing an additional source of capital (in addition to unit capital/ accruals/ profits of the InvIT) to fund acquisition/ development of assets, and thereby increasing the unitholders value.

7.3.2. Further, since InvITs, generally make quarterly distributions, it ordinarily takes around 2 years for any newly listed InvIT to complete the track record of six distributions, and given the requirement of completion of the financial year in which the sixth distribution was made, the InvITs are required to wait for additional time to access the

debt capital to expand their assets base. This also results in different wait times being applicable to different InvITs.

7.3.3. As an illustration, if the sixth distribution falls in the first quarter of the financial year, the InvIT can increase leverage only in the next financial year i.e. post completion of three additional distributions. This situation would be different in the event sixth distribution is completed in the third quarter of the financial year, the InvIT can increase leverage post undertaking only one additional distribution. Such differentiated treatment is not an ideal outcome.

7.3.4. Further, it may be noted that, Regulation 20 of the InvIT Regulations associates the capacity of an InvIT to service additional debt to the number of distributions made rather than to the number of years of existence.

7.4. PROPOSAL AND RATIONALE:

7.4.1. The above request of industry association was deliberated in the HySAC meeting wherein the following was recommended that the additional wait period imposed for meeting the requirement of minimum six distributions in the preceding financial year shall be removed. However, the following shall be ensured with regard to the six continuous distributions:

7.4.1.1. The six continuous distributions should be achieved across minimum six quarters (i.e. maximum one distribution per quarter shall be considered for computing six continuous distributions).

7.4.1.2. The distributions should be consistent with the distribution policy disclosed to the unitholders.

7.4.1.3. Only those distributions shall be considered for computation of six distributions wherein the cash flows generated from all assets, whether held by InvIT or any of the underlying SPVs or HoldCos has been taken into consideration.

Consultation 6: Review of conditions for enhanced borrowings beyond 49% by

InvITs

- 1) Whether the proposal to remove the additional wait period imposed for meeting the requirement of minimum six distributions in the preceding financial year is appropriate?
- 2) Whether the proposal to mandate the achievement of six continuous distributions across minimum six quarters and consistent with the distribution policy disclosed to the unitholders, as conditions for availing enhanced borrowing beyond 49% by InvITs, is appropriate?
- 3) Whether the proposed condition that only those distributions shall be considered wherein cash flows from all assets, whether held by InvIT or any of the underlying SPVs or HoldCos, are being distributed together, is appropriate?

8. TIMELINE FOR FILLING UP OF VACANCY IN THE OFFICE OF THE BOARD OF DIRECTORS OF MANAGER OF REIT (INCLUDING SM REIT) / INVESTMENT MANAGER OF INVIT

8.1. BACKGROUND:

8.1.1. REIT Regulations and InvIT Regulations *inter-alia* require at least half of the board of directors of the Manager / Investment Manager to comprise of independent directors at all times. The Regulations also require the board of directors to comprise of at least six directors and at least one woman independent director.

8.1.2. Industry association have represented that a vacancy created on the board of directors of the Manager / Investment Manager owing to resignation by a director, or due to unforeseen exigencies or unavoidable circumstances, for example – vacancy arising due to death of a director, is outside the control of the Manager / Investment Manager and makes it practically challenging for the Manager / Investment Manager to ensure compliance with the Regulations at all points of time.

8.1.3. In this regard, it is noted that Regulation 25(6) the LODR Regulations provides a time period of three months for replacement of an independent director on account of vacancy caused by resignation or removal. Further, Regulation 17(1E) of the LODR Regulations provides a time period of three months for filling of any vacancy in the office of a director (other than a vacancy arising due to expiry of the term of office of a director).

8.2. EXTANT REGULATORY PROVISION:

8.2.1. Regulation 4(2)(e)(v) of the InvIT Regulations / 4(2)(e)(iv) of the REIT Regulations requires the following:

“4(2) Without prejudice to the generality of the foregoing provisions, the Board shall consider the following, mandatory requirements namely, –

...

(e) with regard to the investment manager / manager, -

.....

(v) / (iv) the investment manager / manager has not less than half of its directors in case of a company or members of the governing board in case of an LLP as independent and not directors or members of the governing board of an Investment Manager / manager of another InvIT / REIT;”

8.2.2. Regulation 7(c) of the InvIT Regulations and REIT Regulations, requires as under:

“(7) The certificate granted under regulation 6 shall, inter-alia, be subject to the following conditions, namely-

.....

(c) The InvIT / REIT and parties to the InvIT / REIT shall satisfy with the conditions specified in regulation 4 at all times;”

8.2.3. Regulation 26G of the InvIT Regulations / 26A of the REIT Regulations, inter-alia, requires the following:

“Subject to other provisions of this Chapter, the provisions contained in sub-regulations (2), (4), (5), (9) and (10) of regulation 17 and regulations 18, 19, 20, 21, 26 and sub-regulation (1), (2), (2A), (3), (4), (5), (7), (8), (9), (10) and (11) of regulation 25 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 shall be applicable, as in force from time to time, with necessary modifications as if the said provisions were the provisions of these regulations.

.....”

- 8.2.4. Regulation 26H (1) of the InvIT Regulations / 26B (1) of the REIT Regulations, requires the following:

“The Board of Directors of the investment manager / manager shall comprise of not less than six directors and have not less than one woman independent director.”

- 8.2.5. Regulation 25(6) of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) requires as under:

“An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than three months from the date of such vacancy:

Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.”

- 8.2.6. Regulation 17(1E) of the LODR Regulations, requires the following:

“Any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than three months from the date such vacancy:

Provided that if the listed entity becomes non-compliant with the requirement under sub-regulation (1) of this regulation, due to expiration of the term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated:

Provided further that this sub-regulation shall not apply if the listed entity fulfils the requirement under sub-regulation (1) of this regulation without filling the vacancy.”

8.3. PROPOSAL

8.3.1. In order to promote Ease of Doing Business and to provide adequate time to the Manager of REIT / Investment Manager of InvIT / Investment Manager of SM REIT to fill a vacancy in the office of its Board of Directors and based on the recommendation of the HySAC, it is proposed to specify the following provisions in the REIT Regulations and InvIT Regulations, in alignment with LODR Regulations:

8.3.1.1. For any vacancy in the office of a director of the manager / investment manager due to which the manager / investment manager becomes non-compliant with the requirement pertaining to composition of the Board of Directors specified in the REIT Regulations / InvIT Regulations, such vacancy shall be filled by the manager / investment manager as under:

- a) if such vacancy arises due to expiration of the term of office of the director, then the resulting vacancy shall be filled not later than the date such office is vacated:
- b) if such vacancy arises due to any reason other than as mentioned above, then the resulting vacancy shall be filled at the earliest and not later than three months from the date of such vacancy.

Consultation 7: Timeline for filling up of vacancy in the office of the Board of Directors of Manager of REIT (Including SM REIT)/ Investment Manager of InvIT

- 1) Whether a separate time period should be provided for filling up of vacancy created on the Board of Directors of the Manager / Investment Manager due to any reason other than expiry of term of office?
- 2) If yes, whether the proposed time period of three months, in alignment with LODR Regulations, is adequate?

9. CLARIFICATION ON CREDIT RATING REQUIRED TO BE OBTAINED BY REITS, INVITS AND SM REITS FOR BORROWINGS

9.1. BACKGROUND:

9.1.1. REIT Regulations and InvIT Regulations require the REIT / SM REIT / InvIT to obtain a credit rating from a credit rating agency in case borrowings exceed the thresholds specified in the REIT Regulations and InvIT Regulations. It has been represented to provide clarity as to whether the credit rating required to be obtained is for the loan / borrowing specific rating or trust level rating.

9.2. EXTANT REGULATORY PROVISION:

9.2.1. Regulation 20(3) of the REIT Regulations requires as under:

“If the aggregate consolidated borrowings and deferred payments of the REIT, holdco and/or the SPV(s), net of cash and cash equivalents exceed twenty five per cent. of the value of the REIT assets, for any further borrowing, -

(a) credit rating shall be obtained from a credit rating agency registered with the Board; and

(b) approval of unit holders shall be obtained in the manner as specified in regulation 22.”

9.2.2. Regulation 26U(5) of the REIT Regulations requires the following for a SM REIT:

“For a scheme of SM REIT opting to utilize leverage in accordance with sub-regulation (2), the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, shall not exceed forty nine per cent. of the value of the scheme assets:

Provided that if the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, exceeds twenty five per cent. of the value of the scheme assets, then for any further borrowings, -

(a) credit rating shall be obtained from a credit rating agency registered with the Board; and

(b) approval of unit holders shall be obtained in the manner as specified in regulation 26ZM.”

9.2.3. Regulation 20(3) of the InvIT Regulations requires as under:

“(3) If the aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents exceed twenty five per cent. of the value of the InvIT assets, for any further borrowing, –

a) upto forty nine percent, an InvIT shall –

(i) obtain credit rating from a credit rating agency registered with the Board; and

(ii) seek approval of unitholders in the manner as specified in Regulation 22.

b) above forty nine percent, an InvIT shall –

(i) obtain a credit rating of “AAA” or equivalent for its consolidated borrowing and the proposed borrowing, from a credit rating agency registered with the Board;

(ii) utilize the funds only for acquisition or development of infrastructure projects;

(iii) have a track record of atleast six distributions, in terms of sub-regulation (6) of regulation 18, on a continuous basis, post listing, in the years preceding the financial year in which the enhanced borrowings are proposed to be made;

(iv) obtain the approval of unitholders in the manner specified in sub-regulation (5A) of regulation 22.”

9.3. PROPOSAL

9.3.1. It is noted that the borrowing thresholds specified in the REIT Regulations and InvIT Regulations are for the aggregate consolidated borrowings and deferred payments of the REIT /

scheme of SM REIT / InvIT, Holdco and/or SPV(s) taken together. Accordingly, when the specified thresholds are exceeded and consequently a rating requirement is triggered as per the Regulations, the credit rating shall be the issuer rating of the REIT / scheme of SM REIT / InvIT and not specific to only the further borrowings made.

- 9.3.2. It may be noted that the meaning of term “*issuer rating*” / “*corporate credit rating*” is provided under Chapter II of the Master Circular for Credit Rating Agencies dated May 16, 2024 as under:

“Issuer Rating / Corporate Credit Rating indicates the degree of safety of the issuer or the rated entity with regard to timely servicing of all its debt obligations.”

- 9.3.3. Hence, in order to provide explicit clarity in the REIT and InvIT Regulations, it is proposed to clarify that the credit rating required to be obtained under the REIT Regulations and InvIT Regulations is the issuer rating of the REIT / InvIT / scheme of SM REIT.

Consultation 8: Clarification on Credit Rating required to be obtained by REITs, INVITs and SM REITs for borrowings

- 1) Whether the proposed clarification that credit rating required to be obtained for borrowings should be the issuer rating of the REIT / InvIT / scheme of SM REIT is appropriate?

**10. INCLUSION OF FIXED DEPOSITS AS CASH AND CASH EQUIVALENTS
FOR COMPUTATION OF LEVERAGE FOR REITS, INVITS AND SM REITS**

10.1. BACKGROUND:

10.1.1. REIT Regulations and InvIT Regulations requires that the aggregate consolidated borrowings and deferred payments of the REIT / InvIT, holdco and SPV(s), net of cash and cash equivalents, shall not exceed 49% / 70% of the value of the REIT / InvIT assets.

10.1.2. The regulations clarify that investment by REITs / InvITs in overnight mutual funds, characterized by their investments in overnight securities, having maturity of one day, are considered as cash and cash equivalent. In the HySAC meeting, few members requested to consider fixed deposits with scheduled commercial banks as cash and cash equivalent for the purpose of computation of leverage since such fixed deposits can be immediately converted into cash whenever required through a premature termination/withdrawal option. In response to such request, it was clarified that cash and cash equivalent can be considered as per Indian Accounting Standard.

10.1.3. However, considering the above request and in order to provide ease of doing business and for the limited purpose of computation of leverage, it is proposed to permit REITs and InvITs to reduce fixed deposits with scheduled commercial banks from total borrowings as well as from value of assets provided such fixed deposits can be immediately converted into cash whenever required through a premature termination/withdrawal option.

10.2. EXTANT REGULATORY PROVISION:

10.2.1. Regulation 20(2) of the REIT Regulations requires the following:

“The aggregate consolidated borrowings and deferred payments of the REIT, holdco and/or the SPV(s), net of cash and cash equivalents shall never exceed forty nine per cent. of the value of the REIT assets:

Provided that such borrowings and deferred payments shall not include any refundable security deposits to tenants.

Explanation 1. – Investment by REITs in overnight mutual funds, characterized by their investments in overnight securities, having maturity of one day, shall be considered as cash and cash equivalent.

Explanation 2. – The amount of cash and cash equivalent shall be excluded from the value of the assets of the REIT.

10.2.2. Regulation 26U(5) of the REIT Regulations requires the following for a SM REIT:

“For a scheme of SM REIT opting to utilize leverage in accordance with sub-regulation (2), the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, shall not exceed forty nine per cent. of the value of the scheme assets: Provided that if the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, exceeds twenty five per cent. of the value of the scheme assets, then for any further borrowings, -

- (a) credit rating shall be obtained from a credit rating agency registered with the Board; and*
- (b) approval of unit holders shall be obtained in the manner as specified in regulation 26ZM.”*

10.2.3. Regulation 20(2) of the InvIT Regulations requires as under:

“The aggregate consolidated borrowings and deferred payments of the InvIT, holdco and the SPV(s), net of cash and cash equivalents shall not exceed seventy per cent. of the value of the InvIT assets.

Explanation 1. – Investment by InvITs in overnight mutual funds, characterized by their investments in overnight securities, having maturity of one day, shall be considered as cash and cash equivalent.

Explanation 2. – The amount of cash and cash equivalent shall be excluded from the value of the assets of the InvIT.”

10.3. RATIONALE FOR CHANGE

10.3.1. It is understood that cash available with REIT / InvIT / SM REIT or HoldCo or SPV is usually placed in fixed deposits and hence, fixed deposits should be reduced from total borrowings as well as from value of assets while computing leverage since such fixed deposits can be immediately converted into cash whenever required through a premature termination/withdrawal option.

10.4. PROPOSAL

10.4.1. In order to promote Ease of Doing Business, it is proposed to specify that fixed deposit with scheduled commercial bank, be permitted to be reduced from total borrowings as well as from value of assets while computing leverage of REIT/InvIT/scheme of SM REITs provided such fixed deposits can be immediately converted into cash whenever required through a premature termination/withdrawal option.

Consultation 9: Inclusion of Fixed Deposits as Cash and Cash Equivalents for computation of leverage for REITs, InvITS and SM REITs

- 1) Whether fixed deposits with scheduled commercial bank which can be immediately converted into cash whenever required through a premature termination/withdrawal option, be permitted to be reduced from total borrowings as well as from value of assets while computing leverage of REIT/InvIT .

11. EXPANDING THE ASSET BASE FOR REITS (including SM REITs)

11.1. BACKGROUND

11.1.1. The definition of 'real estate' or 'property' in the REIT Regulations provide that any asset falling under the purview of 'infrastructure' as defined vide Notification of Ministry of Finance dated October 07, 2013 including any amendments or additions made thereof shall not be considered as 'real estate' or 'property' for the purpose of REIT Regulations.

11.1.2. As a result, assets which are classified as infrastructure (as per the Harmonized Master list of Infrastructure notified by Ministry of Finance) are not permitted to be held under REITs. Further, as per the Harmonized Master List of Infrastructure, there are various assets (like warehouses, hotels, data centres etc.) which are classified as Infrastructure only if certain criteria as to investment, location, size etc. is met. This creates a confusion among the market participants on their classification and thus limit the scope of assets that can be housed under a REIT under the REIT Regulations and hamper the growth of REIT market in India.

11.2. EXTANT REGULATORY PROVISION

11.2.1. Regulation 2(1)(zi) of the REIT Regulations requires as under:

“real estate” or “property” means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage:

Provided that any asset falling under the purview of 'infrastructure' as defined vide Notification of Ministry of Finance dated October 07, 2013 including any amendments or additions made thereof shall not be considered as 'real estate' or 'property' for the purpose of these regulations;

Notwithstanding the above, following captured within the abovementioned definition of infrastructure shall be considered under “real estate” or “property”, -

- (i) hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating;
- (ii) “common infrastructure” for composite real estate projects, industrial parks and SEZ;”

11.2.2. The Updated Harmonized Master List of Infrastructure Sub-sectors as per the Notification No. F. No. 13/1/2017 of Ministry of Finance dated October 11, 2022, reads as under:

S. No.	Category	Infrastructure Sub-sectors
1	Transport and Logistics	<ul style="list-style-type: none"> • Roads and bridges • Ports¹ • Shipyards² • Inland Waterways • Airport • Railway track including electrical & 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 case of urban road transport) • Logistics Infrastructure³ • Bulk Material Transportation Pipelines⁴
2	Energy	<ul style="list-style-type: none"> • Electricity Generation • Electricity Transmission • Electricity Distribution

S. No.	Category	Infrastructure Sub-sectors
		<ul style="list-style-type: none"> • Oil/Gas/Liquefied Natural Gas (LNG) storage facility⁵ • Energy Storage Systems (ESS)⁶
3	Water and Sanitation	<ul style="list-style-type: none"> • Solid Waste Management • Water treatment plants • Sewage collection, treatment and disposal system • Irrigation (dams, channels, embankments, etc.) • Storm Water Drainage System
4	Communication	<ul style="list-style-type: none"> • Telecommunication (fixed network)⁷ • Telecommunication towers • Telecommunication & Telecom Services • Data Centres⁸
5	Social and Commercial Infrastructure	<ul style="list-style-type: none"> • Education Institutions (capital stock) • Sports Infrastructure⁹ • Hospitals (capital stock)¹⁰ • Tourism infrastructure viz. (i) three-star or higher category classified hotels located outside cities with 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, Special Economic Zones, tourism facilities and agriculture markets • Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage • Terminal markets • Soil-testing laboratories • Cold Chain¹¹ • Affordable Housing¹² • Affordable Rental Housing Complex¹³

S. No.	Category	Infrastructure Sub-sectors
		<ul style="list-style-type: none"> • <i>Exhibition-cum-Convention Centre</i>¹⁴

¹ *Includes Capital Dredging*

² *“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.*

³ *“Logistics Infrastructure” means and includes Multimodal Logistics Park comprising Inland Container Depot (ICD) with minimum investment of Rs 50 crore and minimum area of 10 acre, Cold Chain Facility with minimum investment of Rs 15 crore and minimum area of 20,000 sft, and/or Warehousing Facility with investment of minimum Rs 25 crore and minimum area of 1 lakh sq ft.*

⁴ *Includes Oil, Gas, Slurry, Water supply and Iron Ore Pipelines*

⁵ *Includes strategic storage of crude oil.*

⁶ *Includes dense charging infrastructure and grid scale Energy Storage Systems (ESS) with a minimum qualifying capacity of 200 MW-Hr, provided that ESS is not being established on merchant basis.*

⁷ *Includes optic fibre/wire/cable networks which provide broadband / Internet.*

⁸ *Data Centre housed in a dedicated/centralized building for storage and processing of digital data applications with a minimum capacity of 5 MW of IT load.*

⁹ *Includes the provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports-related activities.*

¹⁰ *Includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centres.*

¹¹ *Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.*

¹² “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 meters.

¹³ “Affordable Rental Housing Complex” means a project 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 such as water, sanitation, sewerage/ septage, road, electricity along with necessary social/commercial infrastructure and the initial rent fixed by Local Authority/ Entities based on local survey of surrounding area wherein the project is situated.

Project means a listed project having at least 40 Dwelling Units of double room or single room or equivalent Dormitory Units or a mix of all three in any ratio but not more than one third of total built up area under double bedrooms units.

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

Dormitory Units means a set of 3 Dormitory Bed with common kitchen, toilet and bathroom in 30 square meters carpet area[@] meaning 10 square meters carpet area[@] per Dormitory Bed.

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

¹⁴ “Exhibition-cum-Convention Centre” is defined as Exhibition and Convention Centre Projects with minimum built-up floor area* of 100,000 square metres of exclusively exhibition space or convention space or both combined.

* Built up floor area includes primary facilities such as exhibition centres, convention halls, auditoriums, plenary halls, business centres, meeting halls etc.

11.3. RATIONALE FOR CHANGE

11.3.1. From the assets outlined in the Updated Harmonized Master List of Infrastructure Sub-sectors and the definition of 'real estate' or 'property', it is noted that certain assets fall either under definition of real estate under the REIT Regulations or under the definition of infrastructure under the InvIT Regulations, depending on certain criteria as to investment, location, size etc. The challenge faced by industry and market participants is that whether such assets falls under the definition of real estate under the REIT Regulation or infrastructure under the InvIT Regulations.

11.3.2. The following are some examples of assets where confusion arises among the market participants on the classification as real estate under the REIT Regulations or infrastructure under the InvIT Regulations. It limits the scope of assets that can be housed under a REIT under the REIT Regulations and hamper the growth of REIT market in India.

11.3.2.1. Warehouse

Warehouses are included in the definition of real estate or property under the REIT Regulations.

However, warehousing facility with investment of minimum Rs. 25 crore and minimum area of 1 lakh sq. ft. is classified as infrastructure as the same gets covered under the Updated Harmonized Master List of Infrastructure Sub-sectors.

Hence, it is interpreted that a warehouse facility which does not meet the above criteria may be housed under a REIT whereas a warehouse facility which meets the above criteria cannot be housed under a REIT as it gets classified as infrastructure, in spite of the fact that the income generated by owning a warehouse is mostly rental income by leasing out space in the warehouse.

11.3.2.2. Hotels

The amendment of REIT Regulations in November 2016 allowed hotels to be part of “real estate” or “property” which can be housed under a REIT provided it forms part of composite real estate projects.

However, three star or higher category of hotels located outside cities with population of more than 1 million are classified as infrastructure as the same gets covered in the Updated Harmonized Master List of Infrastructure Sub-sectors.

Hence, it is interpreted that a hotel which does not meet the above criteria may be housed under a REIT whereas a hotel which meets the above criteria cannot be housed under a REIT as it gets classified as infrastructure, in spite of the fact that the income generated by owning hotels is predominantly in nature of the rental income or operating income by leasing out space in hotels.

11.3.2.3. Hospitals

The amendment of REIT Regulations in November 2016 allowed hospitals to be part of “real estate” or “property” which can be housed under a REIT provided it forms part of composite real estate projects.

However, hospitals that include Medical Colleges, Para Medial Training Institutes and Diagnostic Centres are classified as infrastructure as the same gets covered in the Updated Harmonized Master List of Infrastructure Sub-sectors. Hence, independent hospitals (which are not part of composite real estate projects) cannot be housed under REITs in spite of the fact that the income generated by owning hospitals is predominantly in the nature of the rental income or operating income by leasing out space in hospitals.

11.3.2.4. Affordable housing and Affordable Rental housing complex

These assets are classified as infrastructure as they get covered in the Updated Harmonized Master List of Infrastructure Sub-sectors and hence cannot be made part of the REIT assets in spite of the fact that income from owning these assets would be rental income. However, globally residential REITs own and manage various forms of residences and rent space in those properties to tenants. Residential REITs eventually specializes in apartment buildings, student housing, manufactures homes, single family homes, etc.

11.3.2.5. Data centres

Data centres housed in a dedicated/centralized building for storage and processing of digital data applications with a minimum capacity of 5 MW of IT Load are classified as infrastructure as the same gets covered in the Updated Harmonized Master List of Infrastructure Sub-sectors.

In view of the above, Data centre with above specifications cannot be housed under a REIT although the primary source of revenue by owning the date centre is rental income generated from allowing customers to use dedicated space in the data centre to safely store data.

11.3.3. It may be noted that the assets outlined in para11.3.2. above are illustrations of assets which are predominantly real estate assets generating rental income or income through leasing of such assets, still cannot be made part of REIT assets as they get classified as infrastructure by virtue of them getting covered in the Updated Harmonized Master List of Infrastructure Sub-sectors.

11.4. **PROPOSAL**

11.4.1. In view of the above, it is proposed to amend the REIT Regulations to provide that any asset falling under the definition

of 'infrastructure' can be considered as 'real estate' or 'property' (and hence eligible to be held as part of the REIT or SM REIT assets) if the following principle is met:

“The objective of holding such asset by the REIT (either directly or through underlying HoldCos / SPVs) shall be to earn fixed rental income from leasing out such asset and without assumption of any risk or reward arising out of or related to the operation of such asset.”

- 11.4.2. The following is a list of illustrative pre-conditions to ensure conformity with the aforementioned principle:
- 11.4.2.1. *The business of REIT should be leasing out such assets and not operating such assets;*
- 11.4.2.2. *REIT / SPV / HoldCo shall carry no risk of the operating model directly / indirectly in any form or manner;*
- 11.4.2.3. *The income from such asset should be fixed rental income from leasing out such asset and not operating income from such asset;*
- 11.4.2.4. *The lease tenure on such assets should be long term in nature;*
- 11.4.2.5. *The rentals generated on such assets should be based on leasable area (such as Rs. X per square feet);*
- 11.4.2.6. *The assets should be leased out in cold shell conditions or in warm shell conditions with basic utilities*
- 11.4.2.7. *Since the REIT/HoldCo/SPV is simply leasing the asset and the asset is operated by the tenant, the license for operation of such assets should not be in the name of the REIT / SPV / HoldCo.*

It may be noted that the pre-conditions stated above are illustrative in nature and the Investment Manager/Manager should ensure conformity with the principle stated in para 11.4.1 above.

Consultation 10: Expanding the Asset Base for REITs (including SM REITs)

Kindly provide your comments along with supporting rationale on the following:

- 1) Whether the assets falling under the definition of 'infrastructure' be permitted to be held as part of the REIT assets?
- 2) Whether the general principle specified in para 11.4.1. is adequate and appropriate?
- 3) Whether the list of illustrative conditions specified in para 11.4.2. is adequate and appropriate?

PART – B: INVESTOR PROTECTION MEASURES

12. REVIEW OF INVESTMENT IN UNLISTED EQUITY SHARES BY REITs

12.1. BACKGROUND

12.1.1. Regulation 18(4) of REIT Regulation permit REITs to invest not less than eighty percent of the value of the REIT assets in completed and rent and/or income generating properties. Further, Regulation 18(5) of REIT Regulations provides list of certain investments that are permitted to invest by REIT which should not be more than twenty percent of the value of REIT assets. The said list of permitted investments inter-alia include investment in unlisted equity shares of companies which derive not less than seventy-five percent of their operating income from real estate activity as per the audited account of the previous financial year.

12.1.2. Similarly, Regulation 18 of InvIT Regulations also provides that public InvITs shall invest not less than eighty percentage of the value of InvIT assets in completed and revenue generating infrastructure, privately placed InvITs shall invest not less than eighty percent of the value of InvIT assets in eligible infrastructure projects. Further, , Regulation 18(5)(b) read with 18(4) of InvIT Regulations provides list of certain investments that are permitted to invest by InvITs which should not be more than twenty percent of the value of InvIT assets.. However, investment in unlisted equity shares other than the equity shares of HoldCo and SPVs is not permitted for InvITs under the InvIT Regulations.

12.2. EXTANT REGULATORY PROVISION:

12.2.1. Regulations 18(4) and 18(5) of the REIT Regulations reads as under:

“18.

(4) *Not less than eighty percent of value of the REIT assets shall be invested in completed and rent and/or income generating properties subject to the following:-*

(a) *if the investment has been made through a holdco and/or SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in properties by such holdco and/or SPVs shall be considered under this sub-regulation and the remaining portion shall be included under sub-regulation (5);*

(b) *if any project is implemented in stages, the part of the project which is completed and rent and/or income generating shall be considered under this sub-regulation and the remaining portion including any contiguous land as specified under proviso to sub-regulation (2) shall be included under clause (a) of sub-regulation (5)*

(5) *Not more than twenty percent of value of the REIT assets shall be invested in assets other than as provided in sub-regulation (4) and such other investment shall only be in,-*

(a)

(da) *unlisted equity shares of companies which derive not less than seventy five percent of their operating income from real estate activity as per the audited accounts of the previous financial year*

.....”

12.3. PROPOSAL AND RATIONALE:

12.3.1. In order to align REIT Regulation with InvIT Regulations, it is proposed that REITs shall not be permitted to invest in unlisted equity shares of companies other than HoldCo and/or SPV as part of investment in real estate or property.

12.3.2. Further, for any existing investment in the unlisted equity shares by the REITs, it is proposed to be provide certain glide path to either dispose of the

investment or acquire necessary stake to qualify such investment in the companies as investment in HoldCo/ SPV.

Consultation 11: Review of investment in unlisted equity shares by REITs

- 1) Whether the proposal to streamline REIT Regulations with InvIT Regulations to remove the unlisted equity shares from eligible investments by REITs is appropriate?
- 2) For any existing investment in the unlisted equity shares by the REITs, whether the proposal to provide certain glide path to either dispose of the investment or acquire necessary stake to qualify such investment in the companies as investment in HoldCo/ SPV is appropriate?

13. REVIEW OF INVESTMENT IN LIQUID MUTUAL FUNDS - REITs AND InvITs

13.1. BACKGROUND

13.1.1. Regulation 18 of InvIT Regulations provides that public InvITs shall invest not less than eighty percentage of the value of InvIT assets in completed and revenue generating infrastructure, privately placed InvITs shall invest not less than eighty percent of the value of InvIT assets in eligible infrastructure projects. Further, Regulation 18(5)(b) read with Regulation 18(4) of InvIT Regulations provides list of certain permissible investments for InvITs which should not be more than twenty percent of the value of InvIT assets. The said list of permitted investments inter-alia include investment in liquid mutual funds.

13.1.2. Similarly, Regulation 18(4) of REIT Regulation mandates REITs (excluding SM REITs) to invest not less than eighty percent of the value of the REIT assets in completed and rent and/or income generating properties. Further Regulation 18(5) of REIT Regulations provides list of certain investments that are permitted to invest by REIT which should not be more than twenty percent of the value of REIT assets. However, REITs are not permitted to invest in liquid mutual funds.

13.1.3. Regulation 26T of REIT Regulations provides that scheme of SM REIT shall invest at least ninety-five percent of the value of the scheme assets in completed and revenue generating real estate assets. Further, upto five percent of the value of scheme of SM REIT assets are permitted to be invested in liquid assets which include liquid mutual funds.

13.2. EXTANT REGULATORY PROVISION:

13.2.1. Regulations 18(5) of the InvIT Regulations reads as under:

“(5) In case of InvITs as specified under sub-regulation (4) of regulation 14

(a)

(b) not more than twenty per cent. of value of the InvIT assets, shall be invested in

(i)

(v) money market instruments, liquid mutual funds or cash equivalents

.....”

13.2.2. *Regulations 18(5) of the REIT Regulations applicable to REIT excluding SM REITs reads as under:*

“ (5) Not more than twenty per cent. of value of the REIT assets shall be invested in assets other than as provided in sub-regulation (4) and such other investment shall only be in, -

...

(a).....

(h) money market instruments or cash equivalents.”

13.2.3. *Regulation 26T(2) of REIT Regulations applicable to SM REITs reads as under: The scheme of the SM REIT shall invest at least ninety-five per cent. of the value of the schemes’ assets for each of its schemes in completed and revenue generating properties and shall not invest in under-construction or non-revenue generating real estate assets:*

Provided that up to five percent. of the value of the schemes’ assets may be invested in liquid assets, which are unencumbered

13.2.4. *Regulation 2(1)(ta) defines liquid asset as under:*

““liquid asset” means cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds”

13.3. PROPOSAL AND RATIONALE:

13.3.1. In order to align REIT Regulations with InvIT Regulations, it is proposed to permit REITs to invest in liquid mutual funds under permitted list of investments which should not be more than twenty percent of the value of REIT assets.

13.3.2. Further, considering that the investment in liquid mutual funds would be a temporary deployment of funds by REITs and InvITs pending investment in suitable real estate or infrastructure opportunities, the investment in such funds should carry minimum credit risk. Hence, it is proposed to permit investment by REITs (including SM REITs) and InvITs in liquid mutual funds schemes where the credit risk value is more than equal to 12 and falls under the Class A-I in the potential risk class matrix as specified under SEBI Master Circular for Mutual funds.

Consultation 12: Review of investment in liquid mutual funds – REITs and InvITs

- 1) Whether the proposal to enable REITs to invest in liquid mutual funds is appropriate?
- 2) Whether the proposal to permit investment in liquid mutual funds by REITs (including SM REITs) and InvITs in only such schemes where the credit risk value is more than equal to 12 and falls under the Class A-I in the potential risk class matrix as specified under SEBI Master Circular for Mutual funds, is appropriate?

14. ROLES AND RESPONSIBILITIES OF TRUSTEE FOR REITS, INVITS AND SM REITS

14.1. BACKGROUND

14.1.1. In order to strengthen and enhance the existing role of the trustees of the REIT for the benefit of unitholders and investors of REITs, the Indian REITs Association submitted following proposals:

14.1.1.1. Allow trustee to conduct physical inspection of REITs assets

14.1.1.2. Trustee to provide periodic confirmation to SEBI that it has not dealt in the units of REIT

14.1.1.3. Trustee to conduct meeting with senior management of the manager and Chairperson of audit committee of the manager at least once in each financial year

14.1.1.4. Trustees may seek additional information or documents from manager on any matter pertaining to the REIT

14.1.1.5. Manager may be required to submit following information to trustee

- (a) List of unitholders on quarterly basis
- (b) Shareholding of REIT in SPV, HoldCo and Investment entity and changes if any on a quarterly basis
- (c) Confirmation on compliance with leverage limit on a quarterly basis and at the time of acquisition and disposal of assets
- (d) Trustee may request for due diligence report or such other information in respect of any acquisition
- (e) Net worth compliance certificate from manager on a half yearly basis
- (f) Net worth compliance certificate of sponsor and manager from practicing Chartered Accountant on an annual basis
- (g) Confirmation on the details of unclaimed distributions till the previous quarter

- 14.1.1.6. Trustee may seek records maintained by the manager in terms of Regulation 26(2) of REIT Regulations
- 14.1.2. The above recommendation of Indian REITs association has also been deliberated in SEBI Hybrid Securities Advisory Committee.
- 14.2. Based on the submissions received from Indian REITs association, discussion at HySAC and internal deliberations, the proposals to strengthen and enhance the role of trustee of REITs are discussed in the paragraphs 14.4 to 14.6.

14.3. **EXTANT REGULATORY PROVISIONS**

- 14.3.1. Regulation 9, under Chapter III, of the REIT Regulations provides the Rights and responsibilities of trustee as below:

“Rights and responsibilities of trustee.

9. (1) *The trustee shall hold the REIT assets in trust for the benefit of the unit holders in accordance with the trust deed and these regulations.*

(2) *The Trustee shall enter into an investment management agreement with the manager on behalf of the REIT.*

(3) *The trustee shall oversee activities of the manager in the interest of the unit holders, ensure that the manager complies with regulation 10 and shall obtain compliance certificate from the manager in the form as may be specified on a quarterly basis.*

(4) *The trustee shall ensure that the manager complies with the reporting and disclosures requirements in these regulations and in case of any delay or discrepancy, require the manager to rectify the same on an urgent basis.*

(5) *The trustee shall review the transactions carried out between the manager and its associates and where the manager has advised that there may be a conflict of interest, shall obtain confirmation from a practising chartered accountant or a*

valuer, as applicable,] that such transaction is on arm's length basis.

(6) The trustee shall periodically review the status of unit holders' complaints and their redressal undertaken by the manager.

(7) The trustee shall make distributions in accordance with sub-regulation (16) of regulation 18 and ensure that the manager makes timely declaration of distributions to the unit holders.

(8) The trustee may require the manager to set up such systems and submit such reports to the trustees, as may be necessary for effective monitoring of the performance and functioning of the REIT.

(9) The trustee shall ensure that subscription amount is kept in a separate bank account in name of the REIT and is only utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.

(10) The trustee shall ensure that the remuneration of the valuer is not linked to or based on the value of the asset being valued.

(11) The trustee shall ensure that the manager convenes meetings of the unit holders in accordance with these regulations and oversee the voting by unitholders and declare outcome of the voting.

(12) The trustee may take up with the Board or with the designated stock exchange, any matter which has been approved in an annual meeting or special meeting, if the matter requires such action.

(13) In case of any change in manager due to removal or otherwise,-

(a) prior to such change, the trustee shall obtain approval from unit holders in accordance with regulation 22 and approval from the Board;

(b) the trustee shall appoint the new manager within three months from the date of termination of the earlier investment management agreement;

(c) the previous manager shall continue to act as such at the discretion of trustee till such time as new manager is appointed;

(d) the trustee shall ensure that the new manager shall stand substituted as a party in all the documents to which the earlier manager was a party;

(e) the trustee shall ensure that the earlier manager continues to be liable for all its acts of omissions and commissions notwithstanding such termination.

(14) The trustee shall obtain prior approval from the unit holders in accordance with regulation 22 and from the Board in case of change in control of the manager.

(15) The trustee shall not invest in units of the REIT in which it is designated as the trustee.

(16) The trustee shall ensure that the activity of the REIT is being operated in accordance with the provisions of the trust deed, these regulations, the offer document and if any discrepancy is noticed, shall inform the same to the Board immediately in writing.

(17) The trustee shall provide to the Board and to the designated stock exchange such information as may be sought by the Board or by the designated stock exchange pertaining to the activity of the REIT.

(18) The trustee shall immediately inform to the Board in case any act which is detrimental to the interest of the unit holders is noted.”

14.3.2. Similarly, Regulation 9, under Chapter III, of the InvIT Regulations provides the Rights and responsibilities of trustee.

14.4. PROPOSAL AND RATIONALE

- 14.4.1. In order to strengthen and enhance the existing role and responsibilities of the trustee of the REIT, it is proposed to amend the REIT regulations to specify certain principles for trustees of REITs (including SM REITs).
- 14.4.2. The principles that underpin the roles and responsibilities of trustees for Real Estate Investment Trusts (REITs) are foundational to ensuring transparency, accountability, and the safeguarding of unitholder interests. Key principles include:
- a) Transparency: Ensuring clear and open communication with unitholders and regulatory bodies.
 - b) Accountability: Upholding the fiduciary duties to act in the best interest of the unitholders.
 - c) Due Diligence: Meticulously verifying all compliance and operational aspects of the REIT or InvIT.
 - d) Compliance: Strict adherence to regulatory requirements and ethical standards.
 - e) Impartiality: Acting without conflict of interest and prioritizing the welfare of all stakeholders.
- 14.4.3. It is proposed to amend REIT Regulations as under in order to specify the abovementioned principles to be adopted by the trustees of REIT:

“Principles governing the trustees

“The core principles defining the role and responsibilities of trustees shall encompass transparency, accountability, due diligence, and compliance with established regulations. Trustees are expected to act impartially, prioritize protection of the interests of unitholders, ensure effective management oversight over the Manager and the REIT, and maintain high standards of governance of the Manager and the REIT.”

14.4.4. Further, the illustrative list of roles and responsibilities listed below will guide the trustees in their operations. However, trustees retain the flexibility to adopt additional measures or responsibilities crucial for meeting the overarching principles of their role.

14.4.5. **ILLUSTRATIVE ROLES AND RESPONSIBILITIES OF TRUSTEES**

It is further proposed to provide the following illustrative roles and responsibilities of trustees: :

14.4.5.1. **Asset Management Oversight:**

- i. Conduct regular physical inspections of REIT and InvIT assets.
- ii. Supervise the maintenance and compliance of assets with safety and operational standards.

14.4.5.2. **Regulatory Compliance and Reporting:**

- i. Provide periodic confirmations to SEBI that trustees have not engaged in transactions involving the units of the REIT or InvIT they manage.
- ii. Ensure that the manager submits certain information to the trustees such as:
 - a) List of unitholders on quarterly basis
 - b) Shareholding of REIT in SPV, HoldCo and Investment entity and changes if any on a quarterly basis
 - c) Confirmation on compliance with leverage limit on a quarterly basis and at the time of acquisition and disposal of assets
 - d) Trustee may request for due diligence report or such other information in respect of any acquisition

- e) Net worth compliance certificate from manager on a half yearly basis
 - f) Net worth compliance certificate of sponsor and manager from practicing Chartered Accountant on an annual basis
 - g) Confirmation on the details of unclaimed distributions till the previous quarter
- iii. Ensure that the net distributable cash flow calculated by the manager is in accordance with these regulations and the trust deed
- iv. Where the trustee has reason to believe that the conduct of business of the trust is not in accordance with these regulations they shall forthwith take such remedial steps as are necessary by them and shall immediately inform the Unitholders and the Board of the violation and the action taken by them.

14.4.5.3. Managerial Oversight:

- i. Hold annual and as-needed meetings with the manager's senior management and the chairperson of the audit committee.

14.4.5.4. Information and Documentation:

- i. Request and review detailed reports and documents from the manager regarding the operational, financial, and compliance status.
- ii. Require managers to provide due diligence reports, net worth compliance certificates, and confirmations of unclaimed distributions.

14.4.5.5. Record-Keeping:

- i. Seek records maintained by the manager in terms of Regulation 26(2) of REIT Regulations

- ii. Maintain comprehensive and systematic records of all trustee activities, decisions, and notable transactions to ensure accountability and ease of audit.

14.4.5.6. Ethics and Conflict of Interest:

- i. Ensure that the manager has not given any undue or unfair advantage to any associates or dealt with any of the associates of the manager in any manner detrimental to interest of the unitholders.
- ii. Ensure that there is no conflict of interest between the manner of deployment of its net worth by the manager and the interest of the unit-holders.
- iii. Ensure that the manager has been managing the Trust and schemes of SM REIT independently of other activities and have taken adequate steps to ensure that the interest of investors of one scheme of SM REIT are not being compromised with those of any other scheme of SM REIT or of other activities of the Trust or the Manager/Investment Manager.
- iv. The trustee shall abide by the Code of Conduct as specified in the Sixth Schedule of the REIT Regulations.

14.4.5.7. Auditing and Financial Review:

- i. The trustee shall be accountable for, and be the custodian of, the funds and property of the respective trust and shall hold the same in trust for the benefit of the unitholders in accordance with these regulations and the provisions of trust deed.

- ii. Trustee shall on a half-yearly basis review the net worth of the manager to ensure compliance with the threshold provided in these regulations on a continuous basis

14.4.5.8. **Due Diligence:**

- i. Trustee shall exercise due diligence as under:

A. General Due Diligence:

- a) The Trustee shall be discerning in the appointment of the directors on the Board of the manager.
- b) Trustee shall review the desirability or continuance of the manager if substantial irregularities are observed in the trust or any of the schemes of SM REIT and shall not allow the manager to float new schemes of SM REIT.
- c) The Trustee shall ensure that the trust property is properly protected, held and administered by proper persons and by a proper number of such persons.
- d) The Trustee shall ensure that all service providers are holding appropriate registrations from the Board or concerned regulatory authority.
- e) The Trustee shall arrange for test checks of service contracts.
- f) Trustee shall immediately report to the Board of any special developments in the trust.

B. Specific due diligence:

The Trustee shall:

- a) obtain audit reports of the Manager and the REIT, its HoldCos and SPVs at regular intervals from auditors appointed by the manager,
 - b) obtain secretarial compliance reports from the manager,
 - c) consider the reports of the auditor and secretarial compliance reports of REIT at their board meetings for appropriate action,
 - d) trustee shall review the activity of the REIT on a quarterly basis and place the report of the same before their board
 - e) consider the reports of the auditor and compliance reports of manager at their board meetings for appropriate action,
 - f) maintain records and minutes of the Board meetings of the Trustee for the review of information pertaining to the REIT,
 - g) prescribe and adhere to a code of ethics by the Trustee, manager and its personnel,
 - h) communicate in writing to the manager of the deficiencies and check on necessary measures taken by Manager for the rectification of deficiencies.
- ii. The trustee shall also exercise due diligence on such matters as may be specified by the Board from time to time.

14.4.6. **It is reiterated that roles and responsibilities listed above are illustrative and not exhaustive. Trustees shall undertake necessary actions, roles and responsibilities as deemed necessary to adhere to the principles state in para 12.4.3 above.**

- 14.4.7. The proposals on strengthening and enhancing the existing role and responsibilities of the trustee of the REIT (including SM REIT) is also relevant in case of InvIT, hence it is proposed to specify similar provisions for InvIT appropriately in the InvIT Regulations.

Consultation 13: Role and Responsibilities of Trustee for REITs, InvITs and SM REITs

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 1) Whether the proposal to formally establish the principles governing the roles and responsibilities of trustee is appropriate and adequate?
- 2) Whether the proposed illustrative list of roles and responsibilities of Trustee is appropriate and adequate?
- 3) Whether the proposed flexibility given to trustee for meeting the principles of their role is adequate?
- 4) Whether the proposal to implement these enhanced role and responsibilities to the trustee of the InvIT, along with the trustee of the REIT, is appropriate?

15. **PUBLIC COMMENTS**

15.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposals. The comments/ suggestions should be submitted latest by November 13, 2024, through the online web-based form which can be accessed using the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

15.2. Kindly go through the instructions mentioned on the above link before submitting comments on the consultation paper

15.3. In case of any technical issue in submitting your comment through web based public comments form, you may contact the following through email with a subject: *"Issue in submitting comments on Consultation Paper on Proposals for REITs and InvITs"*.

a) Ritesh Nandwani, DGM (riteshn@sebi.gov.in)

b) Pranay Kumar Singh, AM (pranays@sebi.gov.in)

Issued on: October 30, 2024