



# REITs and InvITs - financing urbanization and infrastructure in India

A comprehensive insight

July 2021

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# Executive summary

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**Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)** are conceptually like mutual funds in that funds are raised (backed by a sponsor) from institutional and retail investors which is then invested in infrastructure or real estate projects. The income earned from such projects is periodically distributed (at least 90% of net distributable cash flows (NDCF)) to unitholders. However, unlike mutual funds, they also have characteristics of a business enterprise considering they also raise debt and through a Trustee and an Investment Manager, are actively involved in projects to maximize returns to unitholders.

The rising emergence and popularity of REITs/InvITs in India is a welcome development for capital thirsty sectors, e.g., infrastructure (roads and highways, ports, railways, etc.), power, real estate, etc. With a view to increasing private participation supported by favorable government policies (e.g., enabling investment by foreign portfolio investors) and long-term investment outlook, many marquee investors including sovereign and pension funds are continuing to raise their stakes in such assets. Investors benefit from generating regular cash distributions, stable yield and an opportunity for sponsor(s) to expand their asset base.

While REITs/ InvITs have raised capital of over US\$4 billion in India, a funding requirement of over US\$1.4 trillion by 2025 is estimated by the National Infrastructure Pipeline announced by the Government of India. Early trends of performance are encouraging. The combined market-cap of the three listed REITs in India is over US\$7 billion and over US\$10 billion for InvITs. Chapters 1 to 3 of this publication offer further insights to the tremendous opportunity for investment and growth.

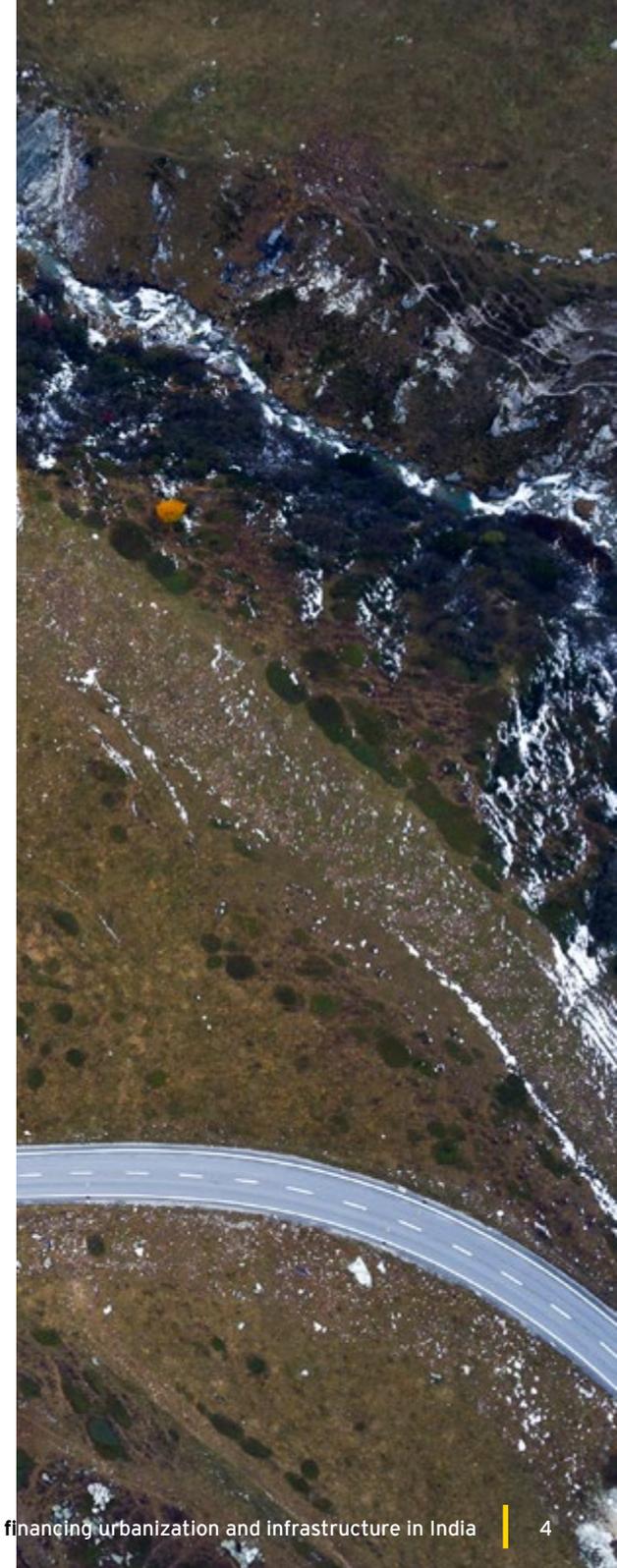
REITs/InvITs are primarily governed by SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014 and various circulars issued under these Regulations. While InvITs can be public listed, private listed or private unlisted, REITs are required to be publicly listed. There are various parties involved in REITs/InvITs such as a Sponsor, Trustee, Investment Manager. Distributions by REIT/InvITs are based on NDCF unlike companies where dividends are based on profits. These distributions are declared and made not less than once every six months for publicly offered REITs/InvITs and once a year for privately placed InvITs. This framework, formation and registration details and various types of projects are outlined in chapter 5 and chapter 6.

Under SEBI regulations, three years of audited combined financial information under Ind AS needs to be presented. Some of the practical

challenges that arise include availability of financial information (in case the SPV is acquired during the last three years), different auditors of the investment trust and those of SPVs before acquisition, GAAP conversion (from Indian GAAP to Ind AS) and the need to have uniform accounting policies. In addition, there are other complex areas such as whether these relate to asset acquisition or business combination, classification of unit capital and appropriate accounting for distributions (refer to chapter 7 for details).

From a tax perspective, REITs and InvITs are pass-through vehicles under Income tax and hence income of REITs/ InvITs (in the form of dividends and interest from underlying assets) is fully exempt. As set out in Chapter 8 (taxability of REIT/ InvIT), the distributions made by the investment trusts are taxed directly in the hands of investors depending on the nature of such distributions (dividend, interest or capital repayment).

The Government including SEBI and other regulators have played a proactive role in popularizing and promoting these investment trusts. Sponsors/management also have an important role in establishing high standards of corporate governance which is a pre-requisite for any investment. By adopting consistency in financial reporting as well as providing better transparency (benchmarking) and understandability for overseas investors are key ingredients for long-term success. We look forward to a new era of growth fueled by capital investment in REITs/InvITs.



# Setting the context

Key drivers for REITs and  
InvITs in India

Mitigating funding challenges  
for real estate and  
infrastructure projects

Enabling efficient  
distributions

Tapping into global capital

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Globally, REITs (Real Estate Investment Trusts) have been one of the predominant means of fund raising for yielding assets. Started in year 1960 in USA, today the total market cap of REITs and business trusts stands at US\$2.4 trillion<sup>1</sup>. In India, the instrument is still at a nascent stage with first issuance in May 2017 and total funds raised of US\$9.7 billion<sup>2</sup> till date.

In India, REITs are used for investment in real estate sector only and InvITs (Infrastructure Investment Trusts) are used for infrastructure sector. While REITs have to be public issue listed, InvITs can be listed or unlisted. Further, Listed InvITs can be privately placed or placed via public issue to a larger set of investors. The Government of India (the Government or GoI) launched InvITs and REITs to bring in long term yield capital into the country and in order to increase private participation primarily in infrastructure and real estate sectors, while these are also relevant for other sectors.

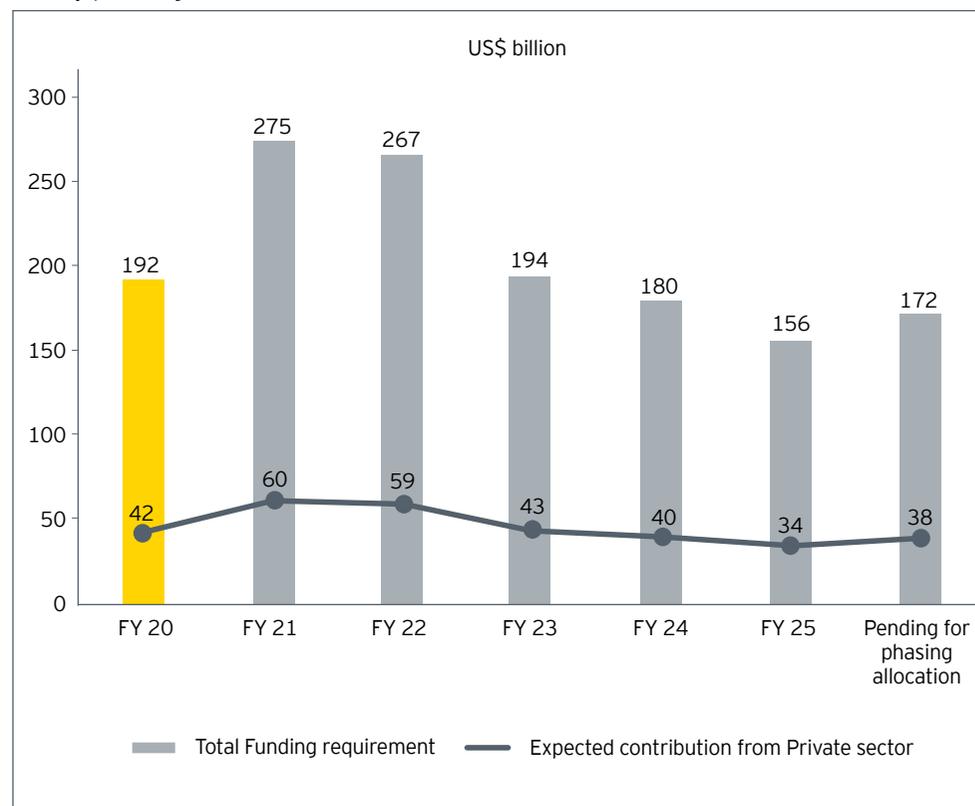
1. Market capitalization as on 31st May 2021 (Capital IQ)  
 2. Source: Economic Times and various news reports

## Key drivers for REITs and InvITs in India

### Infrastructure sector

Funding requirement in the infrastructure sector is estimated at US\$1.4 trillion by 2025 as per the National Infrastructure Pipeline (NIP) announced by the GoI. Yearly phasing of the infrastructure investments is provided below:

Yearly phasing of the US\$1.4 trillion investment



This would entail private sector investment of US\$325 billion in infrastructure. In order to allow for capital recycling and further investments under PPP modes, InvITs are expected to play a key role in monetization of existing projects in some of these sectors (with conducive regulatory frameworks, cash flow profile, taxation advantage):

Sector	Planned Investment (US\$ b)	Expected private sector participation
Road and Highways	276.06	39%
Conventional power (Thermal) <sup>3</sup>	163.38	6%
Petroleum and natural gas	26.76	15%
Renewable energy	130.99	100%
Railways	192.96	12%
Port	14.08	11%
Airport	19.72	39%
Urban	229.58	1%
Digital infrastructure	45.07	71%
Urban & Others	609.32	~1%
<b>Total Investment</b>	<b>1,436.00</b>	

3. GOI to update the amount post receiving phasing from Ministry of Power

4. Colliers International India

## Real Estate Sector

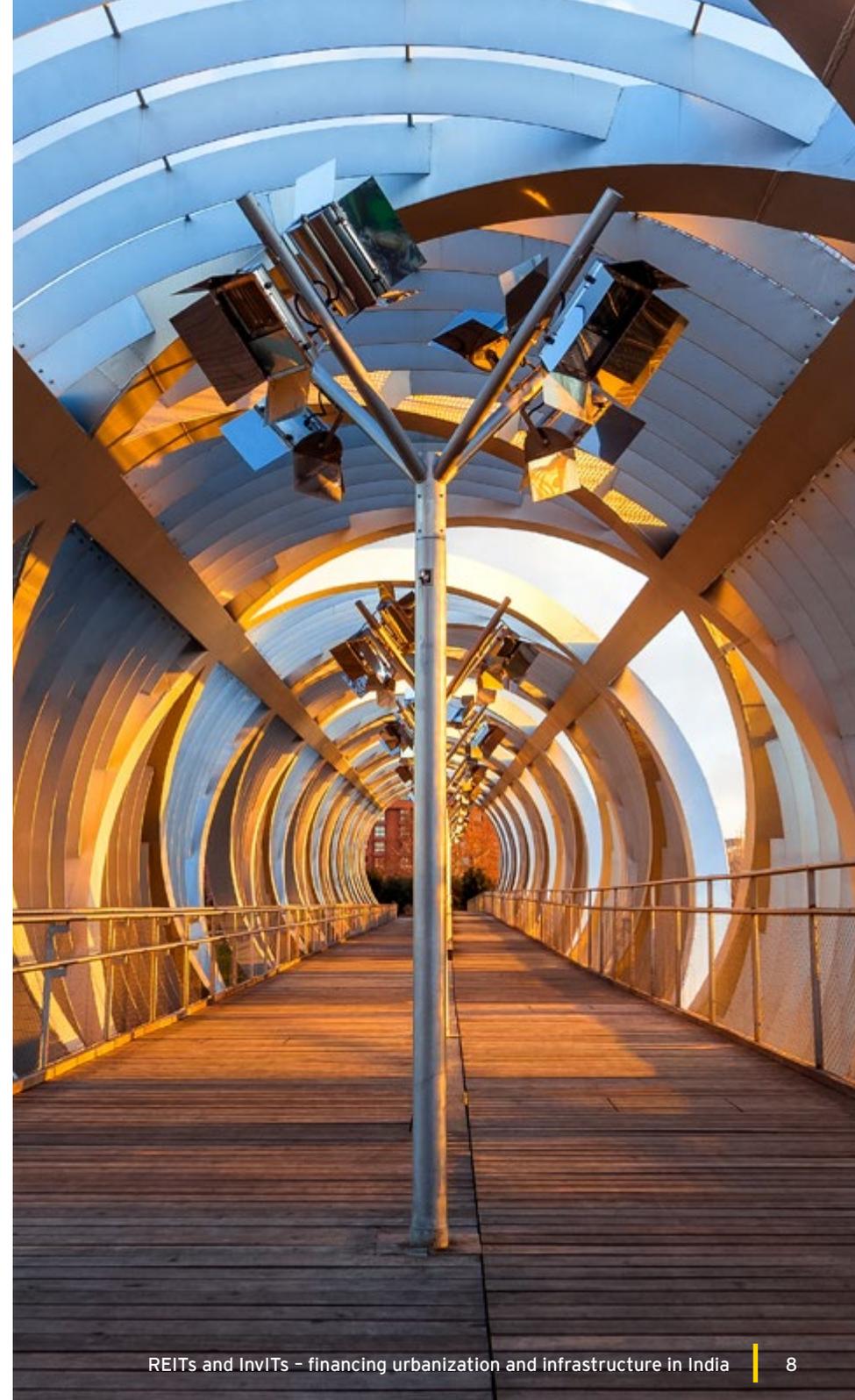
Real estate sector in India is expected to reach a market size of US\$1 trillion by 2030<sup>4</sup>. Key growth drivers for commercial real estate sectors are:

- ▶ COVID has brought about uncertainty in Indian office real estate market as near-term office leasing demand has been deferred. Flexible working conditions and the extent to which they stay in the corporate environment will determine medium term demand for office spaces
- ▶ Despite the near to medium term headwinds from COVID-19, long term drivers for real estate demand are strong and likely to withstand adversities in the sector
- ▶ In light of potential growth in the sector, two REITs have recently formed in last 9-month period, taking the total to three REITs in India:
  - ▶ In March 2019, Embassy Office Parks, India's first REIT was launched by the global investment firm Blackstone and realty firm Embassy group that raised US\$670 million, one example of REITs Investment vehicle for rental generating non-residential segment
  - ▶ Mindspace REIT, India's second REIT, listed successfully amidst the pandemic in July 2020 and raised US\$600 million from strategic and non-strategic investors
  - ▶ Brookfield India REIT, India's third REIT, listed successfully in February 2021 and raised US\$500 million from strategic and non-strategic investors

# Mitigating funding challenges for real estate and infrastructure projects

REITs and InvITs are investment vehicles that can be used to attract private investment in the infrastructure and real estate sectors by mitigating these challenges:

#	Key challenges	Description	Challenges mitigated through InvIT/REIT route
1	Higher Quantum	Projects with large amount of CapEx.	REIT/ InvIT help developers release their invested equity and deploy capital in new projects
2	Long term capital	Capital is required to be blocked for 15 to 35 years	Attracts pension funds and insurance companies, thus meeting long-term infrastructure financing need
3	High Leverage	DER of 2.33 to 4.0. Repayment period ~15 to 20 years	Refinancing of debt at InvIT level for longer duration, advantage due to pooling of cash flows
4	Limited Exit Options	Challenges in IPO/ Listing <ul style="list-style-type: none"> <li>▶ Portfolio Size</li> <li>▶ Growth visibility</li> <li>▶ Market conditions and Investor appetite</li> </ul>	Self-amortizing nature of units provide exit to the Investor over life of REITs/ InvIT. Thus, even if the portfolio cannot go public on account of market conditions, portfolio size and growth visibility challenges, investors would get exit over the life of asset
5	Corporate governance issues	Limited disclosure requirements under Companies Act.	REITs/ InvITs are managed by an independent trustee and investment managers/managers and have stringent reporting requirements. REIT/InvIT structure provides transparency in the business conduct to Investors



## Enabling efficient distributions

REITs and InvITs enable efficient upstreaming of cash for the following reasons:

- ▶ At the REIT and InvIT level, distributions can be undertaken basis cash available since provisions of Companies Act do not apply to trusts
- ▶ The government has introduced a beneficial tax regime insofar as dividends are concerned. As long as the SPVs under the REIT or InvIT remain in the old tax regime, any distribution of dividend is exempt right through the chain including for the unitholders. This becomes more relevant for InvITs since the SPVs in the infrastructure sector could be enjoying a tax holiday, may have MAT credits, un-absorbed depreciation and hence would be more suited to remaining the old tax regime
- ▶ On-lending to SPVs - InvITs are able to borrow debt at lower cost on account of pooling of cash flows. Further, this debt could be further lent to respective SPVs at higher interest rate. Servicing of debt from InvITs at higher costs helps upstream cash from SPVs removing cash traps



## Tapping into global capital

REITs and InvITs have attracted investments from a new class of investors, i.e., pension funds, sovereign wealth funds, insurance companies apart from private equity and mutual fund companies. Furthermore, pension funds and sovereign wealth funds have long term investment horizons, favorable for investments in infrastructure projects, with long project lives. In Indian InvITs, several new pension funds, sovereign wealth funds and Insurance companies have participated via InvIT route such as OMERS, CPPIB, Allianz, GIC, Brookfield, Blackstone and Private Investment arm of World Bank (IFC), etc. Additionally, public InvITs also allow participation by small retail investors also in the large infra assets.

# Global REITs for infrastructure assets

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There are now over 800 listed REITs globally with a total market capitalization of approximately US\$2.4 trillion<sup>5</sup>. The USA is key mature market for REITs with over 28% of global REITs listed in its exchanges, accounting for ~63% of global REIT market capitalization.

While countries have inclined towards the US REIT concept, each has added a slightly modified combination of requirements, suited for their own economy. Countries such as the US and Japan have made listing an option while Singapore has made listing a mandatory requirement (to avail tax benefits), to promote participation of public in real estate market. Growing markets have exempted REITs from income and capital gains tax on property rentals, stamp duties, etc. One can also observe difference in treatment of withholding taxes, with Turkey maintaining it at 0%, while other countries maintain it at a standard rate for REITs, or as per treaties. REIT structures range from trust structure (in Australia, India, Malaysia), mutual fund (in Canada, Greece), unit trusts (in Singapore, New Zealand), joint stock corporation (in Germany, Turkey), among others.

Key parameters of regulations governing setting up of REITs in countries with an established framework (top five based on market cap) are covered in table below:

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5. Source: Capital IQ -as at 31st May 2021



Parameters	USA	Japan	Singapore	United Kingdom	Australia
Minimum share capital <sup>6</sup>	Nil	JPY 100 million (~US\$0.925 million)	SGD 300 million (~US\$214 million)	GBP 700,000 (~US\$0.56 million) (as applicable for listing in UK/on LSE)	US\$1
Listing requirements	No	No	Yes, for certain tax concessions only	Yes, within three years of incorporation	No
Shareholder requirement	Minimum shareholder -100 shareholders <i>Less than five individual unitholders cannot be more than 50%</i>	No established requirement	Minimum 500 unitholder to hold more than 25% of capital	More than five single corporate shareholder cannot hold over 10% units	Not closely held <sup>7</sup>
Investment by foreign shareholders	Permitted	Permitted	Permitted	Permitted	Permitted, however, single investor cannot hold more than 10% of units
Distribution obligations	More than 90% of its taxable ordinary income	More than 90% of distributable profits	More than 90% of tax transparent income	90% of tax-property rental profits, 100% of property income distribution received from investee REITs	No minimum distribution rules
Distribution frequency	Annually	To pay only when declared	Annually or semi-annually or quarterly	Within 12 months of the end of the year	Annually or semi-annually
Leverage limit	None	No legal restrictions	leverage limit of 45% at project level or Holdco level	Maintain interest cover -1.25x of profits of property rental income	No established leverage limit; general thin capitalization rules may apply
Investment in foreign assets	Permitted	Permitted	Permitted	Permitted	Permitted

Source: European public real estate association - REIT survey

6. 1 US\$= 108 JPY = 1.4 SGD = 0.8 GBP

7. a 75% or greater interest is not held by 20 or fewer persons (retail trust) and ten or fewer person (wholesale trust), excluding interests held by specified 'eligible widely-held investors'. Also, a foreign individual cannot hold an interest of 10% or more

REITs have become an attractive investment opportunity overseas, delivering high yields through steady distributions and long-term capital appreciation, while offering liquidity and an alternate funding mechanism. Additionally, real estate, having low correlation with other asset classes, qualifies as a meritorious portfolio diversifier. It would be interesting to note that FY2020 saw public listing of 16 REITs having total market capitalization of US\$7.6 billion, also marking India's debut REIT (currently trading at over US\$3.4 billion)<sup>8</sup>:

Further, tower and fiber lease rentals from telecom service providers have also been structured as REITs globally. US public telecom REITs, with portfolios of tower and fiber assets, account for ~15% of US listed REIT market capitalization.

US REITs	Year formed	Type	Market capitalization (US\$ billion)	Portfolio
American Tower Corporation	2011	Public	101	~180,000 sites
Crown Castle International	2014	Public	72	~40,000 towers, ~130,000 km fiber
SBA Communications	1997	Public	29	~32,400 sites
Uniti Group Inc.	2014	Public	3	~670 towers, ~10,000 km fiber
<b>Total</b>			<b>~US\$204 billion</b>	

Source: Capital IQ for tower InvITs

Also, following oil & gas focused infrastructure trusts state the adoption of REITs in Infrastructure sectors:

- ▶ CorEnergy Infrastructure (gas pipeline & transmission, market cap.: ~US\$109 million)
- ▶ LandMark Infrastructure Partners (~2,025 sites across tower/ power genco; market cap.: ~US\$312 million).

Following the trend, Singapore has also seen listing of infrastructure business trusts, prominent ones being NetLinkNBN (telecom fiber assets; market cap.: ~US\$2.8 Bn) and Keppel Infrastructure Trust (energy and distribution, waste and water plants; market cap.: ~US\$2.0 billion), among other trusts in shipping business and logistic parks.

India has also witnessed growth in formation of InvITs involving roads and highways, transmission, telecom towers (pending listing), among others, into InvITs.

8. As on 31st May 2021

# REITs and InvITs in India

Evolution of REIT and InvIT  
framework

Key regulatory bodies

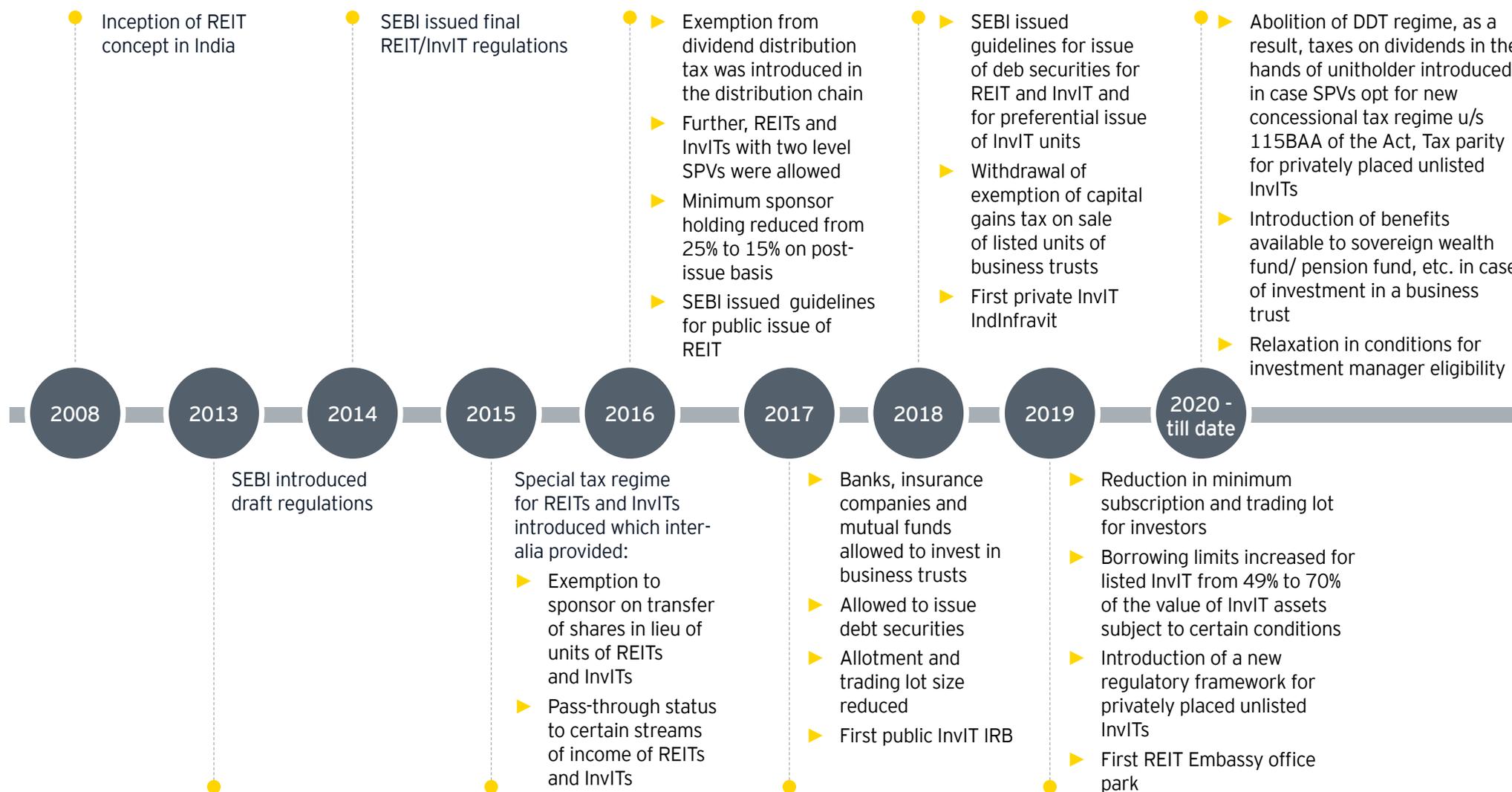
Presence of REITs and InvITs  
in India

Potential sectors where  
InvITs can be formed

3

In India, REITs were conceptualized in 2008, however, due to evaluation of various framework and regulations, India approved creation of REITs and InvITs in the budget session of 2014. REITs/ InvIT have a pass-through structure and are therefore required to distribute majority of their earnings to unit holders.

## Evolution of REIT and InvIT framework



## Key regulatory bodies:

Governing bodies	Key areas/ role governed
Ministry of Finance	<ul style="list-style-type: none"> <li>▶ Provision related to capital gain on transfer of share to trust</li> <li>▶ Taxation on dividends</li> <li>▶ Taxation on transfer of Units</li> </ul>
Securities and Exchange Board of India	<ul style="list-style-type: none"> <li>▶ Registration of trust as REIT/ InvIT</li> <li>▶ Eligibility criteria/roles/responsibilities of key parties to trust</li> <li>▶ Listing requirement</li> <li>▶ Raising fund through public or private placement</li> <li>▶ Key guidelines for unitholder's right</li> </ul>
Reserve Bank of India	Fund raising from foreign investors
MCA	Depreciation and governance of SPVs under companies Act
Ministry of law and Justice	Formation of trust

The GoI has made amendments in tax regime governing InvITs which is likely to help attract participation from investors:

- ▶ Bringing unlisted InvITs at par with listed InvITs from taxation perspective - ease of implementation of unlisted InvITs is likely to foster growth
- ▶ Tax exemption for sovereign wealth funds and pension funds, i.e., no tax on dividend or interest or capital gains
- ▶ The Government has introduced a beneficial tax regime insofar as dividends are concerned. As long as the SPVs under the REIT or InvIT remain in the old tax regime, any distribution of dividend is exempt right through the chain including for the unitholders.



## Presence of REITs/ InvITs in India

In India, REITs and InvITs have together raised more than US\$4.7 billion of capital and another US\$5 billion of InvIT transactions have already been announced (including Brookfield Jio's telecom towers and the L&T IDPL follow-on issuance). Highlights of REITs & InvITs issued in India are:

### REITs/InvITs in India (1/2)

	IRB InvIT Fund	India Grid Trust	IndInfravit Trust	India Infrastructure Trust	Oriental InfraTrust
Sponsor	IRB Infrastructure Developers Ltd.	Sterlite Power Grid Ventures Ltd., KKR	L&T Infrastructure Development Projects Ltd	Brookfield Asset Management, Canada	Oriental Structural Engineers Pvt. Ltd., Oriental Tollways Private Limited
Year of launch	May-17	Jun-17	May-18	March -19	Jun-19
Sector focus	Highways	Transmission	Highways	Pipeline	Highways
Public/ Private	Public	Public	Private	Private	Private
Asset portfolio	4,055 lane-km	5,800 ckm	5,040 lane-kms	1,480 km	2,804 lane-km
At launch					
Network length	3,645 lane-km	1,936 ckm	2,740 lane-kms	1,480 km	2,804 lane-km
EV (US\$mn)	868	525	645	1,995	NA
Market cap (US\$mn)	782	386	529	1,085	NA
Marquee investors	GIC; Monetary Authority of Singapore; CIM Investment Fund ICAV; Platinum Asia Fund, among others	KKR; GIC; BNP Paribas; Deutsche Bank; Copthall Mauritius; Schrodgers Investment Management (Hong Kong); BNP Paribas	Allianz, Germany; Canada Pension Plan Investment Board; OMERS,	Brookfield Asset Management, Canada	International Finance Corporation; DEG (German DFI); Asian Infrastructure Investment Bank; Asian Sovereign Wealth Fund

## REITs/InvITs in India (2/2)

	Embassy Office Parks REIT	Mindspace Business Parks REIT	Digital Fibre Infrastructure Trust	Tower Infrastructure Trust	IRB Infrastructure Trust	Brookfield India Real Estate Trust
Sponsor	Blackstone Real Estate Advisors, Embassy Property Development	Cape Trading LLP, Anbee Constructions LLP (K Raheja Corp group)	Reliance Industries Ltd	Reliance Industries Ltd and Brookfield Asset Management	IRB Infrastructure Developers	Brookfield Asset Management
Year of launch	Apr-19	Jul-20	Sep-20	Aug-20	Feb-20	Feb-21
Sector focus	Commercial offices	Commercial offices	Fiber	Telecom tower	Highways	Commercial offices
Public/ Private	Public	Public	Private	Private	Private	Public
Asset portfolio	33.3 million sq ft	29.5 million sq ft	17.3 million fiber pair km	174,451 towers	5,900 lane kms	14.0 million sq ft
At launch						
Network length	32.7 million sq ft	23.0 million sq ft	17.3 million fibre pair km	174,451 towers	5,900 lane kms	14.0 million sq ft
EV (US\$mn)	4,484	3,157	13,893	3,430	3,061	1,972
Market cap (US\$mn)	782	2,174	2,016	NA	1,221	1,074
Marquee investors	Blackstone Real Estate Advisors, Embassy Property Development	GIC; Capital Income Builder; Fidelity Group; Fullerton	Abu Dhabi Investment Authority and Public Investment Fund (Saudi Arabia)	Brookfield Asset Management, Canada	GIC	Brookfield Asset Management, Canada

Source- [www.sebi.gov.in](http://www.sebi.gov.in)

## Potential sectors where InvITs can be formed

Infrastructure Investment Trusts could be set up for sectors defined under Infrastructure definition as per RBI guidelines. Till date, developers engaged in road, power transmission (including gas pipelines) and tower transmission have formed InvIT. Sectors with favorable outlook in the following is likely to witness more participation from InvITs in ensuing years:

- ▶ Expected participation from the private sector
- ▶ Cash flow profiling of the sector - sector with increasing EBITDA may save on tax through refinancing at InvIT level and on lending to companies
- ▶ FDI policy to attract funds from foreign market by InvIT



Sector	Expected invested by FY25 US\$b	Expected contribution by the private sector	Revenue profiling*	Foreign direct investment	Other factors	EY assessment of likelihood of sector to follow InvIT route
Renewable energy	130.99	100%	Steady - as the tariff and capacity is fixed	100% under automatic route	DISCOM payment risk Long term plant performance risk	Upside would be largely driven by growth, so InvIT route will be feasible for highly credible developers with strong track record of executing renewable energy projects with best-in-class standards  <b>Medium probability</b>
Highways	276.06	39%	Depends on the type of project.  Steady in case of - Annuity/Hybrid Annuity  Upward - In toll project due to increase in toll rate and vehicle	100% under automatic route	Toll collection, Environment approvals, Land acquisitions	With three precedents of Highways developer raising fund through InvIT route and recent guidelines of treating listed and unlisted InvIT at par, highway sector may see few InvIT in near future.  As per market sources government agency such as NHAI, IFC and I squared backed Cube Highway are in advance discussion of launching their InvIT  <b>High probability</b>
Airports	19.72	39%	Upward due to increase in demand/ non-passenger fee revenue	100% under automatic route <sup>9</sup>	Limited participation of private sector. Gol is emphasizing on the privatization of airport in coming	Post COVID, existing developers are likely considering monetizing assets (subject to regulatory requirement) to free up invested equity & deleverage balance sheets in order to bid for upcoming airport available for privatization  <b>Low to medium probability</b>

9. [https://dipp.gov.in/sites/default/files/pn2\\_2020.pdf](https://dipp.gov.in/sites/default/files/pn2_2020.pdf)

Sector	Expected invested by FY25 US\$b	Expected contribution by the private sector	Revenue profiling*	Foreign direct investment	Other factors	EY assessment of likelihood of sector to follow InvIT route
Ports	14.08	11%	Upward due to increase in demand	100% under automatic route	The sector is primary controlled by government	Post COVID, existing developers are likely to consider monetizing assets (subject to regulatory requirement) to free up invested equity and deleverage balance sheets in order to bid for upcoming airport available for privatization <b>Low to medium probability</b>
Railways	192.96	12%	Upward due to increase in demand	100% under automatic route	The sector is primary controlled by government	Ministry of Railways (MoR) may consider pooling railway assets through InvIT to raise funds from private sector <b>Low probability</b>
Power transmission <sup>10</sup>	80	Not quantified	Variable	100% under automatic route	T&D loss, regulatory risk (tariff revision)	With successful operation of Indi grid, and increasing demand of capital, InvIT structure may come in the sector As per market sources, power grid has already announced its plan to form InvIT
Metro rail <sup>11</sup>	The total allocation is not quantified Rail budget 2020 announced 148-km-long Bengaluru suburban transport project at a cost of INR 2.61 billion	Total allocation of private sector participation is not quantified Center is looking for funding 60% of the planned 2.61 billion by external/private funding.	Upward due to increase in demand	100% under automatic route	Fares, driven by passenger and network growth State control over availability of Right of Way (ROW)	With weak position of private sector player engaged in the sector, the sector is not very attractive to investor looking higher return <b>Medium probability</b>

\*Our assessment of revenue profiling does not incorporate impact of COVID-19 situation, as we understand this is temporary phase which will not impact long term revenue profile of the sectors  
Exchange rate 1 US\$-Rs. 70

10. Ieefa Feb 2020 report and new sources

11. News sources, IBEF reports

# Framework for REIT and InvIT

Key stakeholders

Formation and registration

Distributions

Meetings of unitholders

Related party transactions

Valuation

4

REITs or InvITs, conceptually, are similar to mutual funds, which channelize funds from institutional and retail investors into a pool which is then invested in infrastructure or real estate projects and the income earned from such projects is periodically distributed to unitholders. However, unlike mutual funds, they also have characteristics of a business enterprise considering the fact that they also raise debt and in most cases are actively involved in the projects to maximize returns to unitholders

REITs and InvITs in India are primarily governed under SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014 as amended from time to time (together referred to as SEBI Regulations) respectively and various circulars issued by SEBI under these regulations (referred to as SEBI Circulars)

An REIT or InvIT is designed as a tiered structure which invests in eligible infrastructure or real estate projects either directly or through Special Purpose vehicles (SPVs) owning such projects or through a holding company or hold co owning the SPV(s)

## SPV and Holdco:

### An SPV is a company or LLP

In which the InvIT or the Holdco holds or proposes to hold controlling interest and not less than 51% of equity capital or interest (*in case of REIT: in which either the REIT or the Holdco holds or proposes to hold not less than 50% of the equity share capital or interest*)

Which holds not less than 90% of its assets directly in infrastructure projects and does not invest in other SPVs (*in case of REIT: which holds not less than eighty per cent of its assets directly in properties and does not invest in other special purpose vehicles*); and

Which is not engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects. (*in case of REIT: which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development*)

### A "holdco" is a company or LLP

In which InvIT holds or proposes to hold controlling interest and not less than fifty one per cent of the equity share capital or interest and which in turn has made investments in other SPV(s), which ultimately hold the infrastructure assets (*in case of REIT: in which REIT holds or proposes to hold not less than 50% of the equity share capital or interest and which it in turn has made investments in other SPV(s), which ultimately hold the property(ies)*)

Which is not engaged in any other activity other than holding of the underlying SPV(s), holding of infrastructure projects/real estate and any other activities pertaining to and incidental to such holdings

### Infrastructure/Real estate

Infrastructure includes all infrastructure sub-sectors specified in the Harmonized Master List of Infrastructure Sub-sectors notified by Department of Economic Affairs, Ministry of Finance as amended from time to time

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

However, any asset falling under infrastructure as defined above shall not be considered as real estate except:

- ▶ Hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating
- ▶ Common infrastructure for composite real estate projects, industrial parks and SEZ

## Key stakeholders

- ▶ **Sponsor:** An entity (company, LLP or any body corporate) which sets up the InvIT (in case of REIT: any person who sets up the REIT) and is designated as such at the time of application to SEBI and shall include an inducted sponsor.

There can be multiple sponsors. In case of InvIT, each sponsor shall have a net worth (in case of a company or body corporate) or net tangible assets (in case of LLP) of not less than INR 1 billion. In case of REIT, the sponsor(s), on a collective basis, shall have a net worth of not less than INR 1 billion, provided each sponsor shall have a net worth of not less than INR 200 million. Further, the sponsor or its associates shall have a sound track record (i.e., experience of at least five years and where the sponsor is a developer, at least two projects of the sponsor have been completed) in development of infrastructure/real estate or fund management in the infrastructure/real estate sector.

- ▶ **Trustee:** A person who holds the REIT or InvIT assets in trust for the benefit of the unitholders in accordance with the SEBI Regulations. Trustee should be registered under SEBI (Debenture Trustees) Regulations, 1998 and should not be an associate of the sponsor(s) or investment manager. Further Trustee should have wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of SEBI.

- ▶ **Investment Manager<sup>12</sup>(IM):** An entity<sup>13</sup> (company, LLP or any body corporate) which manages assets and investments of the REIT/ InvIT and undertakes various activities of REIT/InvIT specified under the SEBI Regulations. IM to have a net worth (in case of a company or body corporate) or net tangible assets (in case of LLP) of not less than INR 100 million and experience of at least five years in fund management or advisory services or development in the infrastructure real estate sector<sup>14</sup>.

Further, there shall be at least two employees with at least five years of experience in the above areas<sup>15</sup>. IM's to have at least half of the directors (in case of a company) or members of the governing board (in case of LLP) as independent and not directors or members of the governing board of an Investment Manager of another REIT/ InvIT. For InvITs, IMs to have an office in India from where the operations pertaining to the InvIT are proposed to be conducted;

- ▶ **Project Manager (in case of InvITs):** A person designated as such by the InvIT and is responsible for the execution/ management of the project. Under the SEBI Regulations, the project manager shall be the sponsor or an associate of sponsor for a period of three years from the date of listing of InvIT units unless a replacement is appointed by unitholders through Trustee.

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12. Investment Manager for InvITs is referred to as Manager for REITs. However, in this Section, the term Investment Manager is used which would mean Manager for REITs.

13. In case of REITs, it should be incorporated in India.

14. Or the combined experience of the directors/partners/ employees in the above areas for at least 30 years, wherein directors/partners/employees with more than 5 years of experience only to be considered for computing the combined experience (applicable only for InvITs)

15. For InvIT, the IM should have atleast one employee with atleast 5 years of experience in the relevant sub-sector in which the InvIT has invested/proposes to invest.

## Formation and registration

An REIT/InvIT is setup as a trust settled by the sponsor under the Indian Trusts Act, 1882 and the trust deed registered in India under the provisions of the Registration Act, 1908. Further, a Certificate of Registration as REIT/InvIT needs to be obtained from SEBI, the key requirements for which are as follows:

- ▶ The trust deed has its main objective as undertaking activity of REIT/ InvIT in accordance with SEBI Regulations
- ▶ Persons have been designated as sponsor(s), Investment Manager and Trustee under SEBI Regulations. All these should be separate entities
- ▶ No unit holder of REIT/ InvIT enjoys superior voting or any other rights over another unit holder and there shall not be multiple classes of units of REIT/ InvIT . However, subordinate units may be issued to sponsor(s) and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units
- ▶ The details pertaining to proposed activities of the REIT/ InvIT

## Distributions

Distributions by REIT/ InvIT are based on the Net Distributable Cash Flows (NDCF) unlike companies where the dividends are paid based on profits. Key provisions relating to distributions are as follows:

- ▶ At least 90% of the NDCF of the SPV shall be distributed to REIT/ InvIT or Holdco in proportion of the holding in SPV subject to applicable provisions of the Companies Act, 2013 or LLP Act, 2008
- ▶ 100% of the cash flows received by the Holdco from underlying SPVs shall be distributed by the Holdco to REIT/ InvIT. Out of cash flows generated by the Holdco on its own, at least 90% of the NDCF shall be distributed to the REIT/ InvIT
- ▶ At least 90% of NDCF of the REIT/ InvIT shall be distributed to the unit holders
- ▶ The distributions are declared and made by the Investment Manager not less than once in every six months for publicly offered REIT/ InvIT and once a year for privately placed InvITs. Subject to this, REIT/ InvIT shall make the distributions in a manner as specified in the offer document/placement memorandum. For e.g., some of the REIT/ InvIT have chosen to make quarterly distributions

- ▶ Sale proceeds from an asset, if not proposed to be reinvested in another asset within a period of one year, shall be included in NDCF for the purpose of distribution to unit holders
- ▶ The distributions shall be made within 15 days from the date of declaration. If distributions are not made within this period, the Investment Manager is liable to pay 15% per annum interest to unitholders and such interest shall not be recovered from REIT/ InvIT through fees or any other form of payment

## Meetings of unitholders

- ▶ **General:** Provisions relating to Unitholders' meetings are similar to companies in some aspects, though there are several aspects which are quite different for REITs/ InvITs. The Investment Manager is responsible for conducting meetings of unitholders subject to oversight by the Trustee. For matters involving the Investment Manager such as change/removal or change of control of the Investment Manager, Trustee shall handle all activities pertaining to conduct of meetings. For matters involving the Trustee such as change of Trustee, the Trustee shall not be involved in the conduct of unitholders' meetings.

▶ **Conduct of business in annual meetings:**

Any information that is required to be disclosed to the unit holders and any issue that, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including:

- ▶ Latest annual accounts and performance of the REIT/ InvIT
- ▶ Approval of auditor and fees of such auditor, as may be required
- ▶ Latest valuation reports
- ▶ Appointment of valuer, as may be required
- ▶ Any other issue

▶ **Matters requiring approval of unitholders:**

1. Investment limits/conditions, related party transactions and acquisition/sale of projects in certain cases
2. Transaction, other than any borrowing, value of which is equal to or greater than 25% of the REIT/ InvIT assets
3. Borrowings above the threshold specified under SEBI Regulations (i.e. 25% of REIT/ InvIT assets) (not applicable for private unlisted InvITs)
4. Issue of units after initial public offer by an REIT/ InvIT
5. Any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or investment

manager, is material and requires approval of the unit holders

6. De-classification of the status of sponsor
7. Any change in investment manager of REIT/ InvIT including removal of the investment manager or change in control of the investment manager (also requires SEBI approval except for unlisted InvITs)
8. Any material changes in investment strategy or any change in the management fees of the InvIT
9. The trustee and investment manager in case of InvITs (sponsor or trustee in case of REITs) proposing to seek delisting of units
10. Further, any issue can be taken for approval upon request of the unit holders including:
  - ▶ Removal of the investment manager and appointment of another investment manager to the REIT/ InvIT
  - ▶ Removal of the auditor and appointment of another auditor to the REIT/ InvIT
  - ▶ Removal of the valuer and appointment of another valuer to the REIT/ InvIT
  - ▶ Delisting of the REIT/ InvIT, if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders

- ▶ Any issue which the unit holders have enough reason to believe that is detrimental to the interest of the unit holders
- ▶ Change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders

For point 10 above, at least 25% of the unitholders by value (excluding any party related to the transaction and its associates) shall apply, in writing, to the Trustee. If the issue pertains to change in the trustee (as mentioned in point f. above), then at least 60% of unitholders by value shall apply, in writing, to the Investment Manager.

- ▶ **Approval of resolutions:** For a resolution to be approved, the votes cast in favor of the resolution shall be more than the votes cast against the resolution. Exceptions to this are as follows:
  - ▶ For issues from Point 7 to Point 10 above and issues requested by unitholders to be approved in general meeting, votes cast in favor of the resolution shall not be less than one and a half times the votes cast against the resolution
  - ▶ No person, other than sponsor(s), its related parties and its associates, shall acquire units of an REIT/ InvIT which taken together with units held by such person and by persons acting in concert with such person in such REIT/ InvIT,

exceeds twenty-five per cent of the value of outstanding REIT/ InvIT units unless approval from seventy five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction, is obtained

- ▶ In case of any change in sponsor/ inducted sponsor or change in control of sponsor/inducted sponsor, prior approval from seventy-five per cent of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained
- ▶ For Listed InvITs (public and private), for availing borrowings in excess of 49% of the value of the InvIT assets, approval from 75% of the unitholders by value shall be obtained
- ▶ For delisting of units of private listed InvIT for conversion to private unlisted InvIT, approval from 90% of the unitholders by value shall be obtained

## Related party transactions

- ▶ The definition of related parties under InvIT Regulations and REIT Regulations includes all related parties defined under the Companies Act, 2013 and the applicable accounting standards and further includes parties to REIT/ InvIT (i.e., Sponsor(s), Investment Manager, Project Manager(s) and Trustee) and promoters, directors and partners of the parties to the REIT/ InvIT
- ▶ SEBI Regulations require all related party transactions to be on an arms-length basis
- ▶ All related party transactions of an InvIT to be disclosed - a). in the offer document or placement memorandum with respect to any such transactions entered prior to the offer of units and any such proposed transactions subsequent to the offer and b). to the designated stock exchanges and unit holders periodically in accordance with the listing agreement and SEBI Regulations
- ▶ If in a financial year, the total value of all related party transactions pertaining to acquisition or sale of assets or investments in securities exceeds 5% of the value of InvIT assets (for REITs: 10% of the value of REIT assets) or the funds borrowed from related parties exceeds 5% of the total consolidated

borrowings of the InvIT, Holdco(s) and SPV(s) (for REITs: 10% of the total consolidated borrowings), prior approval from unit holders is required for any subsequent related party transaction

- ▶ Transaction between InvITs with a common investment manager or sponsor (or different investment managers or sponsors which are associates), shall be deemed to be related party transactions for each of the InvITs

## Valuation

- ▶ Since REITs/ InvITs by their very nature are asset intensive, hence a valuer has a crucial role to play in an REIT/ InvIT setup. REITs/ InvITs are required to mandatorily appoint a valuer under the SEBI Regulations which is done by the Investment manager in consultation with the Trustee. The valuer is required to be independent of the REIT/ InvIT, its Sponsor, Investment manager and Trustee and shall have at least five years' experience of infrastructure/real estate assets valuation
- ▶ A valuer cannot value the same project for more than four consecutive years, however the valuer can be reappointed after a cooling off period of two years. A valuer cannot undertake valuation of any assets where it has been involved in the acquisition or disposal of such asset in the last 12 months except where it was engaged by the REIT/ InvIT for such acquisition or disposal
- ▶ A full valuation is required to be conducted by the valuer not less than once in every financial year. Such full valuation shall be conducted at the end of the financial year ending 31 March
- ▶ A half yearly valuation of the assets of REIT/public listed InvIT shall be conducted by the valuer for the half-year ending 30 September for incorporating any key changes in the previous six months. In case the borrowings exceed 49% threshold for

public listed InvITs, such valuation shall be conducted by the valuer for quarter ending June, September and December

- ▶ In case of any material development that may have an impact on the valuation of the assets of REIT/public listed InvIT, the investment manager shall require the valuer to undertake full valuation of the infrastructure project under consideration within not more than two months from the date of such event
- ▶ Valuation reports received by the investment manager shall be submitted to the stock exchanges within fifteen days from the receipt of such reports
- ▶ For any transaction of purchase or sale of infrastructure projects/properties by public listed REIT/ InvIT, a full valuation of the project/property shall be undertaken by the valuer. In case an asset is proposed to be purchased at a value greater than 110% of the value of the asset as assessed by the valuer or in case an asset is proposed to be sold at a value less than 90% of the value of the asset as assessed by the valuer, approval of the unit holders shall be obtained

## Audit

- ▶ Auditor is appointed by the Investment Manager of REIT/ InvIT in consultation with the Trustee for a period of not more than five years. The auditor can be reappointed for another 5 consecutive years subject to approval of unitholders in the annual meeting
- ▶ The auditor shall always have a right of access to the books of accounts and vouchers pertaining to activities of the REIT/ InvIT. The auditor shall have a right to require such information and explanation pertaining to activities of the REIT/ InvIT as he may consider necessary for the performance of their duties as auditor from the employees of REIT/ InvIT or parties to the REIT/ InvIT or Holdco or SPV or any other person in possession of such information
- ▶ The investment manager shall ensure that the audit of accounts of the REIT/ InvIT by the auditor is done not less once in a year and such report is submitted to the stock exchanges within 60 days of end of financial year ending 31 March. For unlisted InvITs, the report is submitted to the trustee and unitholders

# Types of REITs and InvITs

A large cable-stayed bridge is illuminated at night, spanning across a body of water. The bridge's central pylon and stay cables are brightly lit, creating a strong contrast against the dark sky. In the background, a city skyline is visible with various lights and structures. The water reflects the lights from the bridge and the city. In the foreground, a rocky pier with a metal railing extends into the water.

Possible structures

Shareholding requirements

Investment portfolio conditions

Leverage guidelines

5

## REITs

Under the existing regulations, only one category of REITs is permitted, i.e., a REIT which is listed and offers units to public. An investor is required to invest minimum of INR 50,000 in a REIT and there shall be a minimum of 200 unitholders (other than sponsor(s), related parties and associates).

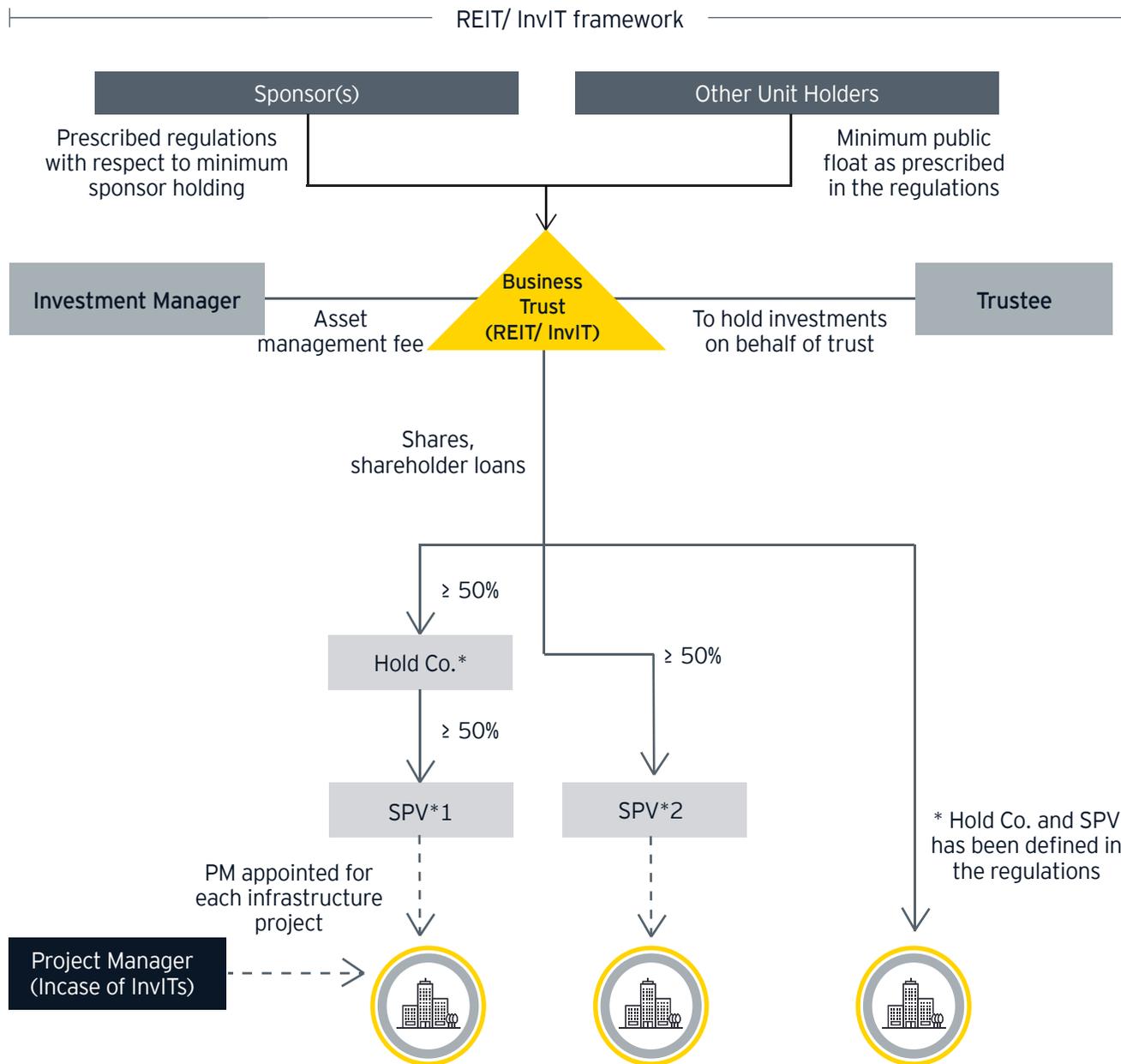
## InvITs

The table below provides a summary of SEBI Regulations around various types of InvITs:

#	Parameter	Private unlisted InvITs	Private listed InvITs	Public listed InvITs
1	Specified investors	Institutional investors and body corporates, whether Indian or foreign	Institutional investors and body corporates, whether Indian or foreign	Can invite funds from public as well (subject to minimum public float)
2	Minimum investment by an investor	INR 1 crore	INR 1 crore (If more than 80% of assets are completed and revenue generating assets, minimum investment is INR 25 crore)	INR 1 lakh
3	Number of unit holders (other than sponsor(s), its related inconsistent with section 4 parties and its associates)	No minimum investors, Maximum 20 investors	Minimum 5 investors, each holding not more than 25% of InvIT units  Maximum 1000 investors	Minimum 20 investors, each holding not more than 25% of InvIT units
4	Distribution of cash	Distributions not less than once every year in every financial year	Distributions not less than once every year in every financial year	Distributions not less than once every six months in every financial year
5	Investment restrictions	Refer section 'Investment Portfolio conditions'		

# Possible structures

A REIT/InvIT (collectively referred to as business trust) are permitted to hold income generating assets either directly or through investment in SPVs holding such assets. Further, the SEBI regulations also permit such REIT and InvIT flexibility to hold the SPVs through a Holding Company (Hold Co.). The Hold Co. should not be engaged in any activity other than holding shares of SPVs or directly holding assets (i.e., Infrastructure projects in case of Hold Co. of InvIT and real estate assets in case of Hold Co. of REIT). Further, where such SPVs are held through a Hold Co., the business trust would be required to hold a controlling interest and not less than 51% of equity share capital of interest in the Hold Co. It also needs to be ensured that the ultimate holding interest of business trust in underlying SPVs shall not be less than 26%. Given below is a diagrammatic presentation of the REIT and InvIT structures



Refer Appendix B for Key structural highlights of different REITs and InvITs

## Shareholding requirements

The SEBI REIT/ InvIT Regulations prescribe minimum holding stake/ minimum controlling interest which the REIT/ InvIT shall have in the Hold Co or the underlying SPV. The same has been tabulated below:

Particulars	Minimum controlling interest
Investment through Hold Co (in case of REITs and InvITs)	<ul style="list-style-type: none"> <li>▶ InvIT to hold controlling interest and not less than 51 % of equity share capital or interest in Hold Co.</li> <li>▶ REIT to hold controlling interest and not less than 50 % of equity share capital or interest in Hold Co. Investments made by HoldCo in SPVs (holding infrastructure assets), should be such that ultimate holding interest of REIT/ InvIT in underlying SPV is not less than 26%</li> <li>▶ The investment manager shall appoint majority of the board members of holding company and/ or SPV</li> <li>▶ The investment manager shall ensure that in every meeting of holding company and/ or SPV, the voting of the REIT/ InvIT shall be exercised</li> </ul>

Particulars	Minimum controlling interest
Investment through SPV	<ul style="list-style-type: none"> <li>▶ InvIT or HoldCo held by such InvIT to hold controlling interest and not less than 51 % of equity share capital or interest</li> <li>▶ REIT or Hold Co held by such REIT to hold controlling interest and not less than 50 % of equity share capital or interest</li> <li>▶ The investment manager shall appoint majority of the board members of SPV</li> <li>▶ The investment manager shall ensure that in every meeting of SPV, the voting of the REIT/ InvIT shall be exercised</li> </ul> <p>A part of the infrastructure assets is held under PPP projects wherein there are certain restrictions on transfer of shareholding by sponsors. In such cases, where acquisition or holding is not permitted pursuant to concession agreement/ other such agreements, there shall not be any minimum shareholding requirement.</p> <p>However, sponsor will be required to maintain holding at SPV level. The consolidated value of such holdings at SPV level along with value of units held by sponsor shall not be less than 15% of total InvIT units after initial issue of units on a post issue basis for a period of minimum three years from date of listing of units. Further, in case such holding of sponsor in the SPV results in InvIT not having controlling interest, the sponsor shall be required to enter into a binding agreement with the InvIT to ensure that decisions taken by the sponsor including voting with respect to the SPV are in compliance with the InvIT regulations and not against the interest of the InvITs or its unit holders.</p>

## Investment Portfolio conditions

SEBI REIT and InvIT Regulations have prescribed the investment conditions with respect to REITs and InvITs respectively. These investment conditions have been briefly captured below:

Particulars	InvITs		REITs
	Private InvITs (listed and unlisted)	Public InvITs	
At least 80% of asset value	Investments to be made directly/ indirectly in eligible infrastructure* projects	Investments to be made on proportionate holding basis in completed and revenue generating infrastructure projects, provided: <ul style="list-style-type: none"> <li>▶ Where investments made through HoldCo/ SPV, only direct investments by such HoldCo/ SPV to be considered</li> <li>▶ Where projects are implemented in stages, only completed and revenue generating part considered</li> </ul>	Investments to be made in completed and rent generating properties, provided: <ul style="list-style-type: none"> <li>▶ Where investments made through HoldCo/ SPV, only direct investments by such HoldCo/ SPV to be considered</li> <li>▶ Where projects are implemented in stages, only completed and rent generating part considered</li> </ul>

Particulars	InvITs		REITs
	Private InvITs (listed and unlisted)	Public InvITs	
Not more than 20% of asset value	<p>Investments to be made in:</p> <ul style="list-style-type: none"> <li>▶ Listed/ Unlisted debt of companies/ body corporates in infrastructure sector</li> <li>▶ Listed equity shares of Indian companies which derive at least 80% of operating income from infrastructure sector</li> <li>▶ Government securities</li> <li>▶ Money market instruments, liquid mutual funds or cash equivalents</li> <li>▶ Remaining indirect investments by HoldCo/ SPV where investments made through HoldCo/ SPV (not considered in the 80% limit)</li> <li>▶ Remaining portion of projects which are implemented in stages (not considered in the 80% limit)</li> </ul> <p>In case of public InvITs, investments can also be made in under-construction infrastructure projects, however, the same shall be limited 10% of InvIT asset</p>		<p>Investments to be made in:</p> <ul style="list-style-type: none"> <li>▶ Listed/ Unlisted debt of companies/ body corporates in real estate sector</li> <li>▶ Listed equity shares of Indian companies which derive at least 75% of operating income from real estate activity</li> <li>▶ Government securities</li> <li>▶ Money market instruments, liquid mutual funds or cash equivalents</li> <li>▶ Remaining indirect investments by HoldCo/ SPV where investments made through HoldCo/ SPV (not considered in the 80% limit)</li> <li>▶ Remaining portion of projects which are implemented in stages, including contiguous land (not considered in the 80% limit)</li> </ul> <p>Additionally, investments can also be made in:</p> <ul style="list-style-type: none"> <li>▶ Unlisted equity shares of companies which derive at least 75% of operating income from real estate activity</li> <li>▶ Unutilized floor space index of a project where it has already made investment</li> <li>▶ Transferable development rights acquired for the purpose of utilization with respect to a project where it has already made investment</li> <li>▶ Mortgage backed securities</li> <li>▶ Properties (whether directly/ indirectly), which are: <ul style="list-style-type: none"> <li>▶ Under-construction properties</li> <li>▶ Under-construction properties, which are a part of existing income generating properties owned by REIT</li> <li>▶ Completed and not rent generating properties</li> </ul> </li> </ul>

Particulars	InvITs		REITs
	Private InvITs (listed and unlisted)	Public InvITs	
Impermissible investments	<ul style="list-style-type: none"> <li>▶ Investments in units of other REITs/ InvITs not permissible</li> <li>▶ Lending to any person other than Holdco/ SPV in which the REIT/ InvIT has invested in also not allowed. However, investment in debt securities not considered as lending</li> <li>▶ Additionally, REITs shall not invest in vacant land or agricultural land or mortgages (other than mortgage backed securities)</li> </ul>		

\* InvIT can invest in infrastructure projects (defined under the harmonized list issued by Ministry of Finance) through holding company or an SPV

With respect to the investments by InvIT, the following additional conditions prescribed by SEBI InvIT Regulations may also be considered:

Type of project	Private InvITs (listed and unlisted)		Public InvITs	
	PPP projects*	Non-PPP projects*	PPP projects*	Non-PPP projects*
Under construction project with less than 50% construction completed	Not permissible		Maximum 10% (of value of InvIT assets) investments to be from such projects	
Under construction project with at least 50% construction completed (pre-COD project)	Minimum 80% (of value of InvIT assets) investments to be made in such projects			
Projects, where COD has been achieved, however, there is no revenue generation from such projects for more than one year				
Projects where COD has been achieved and revenue generation from such projects is for more than one year			Minimum 80% (of value of InvIT assets) investments to be made in such projects	

\* InvIT shall not invest in PPP (Public-Private Partnership) projects directly but only through its Holdco and/or SPV(s)

## Leverage guidelines

In case of InvIT (private listed and public listed), SEBI InvIT Regulations have prescribed that the aggregate consolidated borrowings and deferred payments of the InvIT, HoldCo and/ or SPVs, net of cash and cash equivalents shall not exceed 70% of the value of InvIT assets.

In case of private unlisted InvITs, SEBI InvIT Regulations have not prescribed any cap on borrowings for private unlisted InvIT. A private unlisted InvIT may undertake borrowing to the extent permitted under the trust deed, after seeking approval from such number of investors as specified in the trust deed.

In case of REIT, SEBI REIT Regulations have prescribed that the aggregate consolidated borrowings and deferred payments of the REIT, HoldCo and/ or SPVs, net of cash and cash equivalents shall not exceed 49% of the value of REIT assets.

Such leverage thresholds in case of REIT/InvIT shall be subject to the following conditions/ requirements:

Borrowings (as % of asset value)	InvITs	REITs
Up to 25%	No conditions prescribed	
Exceeding 25%, but up to 49%	Following conditions prescribed: <ul style="list-style-type: none"> <li>▶ Obtain credit rating</li> <li>▶ Seek approval of unitholders</li> </ul>	
Exceeding 49%, but up to 70%	InvIT to <ul style="list-style-type: none"> <li>▶ Obtain credit rating of "AAA" or equivalent</li> <li>▶ To utilize funds only for acquisition or development of infrastructure projects</li> <li>▶ Maintain a track record of at least six distributions, on a continuous basis, post listing, in the years preceding the financial year in which enhanced borrowings are proposed to be made</li> <li>▶ Seek approval of unitholders</li> </ul>	Not permissible

Note: In case of REIT, borrowings and deferred payments shall not include any refundable security deposits received from tenants.

# Private and public funding for REITs and InvITs

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Private placement

Subsequent issue of capital

Listed vs. private InvITs

Comparison of REITs/InvITs with IPO

Potential challenges in financial reporting

Post listing requirements

In case of InvIT (private listed and public listed), SEBI InvIT Regulations have prescribed that the aggregate consolidated borrowings and deferred payments of the InvIT, HoldCo and/ or SPVs, net of REITs and InvITs can raise funds by way of Initial Public Offering (IPO), Private Placement (PP), preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale.

### Initial Public Offering

#	Parameter	Private unlisted InvITs
1	Registration	Mandatory registration with SEBI
2	Value of assets	At least INR 5 billion
3	Offer size	At least INR 2.5 billion
4	Public float	<ul style="list-style-type: none"> <li>▶ At least 25% if post-issue capital below INR 16 million</li> <li>▶ At least INR 4 billion if post-issue capital equal or more than INR 16 billion but less than INR40 billion*</li> <li>▶ At least 10% if post-issue capital equal or more than INR 40 billion*</li> </ul> (*Public shareholding to be increased to 25% within 3 years from listing)
5	Investment restrictions	No public issue in case: <ul style="list-style-type: none"> <li>▶ Debarred from accessing the securities market by SEBI</li> <li>▶ Is a promoter, director or person in control of any other company or a sponsor, manager or trustee of any other REIT/InvIT or REIT/InvIT which is debarred from accessing the capital market by SEBI</li> <li>▶ Willful defaulters by the Reserve Bank of India</li> </ul>

### Private placement

#	Eligibility criteria for private placement of InvITs:	
1	Types of investors	Only institutional investors and body corporates
2	Minimum investment	INR 10 million per investor. (INR 250 million per investor If more than 80% investment is in completed and revenue generating assets)

Minimum subscription from each investor is INR 100 thousand in case of InvITs and INR 50 thousand in case of REITs

## Private Placement:

#	Parameter	Private unlisted InvITs
1	Subscription period of units	Not more than 30 days
2	Type of units	Dematerialized and held for more than a year before filing DRHP
3	Trading lot	100 units
4	Minimum number of unitholders	REIT- 200 Public InvIT-20 Private InvIT-5
5	Refund	<ul style="list-style-type: none"> <li>▶ Subscription less than 90%</li> <li>▶ Minimum number of unitholders less than as mentioned in point 4</li> <li>▶ Within 12 working days from issue closing</li> </ul>
6	Registration validity	Offer of units made within three years
7	Objects of the offer	General purpose shall not exceed 10% of amount raised
8	Redemption of units	Buy-back or delisting
9	Reporting of transactions	Sponsor, sponsor group and their associates should report to the stock exchange within 24 hours of transactions between filing of offer document and issue closing

## Role of IM/merchant banker

Manager shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and the role and responsibilities are as follows:

- ▶ Due diligence and underwriting and submission of due diligence report at various stages
- ▶ Addressing queries and alterations by SEBI on the draft offer document
- ▶ Hosting offer document on their website for not less than 21 days
- ▶ Finalizing inter-se allocation of responsibilities between merchant bankers
- ▶ Issuing certificate for agreement entered with manager
- ▶ Issuing compliance certificate to SEBI for news reports between filing and closure of issue
- ▶ Preparation and distribution of application forms and abridged offer document
- ▶ Setting up bidding software with stock exchanges
- ▶ Finalizing basis of allotment along with managing refunds and rejection of bids if any
- ▶ Submission of post-issue reports to SEBI along with issuing post issue advertisement and addressing post-issue grievances

Common responsibilities of Merchant banker and Investment Manager are:

- 1 Filing of placement memorandum/draft offer document with SEBI and stock exchanges
- 2 Dealing with all matters relating to determination of price, issue, allocation and listing of the units of as specified under the law
- 3 Obtaining in-principle approval and final listing and trading approvals from the designated stock exchanges
- 4 Dealing with all matters up to allotment of units to the unit holders
- 5 Ensuring disclosures made in the offer document or placement memorandum are material, true, correct and adequate
- 6 Maintaining public communications and marketing of the issue

Additional responsibilities of manager in public issue:

- 1 Determination of bidding process by Institutional investors
- 2 Advertisement relating to pre-issue opening, opening and closing of issue, price on its website and newspaper
- 3 Ensuring maintenance of security deposit with stock exchange(s)

In addition to the general responsibilities of a merchant banker, these are the following responsibilities w.r.t. REIT and InvIT:

- 1 Making investment decisions with respect to the underlying assets or projects including any further investment or divestment of the assets
- 2 Overseeing activities of the project managers activities
- 3 Ensuring that the infrastructure assets have legally enforceable titles and material contracts are enforceable under the law
- 4 Complying with investment conditions and strategy
- 5 Appointing various intermediaries with respect to various activities, in consultation with the Trustee, in a timely manner
- 6 Ensuring audit of accounts by the auditor

- 7 Ensuring valuation of assets by the Valuer
- 8 Ensuring assets are adequately insured
- 9 Ensuring infrastructure assets have legally enforceable titles and material contracts are enforceable under the law
- 10 Addressing unitholder's grievances and distribution made to them
- 11 Adequately disclosing and submitting documents to the stock exchange
- 12 Providing quarterly activity and performance report to the board of directors or governing board, and undertaking other specified compliance measures
- 13 Undertaking all such other activities delegated to it by the Trustee

# Contents of offer document

## General conditions for offer document:

- ▶ Draft offer document & offer document are filed with SEBI, the latter is an updated version incorporating comments from SEBI with a gap of 30 days
- ▶ Final offer document can be filed within 21 days of no observations from SEBI
- ▶ The final offer document filed provides all the information pertaining to the issue including the price band
- ▶ In case of private placement of InvIT placement memorandum is filed
- ▶ Includes all information and disclosures specified by SEBI and is not misleading or contains any untrue or misstatements including providing of guaranteed returns

## Key mandatory disclosure areas include

- ▶ **Details of parties:** This includes details in relation to the Sponsor, Manager, Trustee and other parties
- ▶ **Terms of Issue:** This includes terms of the offer, distribution of units, listing of units, commitments from investors
- ▶ **Business details and strategy:** This includes investment strategy, capital and risk management strategy and use of proceeds
- ▶ **Financials:** This includes previous three

years financials along with summary, MD&A, details of projects, contingent liabilities, etc.

- ▶ **Risk factors:** This includes risks related to business, organization and structure, risks related to India, ownership, issue and units, etc.

## Financial information to be included in Offer document:

### Period of financial information to be disclosed:

- ▶ The offer document shall contain Ind AS financial information for a period of last three completed financial years immediately preceding the date of offer document
- ▶ If the closing date of the last completed financial year falls more than six months before the date of offer document, then the REIT/InvIT shall also disclose interim financial information

*(Refer Appendix A for further details)*

The financial information shall be disclosed after making the following adjustments:

- ▶ Adjustments/Rectifications for all incorrect accounting practices which resulted in modified opinion(s) or modification(s) to the opinion in the auditor's report

- ▶ Modified opinion(s), where quantification is not possible then a statement to that effect shall be given by the auditors
- ▶ Material amounts relating to adjustments for prior period errors/items shall be identified and adjusted in arriving at the profits of the years to which they relate
- ▶ Change in accounting policy and of the year in which the change in the accounting policy has taken place shall be recomputed
- ▶ The balance sheet shall be prepared after deducting the balance outstanding on Revaluation reserve account from both fixed assets and reserves and the net worth should be arrived at after such deductions
- ▶ Financial statements shall disclose all material items. Materiality shall be judged and determined by the Investment Manager/manager depending upon pertinent facts and circumstances, including the size or nature of the item or a combination of both

In addition to financial disclosures other disclosures include:

- ▶ Working capital
- ▶ Past market performance

In addition to financial disclosures following additional line items are to be provided:

- ▶ Asset cover available
- ▶ Debt-equity ratio
- ▶ Debt service coverage ratio
- ▶ Interest service coverage ratio
- ▶ Net worth

Other areas of disclosure:

- ▶ Summary of the financial statements of the REIT/InvIT, manager/IM and sponsor for the previous three years, as applicable
- ▶ Management discussion and analysis of factors affecting financial condition and results of operations by the Manager/IM
- ▶ Projections of income of the REIT/InvIT over next three years beginning the current financial year certified by the manager/IM and the auditor with respect to calculation and assumptions
- ▶ Contingent liabilities as on the date of the financial information disclosed in the offer document/placement memorandum

In case of REIT for leased out properties (property wise), the following additional disclosures to be made:

- ▶ Total number of tenants
- ▶ Rental income as a percentage of total gross income in aggregate for the top 10 tenants

- ▶ Lease-maturity profile, in terms of the percentage of total gross rental income. for each of the next five years
- ▶ The existing monthly rental income before tax from the property, which is wholly or partly let, together with the amount and a description of any outgoings or disbursements from the rent
- ▶ The estimated current monthly market rental obtainable, on the basis that the property was available to let on the effective date as at which the property was valued

In case of InvIT, general consolidated details of all assets to be made:

- ▶ Breakup or proposed breakup of InvIT assets
- ▶ Details of proposed structure of investment by the InvIT in infrastructure projects
- ▶ Details of the SPV's through which the assets are held including capital structure, pre-issue / post issue holding of InvIT, etc.
- ▶ In case the projects are held or proposed to be held directly by the InvIT, details of holding of all the owners of the projects including percentage of ownership
- ▶ Project-wise details of infrastructure assets held or proposed to be held by the InvIT

- ▶ For under-construction projects, the following additional disclosures shall be made project-wise:
  - ▶ Stage of construction along with percentage of completed construction as at the end of the year
  - ▶ Progress of development and its expected completion

### Principles for preparation of Combined Financial Statements (CFS):

- 1 In case REIT/InvIT has not been in existence for some portion or the entire portion of the reporting period of three years and interim period, combined financial performance of all the proposed assets, for such period of non-existence
- 2 All the assets or entities, which are proposed to be owned by the REIT/InvIT as per the disclosures in the offer document / placement memorandum, shall collectively form part of combined financial statements
- 3 Preparation on assumption that the assets and/or entities, proposed to be owned were part of a single group for such period of non-existence

## Preparation of Combined Financial Statements:

- 1 Prepared considering the assets being part of a single group since the first day of reporting following the principles laid down in Ind AS 110
- 2 All pertinent matters, such as non-controlling interests, foreign operations, different fiscal periods, or income taxes, etc. shall be treated in the same manner as in consolidated financial statements, to the extent applicable
- 3 Combined financial statements shall be prepared based on an assumption that all the assets and/or entities, proposed to be owned were part of a single group for such period of non-existence
- 4 Reflection in CFS for underlying assets have been held by the sponsor or its associates or its group entities for a period lesser than the last three completed financial years

## Valuation of assets

- 1 A half yearly valuation shall be conducted for a publicly offered InvIT, prepared within 1 month from the date of end of such half year (i.e., September 30) and 45 days from the date of end of such half year in case of REIT
- 2 Valuation reports shall be submitted to the designated stock exchanges within fifteen days from the receipt of such valuation reports
- 3 Valuation details (except in case of bonus issue) to be included in the Offer Document and the valuation report shall not be more than six months old at the time of the offer (Not applicable in case of no material changes)



## Subsequent raising of funds

Further issue of capital includes follow-on offer, preferential allotment, qualified institutional placement, rights issue and bonus issue. The below mentions the eligibility criteria for preferential issue, institutional placement and rights issue:

Preferential issue, institutional placement and rights issue general eligibility criteria:

- ▶ Resolution approving the issue of units
- ▶ Units have been listed on a stock exchange
- ▶ In principle approval of the stock exchange(s) for listing
- ▶ Compliance with listing and disclosure obligations
- ▶ None of the promoters or partners or directors of the sponsor(s) or Investment Manager or Trustee of the InvIT is a fugitive economic offender
- ▶ Subsequent institutional placement to be made after expiry of six months from the date of the prior institutional placement

## Listed vs. Private InvITs

Parameter	Private unlisted InvITs	Private listed InvITs	Public listed InvITs
Type of document	Offer document	Placement memorandum	Placement memorandum
Type of Investors	Domestic or foreign Institutional and others	Domestic or foreign Institutional and body corporate only	Domestic or foreign Institutional and body corporate only
Listing	12 days from closing	30 days from allotment	NA
Distributable cashflows	Once every six months per FY year	Once every year	Once every year
Minimum investment	INR 100 thousand	INR 10 million <i>(INR 250 million in case of specified criteria)</i>	INR 10 million
Minimum investors	20	5	20
Filing date	5 days before opening of issue	5 days before opening of issue	5 days before opening of issue
Expiry of approval	1 year from observation by SEBI	3 months of receipt of in-principle approval	NA
Observation by SEBI	Yes	NA	NA
Disclosure	Mandatory	Certain relaxation	Many relaxations
Advertisement	Yes	NA	NA
Listing on SE	Yes	Yes	NA

Conversion from private to public is possible by trustee and investment managers consent and approval of unit's holders amongst other conditions.

## Comparison of REITs/ InvITs with IPO

Area	REITs/InvITs regulation	IPO requirements
Registration with SEBI	Whether public or privately placed, are required to mandatorily get their Trust deed registered with SEBI	A company is required to mandatorily get registered with Registrar of Companies (RoC). Only companies going for an IPO, need to mandatorily file its offer documents with SEBI
Shareholding by sponsors/promoters	Sponsor to hold minimum 15% of units for a minimum period of three years from the date of listing and holding in excess of 15% shall be held for a minimum period of one year	Promotor to hold minimum of 20% of post listing paid up share capital for a minimum period of three years from the date of commencement of commercial production or the date of allotment of initial offer (whichever is later)
Minimum shareholding by public	25% of total outstanding units if post issue paid up share capital is < INR 16 bn	30 days from allotment
Minimum application and allotment lot	The minimum application and allotment lot shall be 100 units and value of one lot shall not be less than INR 50 thousand in case of REIT and INR 100 thousand in case of InvIT	No criteria for minimum lot size
Statements to be included in financial information (key differences)	<p>Project wise operating cash flows</p> <p>Additional information REITs/InvITs regulation in case of an asset purchased from/disposed to a related party</p> <p>Projections of revenue and operating cash flow</p> <p>Statement on Working Capital</p> <p>Historical Financial information of Investment Manager and Sponsor</p>	<p>Statement of Accounting Ratios</p> <p>Statement of Tax Shelter</p> <p>Statement of Dividend Paid</p>

# Potential challenges in financial reporting

## Combined financial information

- ▶ SEBI circulars require inclusion of combined financial statements in the offer document in case the REIT/ InvIT was not in existence for last three years. However, the guidance available for preparation of combined financial statements is not sufficient (ICAI Guidance note on combined and carve-out financial statements only provides principles and does not cover various practical aspects)
- ▶ In cases where preparation of combined financial statements involve carving out financial information from certain entities (e.g., where one or more asset are proposed to be transferred to REIT/InvIT while remaining assets continue in the SPV), there could be practical difficulties in allocation of common expenses, borrowings, cash/ bank balances, etc. for past period for which combined financial information is to be prepared.
- ▶ Where the SPV's were acquired by Sponsor, etc. in recent past and are proposed to be transferred to REIT/InvIT, availability of adequate and reliable financial information of last three years for preparation of combined financial statements could be a challenge

- ▶ Even in cases where audited financial statements of SPVs for last three years are available, there could be potential challenges in relying on audited financial information due to different auditors of REIT/InvIT and those of SPVs
- ▶ GAAP conversion (Indian GAAP to IND AS) for SPVs whose historical financial information is under Indian GAAP could be a challenge
- ▶ Alignment of the accounting policies of SPVs for the preparation of combined financial statements of REIT/InvIT could involve significant efforts
- ▶ Preparation of additional disclosures required by SEBI circulars for, e.g., Statement of net assets and total returns at fair value, debt repayment history, related party transactions could also be challenging

## Projections

- ▶ Preparation of projections involve significant judgements, assumptions and estimates and complicated calculations in projecting the revenue and cash flows for the future periods for each project/ property
- ▶ Projections are required to be certified by the REIT/InvIT auditors, hence the level of scrutiny/review of budgets and assumptions could be high. There could be potential challenges in providing adequate comfort to auditors for their certification



## Fair valuation of projects/properties

- ▶ Identification of a qualified and an independent valuer
- ▶ Access to accurate data points pertaining to individual projects for last three years
- ▶ Discussions with and review by the auditors, which may lead to significant time involvement in finalizing of valuation report

## Net distributable cash flow (NDCF) formula

- ▶ SEBI Circulars require REITs/InvITs to define net distributable cash flows (NDCFs). Such definition is required to be disclosed in the offer document and followed consistently pursuant to listing. The NDCF computation is subject to compliance with the Companies Act, 2013 or Limited Liability Partnership Act, 2008, or any Central Government Act, as applicable.
- ▶ Finalization of NDCF definition/formula could involve a lot of discussions/efforts since it is one of the most important aspects of REITs/InvITs. This would also involve evaluating various approaches/modes for upstreaming of cash generated by projects/properties in SPVs including dividend distribution by SPVs, interest payments, loan repayments or giving of loans by SPVs to REIT/InvIT. Each of these would entail different accounting and tax treatment for the REIT/InvIT and the SPVs. Further, these could also impact the taxability of the unitholders of the REIT/InvIT



- ▶ There could be significant implications from accounting, tax and cash flow perspective based on how the NDCF is determined. It is to be noted that once the NDCF definition is finalized and included in offer document, it must be followed consistently. Any change in NDCF definition later would require unitholders' approval.

## Disclosures of related parties defined in REIT/InvIT regulations

- ▶ There are additional related parties to be reported as per REIT / InvIT Regulations over and above the related parties as per applicable GAAP. This could involve efforts in identifying such parties and their transactions
- ▶ Further, there are additional details required to be disclosed for transactions of acquisition/disposal of assets with related parties for, e.g., summary of valuation report, material conditions or obligations in relation to the transaction, rate of interest, if external financing has been obtained for the transaction/acquisition, any fees or commissions received or to be received by any associate of the related party in relation to the transaction
- ▶ Also, ensuring completeness of the list of related parties and the transactions with such parties could involve a lot of efforts

## Financial information of Investment Manager and Sponsor for past three years

- ▶ Bankers would normally require comfort letters from the auditors of the Investment Manager and Sponsor for inclusion of their financial information in the offer document. This may involve additional time/efforts for both management and the auditors
- ▶ For Investment Managers/Sponsors which are foreign entities, IFRS financial statements can be included in the offer document. However, where IFRS financial statements are not available, such financial statements would need to be prepared requiring GAAP conversion
- ▶ The above would also apply even in case where the financial statements are under a GAAP which is based on IFRS but there are carve-outs. For example, Investment Managers/Sponsors belonging to countries where local standards are based on IFRS but with certain carve-outs

For further details refer section 'Key accounting considerations'

## Post listing requirements

### Reporting requirements:

- ▶ REIT/InvIT shall submit an annual report to unitholders and to designated stock exchanges
- ▶ Submit half yearly report including brief activities and summary of audited consolidated financial statements
- ▶ Financial information shall be disclosed on both standalone and consolidated basis
- ▶ Annual financial information shall contain comparative information for the preceding year and half yearly financials shall contain comparative financial for preceding half year and corresponding half year in the immediately preceding financial year

In addition to key financial statements the REIT/InvIT should also disclose:

- ▶ Statement of NDCF of the REIT/InvIT as well as of the of the Holdcos and SPVs
- ▶ Fees paid to the Investment Manager/manager and project manager (in case of InvIT) and material changes in feed paid
- ▶ Changes in accounting policies
- ▶ Statement of earning per Unit
- ▶ Statement of related party transaction

Further information relating to operations or performance, price sensitive information like borrowing details of Holdco or SVPs, acquisitions or disposal of any assets.

Insider trading regulations:

- ▶ Each listed company is required to formulate code of conduct for regulating, monitoring and reporting of trading by insiders
- ▶ Each listed company is required to formulate code of practices and procedures for fair disclosure of unpublished price sensitive information

# Financial reporting framework

Key accounting considerations

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There is no set of accounting standards prescribed for trusts generally in India. Circulars issued under REIT Regulations and InvIT Regulations (SEBI Circulars) mandate all REITs and InvITs to prepare financial information in accordance with Indian Accounting Standards as defined in Companies (Indian Accounting Standards) Rules, 2015 (Ind AS). This puts REITs/ InvITs on the same platform as companies in terms of financial reporting framework, except that for companies, Ind AS is mandatory only for listed and certain high net worth companies and for the rest it is only voluntary.

REITs/InvITs need to maintain proper books of account, records and documents, etc. relating to a period of not less than eight financial years immediately preceding a financial year.

SEBI Circulars prescribe certain additional statements and disclosures in the financial statements of REITs and InvITs over and above the requirements of Ind AS as explained below:

- ▶ **Statement of NDCF:** Statement of NDCF forms the basis for determining the amounts to be distributed to unitholders periodically. REIT/ InvIT are required to disclose statements of NDCFs of the REIT/ InvIT as well as of all the underlying HoldCos and SPVs. Such statements shall be prepared in accordance with, the definition of NDCFs and the framework for calculation of NDCFs, as defined by the REIT/ InvIT and as disclosed in the offer document. SEBI Circulars provide indicative framework for calculation of NDCF for REIT/ InvIT and for the underlying Holdcos and SPVs



► **Statement of Net Assets at Fair Value:**

#	Particulars	Book value	Fair value
1	Assets	XXXX	XXXX
2	Liabilities	XXXX (as reflected in the balance sheet)	
3	Net assets (A-B)	XXXX	XXXX
4	No. of units	XXXX	XXXX
5	NAV (C/D)	XXXX	XXXX

Note: Breakup of the fair values of the assets must be given project-wise in the notes to the Statement of Net Assets at Fair Value

► **Statement of Total Return at Fair Value:**

Particulars	Amount
Total comprehensive income (as per the Statement of Profit and Loss)	XXXX
Add/Less: Other changes in fair value (e.g., in investment property, property, plant & equipment (if cost model is followed)) not recognized in total comprehensive income	XXXX
<b>Total return</b>	<b>XXXX</b>

- **Related party disclosures:** The definition of related parties under REIT Regulations and InvIT Regulations includes all related parties defined under the Companies Act, 2013 and the applicable accounting standards and further includes parties to REIT/InvIT (i.e., Sponsor(s), Investment Manager, Project Manager(s) and Trustee) and promoters, directors and partners of the parties to the REIT/ InvIT

SEBI Circulars prescribe that in addition to all the disclosures required under Ind AS 24 - Related Party Disclosures, following additional disclosures also need to be given:

- Details of related party and its relationship with REIT/InvIT
- Nature of the transaction
- Value of the transaction
- In case of any related party transaction involving acquisition or disposal of an REIT/InvIT asset, the following additional information shall be provided:
  - Summary of valuation report
  - Material conditions or obligations in relation to the transaction
  - Rate of interest, if external financing has been obtained for the transaction/acquisition
  - Any fees or commissions received or to be received by any associate of the related party in relation to the transaction
- **Details of Investment Manager fees:**
  - Explanations and justification for the fees paid to the Investment Manager, including details about methodology for computation of the fees
  - Whether there has been any material change in the fees paid to Investment Manager compared to the previous reporting period? If yes, detailed reasons and information thereof
  - In case of InvITs, similar details as above to be provide for project manager fees as well

- ▶ **Sub-sector investments (for InvITs):** If the InvIT holds assets in more than one infrastructure sectors/sub-sectors, then it shall disclose a breakup of the investments across all sectors/sub-sectors clearly showing investments in each major sector/sub-sector (major sector/sub-sector would constitute not less than 5% of the total investment in the major classification) together with the percentage thereof in relation to the total investment

### **Submission of financial information to stock exchanges by REITs and InvITs (listed) :**

REITs and InvITs (listed) are required to submit financial results on standalone and consolidated basis to stock exchanges on a half yearly basis. The half year financial information can be audited or reviewed whereas the annual financial information must be audited.

The financial information for the first half of the year needs to be submitted within 45 days from the end of period and should disclose comparative information for the immediately preceding half year as well as for the corresponding half year in the immediately preceding financial year. The financial information for the second half year and the annual financial information needs to be submitted within 60 days from the end of the year along with a note stating that the figures of the



second half year period are the balancing figures of the figures of the full financial year reduced by the figures of the first half year period.

In addition to the above, REITs /InvITs may also submit financial information prepared based on International Financial Reporting Standards (IFRS) on a voluntary basis.

The half yearly financial information submitted to stock exchanges should include the Statement of Profit and Loss and the explanatory notes forming part of it.

The financial information submitted to stock exchanges shall be approved by the board of directors of the Investment Manager and signed by the chairperson or managing director or whole-time director of the Investment Manager or in the absence of any of these, by any other director duly authorized by the board to sign the financial information.

In the audit report, the auditor, in addition to opining on the financial statements, also needs to opine on true and fair view of the statement of net assets at fair value, statement of total returns at fair value and statements of net distributable cash flows.

# Key accounting considerations

There are certain accounting considerations which are common for REITs and InvITs in India. These are explained below:

- ▶ **Classification of unit capital of REIT/InvIT:** REITs/InvITs are required to mandatorily distribute at least 90% of NDCF. Hence, a portion of the unitholders' funds consists of obligation to pay cash to unitholders. Accordingly, the Unitholders' funds would be classified as compound financial instrument which contain both equity and liability components in accordance with Ind AS 32 - Financial Instruments: Presentation. However, SEBI Circulars mandate the minimum line items/disclosures in the financial statements of REITs/InvITs which include those relating to unitholders' equity and the changes therein. This has resulted in inconsistency between the requirements of Ind AS and law (i.e., SEBI Circulars). In the absence of clarity on the above, REITs/InvITs in India generally treat unitholders' funds as equity complying with the requirements of SEBI Circulars. It is pertinent to note that in Singapore, REITs/InvITs classify the unitholders' funds as equity [irrespective of the classification under SFRS(I) 1-32 (equivalent of IAS 32)] in accordance with the Statement of Recommended Accounting Practice (RAP) 7 Reporting Framework

for Unit Trusts (now revised and renamed as Reporting Framework for Investment Funds) issued by the Institute of Singapore Chartered Accountants.

- ▶ **Accounting for distributions declared post balance sheet date:** The board of the Investment Manager approves the distributions to be made for each period after the end of the period. The question is whether such distributions should be accrued as liability as at the period end since the REIT/InvIT is mandatorily required to distribute at least 90% of the NDCF. The accrual of distributions as liability as at period end would be required if the unit capital were to be classified as liability. However, since REITs/ InvITs in India treat the unit capital as equity, the position generally taken (although may vary based on facts) is that the distributions would be recognized as liability only when those are approved by the Board of the Investment Manager.
- ▶ **Presentation of distributions in financial statements of REIT/InvIT:** Unlike in corporate entities where dividends paid cannot exceed the accumulated profits, in REITs/InvITs this is very much possible since distributions are based on NDCF generated during the period which is more a measure of cash generation than profit generation. In case distributions exceed the accumulated profits at balance sheet date, in practice, investment trusts adopt different ways to present the same on the face of the balance sheet for e.g.:
  - ▶ Presenting negative accumulated profits/retained earnings in balance sheet
  - ▶ Reducing the excess distributions made over accumulated profits from unit capital
- ▶ **Business acquisition vs. asset acquisition:** REITs/InvITs acquire projects/properties which are often owned through SPVs. Hence the question arises whether the SPV acquired by REIT/InvIT constitutes a business or an asset. Ind AS 103 provides detailed guidance on determining if the acquired entity is a business or an asset. There are chances of the SPV being classified as a business in case there are existing contracts with customers and service providers executed with the SPV and there are established processes in the SPV for revenue collection, maintenance of assets, etc. although the classification as asset also cannot be ruled out as it will depend on the facts and circumstances of each case. The above determination is significantly impacted by the recent amendments in Ind AS 103 (in line with the amendments in IFRS 3 - Business Combinations). The amendments have narrowed down the scope of the definition of business along with providing an optional concentration test which provides that if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, then the set of activities and assets is determined not to be a business and no further assessment is needed. Though

the test is optional, it is expected that in most of the cases, application of this test would result in the acquisition being treated as asset and not a business. Similar amendments were made under US GAAP in January 2017 (ASU 2017-01) which bring the definition of business under US GAAP and IFRS on similar lines, although the concentration test is mandatory under US GAAP.

► **How the above determination impacts financial statements:**

Business vs. asset is an important determination which could have significant impact on the financial statements as explained in the below table:

Area	Business	Asset
Accounting for goodwill/gain on bargain purchase	Applicable	Not applicable
Fair value accounting	Assets acquired and liabilities assumed are generally accounted for at fair value	The cost of the group shall be allocated to the individual identifiable assets and liabilities on the basis of their relative fair values at the date of purchase. Such a transaction or event does not give rise to goodwill
Directly attributable acquisition-related costs	Expensed off	Capitalized as part of asset cost
Deferred taxes	Recognized initially	Not recognized initially
Contingent consideration	Ind AS 103 provides explicit guidance	Ind AS 16 and Ind AS 38 do not provide explicit guidance
Consideration in the form of shares/units	Ind AS 102 does not apply	Ind AS 102 applies
Disclosures	Extensive disclosures	Not as extensive as those under "Business" classification

It is important to note that the above differences not only affect the accounting as of the acquisition date, but also have an impact on future depreciation, possible impairment and other costs.

How to allocate consideration to individual assets and liabilities in case of Asset acquisition:

- Ind AS 103 does not clarify on how the consideration paid will be allocated in case of acquisition of group of assets that does not constitute a business. For this guidance may be taken from the agenda decision published by the IFRS Interpretations Committee in November 2017, that clarified how an entity accounts for the acquisition of a group of assets that does not constitute a business. There are two approaches suggested by the Committee.
- Under the first approach, an entity accounts for the acquisition of the group of assets as follows:
  - It identifies the individual identifiable assets acquired and liabilities assumed that it recognizes at the date of the acquisition
  - It determines the individual transaction price for each identifiable asset and liability by allocating the cost of the group based on the relative fair values of those assets and liabilities at the date of the acquisition
  - It applies the initial measurement requirements in applicable IFRSs to each identifiable asset acquired and liability assumed

The entity accounts for any difference between the amount at which the asset or liability is initially measured and its individual transaction price applying the relevant requirements.

Under the second approach, for any identifiable asset or liability initially measured at an amount other than cost, an entity initially measures that asset or liability at the amount specified in the applicable standard. The entity deducts from the transaction price of the group, the amounts allocated to the assets and liabilities initially measured at an amount other than cost, and then

allocates the residual transaction price to the remaining identifiable assets and liabilities based on their relative fair values at the date of the acquisition.

▶ **Accounting for contingent consideration:**

In certain cases, the total consideration for acquisition for projects/SPVs includes a portion which is dependent on a future uncertain event or performance of the project. This is termed as contingent consideration.

If it is a “business acquisition”, then Ind AS 103 provides that the acquirer shall classify the obligation to pay contingent consideration either as a “liability” or “equity” under Ind AS 32. The contingent consideration is initially recognized at its fair value as part of the consideration transferred. Subsequently, if the contingent consideration obligation is classified as equity, it is not remeasured. If it is classified as liability (whether in the scope of Ind AS 109 or otherwise), then it is fair valued through P&L

In case of an “asset acquisition”, Ind AS 103, Ind AS 16 or Ind AS 38 do not provide any specific guidance. Where the goods and services in question have been delivered, there is no doubt that there is a financial liability under Ind AS 109. A contingent obligation to deliver cash meets the definition of a financial liability. Therefore, if the obligation to make the variable payment does not depend on the acquiring entity’s future activity

and the event that gives rise to the payment is outside its control, then a financial liability would be recognized.

However, where the purchaser can influence or control the crystallization of the contingent payments, or they are wholly dependent on its future activities, the circumstances are more difficult to interpret. In these cases, the determination of whether the payment should be capitalized or expensed is usually based on the reason for the contingent payment. For example, if the contingent payment is based on period volumes sold or produced it will generally be expensed. Conversely, when the reason for the payment is more clearly linked to the initial value of the asset, rather than its use over time, the entity may elect a policy to either:

- ▶ Include the fair value of all contingent payments in the initial measurement of the asset
- ▶ Recognize a liability only when the contingent payment crystallizes

An entity should adopt and apply a consistent accounting policy to initial recognition and subsequent payments, in accordance with the hierarchy in Ind AS 8 - Accounting Policies, Changes in Accounting Estimates and Errors. An entity should exercise judgement in developing and consistently applying an accounting policy that results in information that is relevant and reliable in its circumstances.

- ▶ **Service Concession Arrangements:** Several projects in the infrastructure sector are executed under the public-private partnership model. Such projects need to be evaluated for applicability of accounting for Service Concession Arrangements under Appendix D of Ind AS 115. If the arrangement falls under the purview of the above appendix, then the entity may need to recognize the project asset either as financial asset or intangible asset depending upon the terms of the arrangement. Accounting for Service Concession Arrangements has significant implications on the balance sheet and the statement of profit and loss and could also have consequential implications on compliances with debt covenants, MAT impact (where applicable), non-banking financial company (NBFC)/ core investment company (CIC) assessment, etc.
- ▶ **Impairment of projects assets:** REITs/InvITs generally acquire operational projects from sponsor/third parties. Such assets are fixed/stable income projects and are sensitive to changes in prevailing interest rates. In case changes in interest rates affect the discounting rate/WACC, there could be risk of impairment of project assets. Hence impairment assessment for project assets under REITs/InvITs becomes an important consideration. Also pertinent to note here is that since impairment is tested at asset/CGU level, there could be cases where there are multiple assets/CGUs within a SPV (which generate

cash flows largely independent of other assets/CGUs) and hence though at the SPV level there may not be an impairment, but at CGU levels within the SPV, there could be impairment.

- ▶ **Impairment of REIT/InvIT's investments in SPVs (equity, loans, etc.):** REITs/InvITs invest amounts in SPVs generally through equity, loans, or other hybrid instruments. Since the SPV periodically upstreams the cash generated in the SPV through dividends, interest or loan repayments, hence the investments in SPV at standalone REIT/InvIT level could get impaired over time which needs to be carefully evaluated as per the requirements of applicable Ind AS.
- ▶ **Investments in liquid mutual funds:** Under the REIT/InvIT Regulations, there are limits of borrowings/leverage. The total borrowings are determined on a net basis after deducting cash and cash equivalents. REITs/InvITs or the SPVs below generally park their funds in bank FDs or liquid mutual funds. Though from a treasury management perspective, there is not much difference between bank FDs or liquid mutual funds (in fact, liquid mutual funds sometimes could be better in terms of returns or flexibility of investment), however liquid mutual funds may not get covered under the definition of cash and cash equivalents under Ind AS. A clarification from SEBI in this regard as to which investments can be considered under cash and cash equivalents for the purpose of computation of net borrowings would be helpful to settle the position.

- ▶ **NDCF distribution by SPVs to REIT/InvIT:** SPVs are required to distribute at least 90% of NDCF to the REIT/InvIT. The cash so received by the REIT/InvIT is considered for the NDCF computation of the REIT/InvIT which is then further distributed to unitholders. One practical challenge in this approach is that the NDCF amount for SPVs can be determined after preparation of the financials for the SPVs i.e. after the end of the period and hence the compliance of the 90% minimum distribution can be assessed only after the period end. At times, the SPVs may not be in a position to ascertain how much of cash is to be upstreamed to the REIT/InvIT by period end to be able to comply with the minimum distribution requirement. Further, if the cash has to be considered in the NDCF of the REIT/InvIT, it has to be distributed by the SPVs before period end, otherwise the distributions made by the SPVs post period end get considered in the NDCF of the subsequent period. A clarification from SEBI in this regard would help resolve the difficulty and bring about consistency in the approach across REITs/InvITs.
- ▶ **Consolidated financial statements for intermediate Holdco:** Companies Act provides exemption from preparation of consolidated financial statements for companies for which the its ultimate or any intermediate parent files consolidated Financial Statements with the Registrar. Since

REITs/InvITs are not governed under the Companies Act, it seems that intermediate Holdcos which hold investments in project SPVs, will be required to prepare consolidated financial statements even though the REIT/InvIT prepares consolidated financial statements of the group as per Ind AS 110. This would have otherwise qualified for exemption under Ind AS 110 had there not been a specific requirement under the Companies Act.

- ▶ **Consolidation of REIT/InvIT by Sponsor:** Sponsors normally hold certain percentage in REIT/InvIT which may or may not be a majority stake. Also, under REIT/InvIT Regulations, Sponsors are required to hold a minimum stake for a specified period. In some cases, the Investment Manager, which is responsible for most of decisions regarding relevant activities of the REIT/InvIT, is a subsidiary of the Sponsor (in other cases, it could be a group entity of the Sponsor). Since the Sponsor is exposed to variability of returns from its investment in the REIT/InvIT and also from the fee earned by the Investment Manager, a question arises whether the Sponsor should consolidate the REIT/InvIT under Ind AS 110. We believe that there is no single answer to this question, and this would require a detailed evaluation under Ind AS 110 of various aspects including but not limited to:

- ▶ The quantum of unitholding of the Sponsor in the REIT/InvIT
- ▶ The restrictions on the voting rights of the Sponsor in general meetings on related party transactions
- ▶ The dispersion of unit holdings among other unitholders, i.e., the number of unitholders that would need to act together to outvote the Sponsor
- ▶ Voting patterns at previous general meetings
- ▶ Kick-out rights available to the other unitholders for removal of Investment Manager
- ▶ Terms and conditions of any investor agreement executed between the Sponsor and other investors which provide differential rights to the Sponsor/ other investors

All relevant facts must be evaluated in light of the provisions of REIT/InvIT Regulations and the control assessment needs to be done taking into account the above points and other relevant facts.

- ▶ **Accounting for investment in units of REIT/ InvIT:** As discussed earlier, REITs/InvITs in India normally treat the issued unit capital as equity in compliance with the requirements of SEBI Circulars. However, entities investing



in the units of REIT/InvIT must assess the classification of such units based on the requirements of Ind AS 32. This would mean that the mandatory requirement of minimum distribution of 90% of the distributable cash flows of REIT/InvIT must be considered in evaluating the classification and the resultant recognition/measurement in the books of the investor. This could result in the investment in units being recognized/measured differently than what could have been the case had those units been classified as equity investments.

# Income tax considerations

On transfer of project SPVs/  
Holdcos

Distributions

On transfer of units of REITs  
and InvITs

FEMA provisions

8

Under Indian income tax laws, REITs & InvITs have been granted a pass-through status and a specific tax regime has been introduced for taxation of REITs and InvITs. Consequently, any income distributed by REIT or InvIT to its unit holders shall be of the same proportion and nature, as is received by / accrued to the REIT or InvIT.

## On transfer of project SPVs/Holdcos

While implementing a REIT or InvIT structure, shares held in SPVs would be exchanged for units of REIT or InvIT. Upon such transfer/ exchange/ swap of shares, following are the tax implications:

### For shareholders of the SPV/ Sponsor:

- ▶ Typically, transfer of shares of a company is taxable in the hands of shareholders. However, an exemption has been provided through which gains on transfer of shares of SPV in lieu of units of REIT or InvIT is exempt for the shareholders
- ▶ In line with the above exemption, cost of acquisition of units of REIT or InvIT is deemed to be cost of acquisition of shares in SPV before transfer to REIT or InvIT. Also, for ascertaining period of holding of units, the period of holding of shares in SPV is also included
- ▶ Any gain or loss recognized on transfer of shares of SPV to REIT or InvIT in exchange of units allotted by the trust shall be excluded while calculating book profits for the purpose of Minimum Alternate Tax (MAT). Actual gain or loss on disposal of units in future shall be considered for the purpose of MAT in such future years and if the taxpayer has opted for a concessional tax regime, then MAT would not be applicable

### For SPVs whose shares have been transferred:

- ▶ In case of change in shareholding of a closely held Company beyond 49%, brought forward tax losses of the Company lapse. Where sponsor/ shareholder of SPVs exchange their shareholding in SPVs for units, tax losses would lapse

### For the REIT or InvIT:

- ▶ The fair value of shares of SPV at which they have been acquired is the cost of acquisition of shares of the SPV for the REIT & InvIT
- ▶ Where the REIT or InvIT acquires the shares SPVs at a price which is lower than the fair market value of such shares (FMV computed in accordance with prescribed rules), then the difference would be taxable for the REIT or InvIT

*Note: While the above tax implications are relevant when shares held in an SPV are exchanged for units of a REIT or InvIT, such implications may not be relevant when there is a swap of any instrument other than shares. Tax as per normal tax principles would continue to apply on such swaps.*

At the time of swap of partnership interest, where SPV is an LLP, for units of a REIT or InvIT:

▶ **For partners of the LLP/ Sponsor:**

- ▶ Gains on transfer of partnership interest shall be taxable in the hands of partners. Exemption from capital gains available is only with respect to transfer of shares for units of REIT or InvIT, where the SPV is a company. Fair value of units issued shall be the consideration for the purpose of computing capital gains
- ▶ Such capital gains shall also be considered while computing the tax liability of the partner in an LLP under MAT/ AMT provisions, if applicable

▶ **For LLPs whose interest has been transferred**

- ▶ Lapse of losses in case of change in shareholding is applicable only in case of a closely held Company. Since in the given case, interest of an LLP is getting transferred, losses should continue

▶ **For REIT or InvIT**

- ▶ Whether adverse tax implications would arise where the REIT or InvIT acquires the LLP interest at a value lower than the prescribed FMV is a matter of debate and would need to be carefully considered

At the time of swap of assets for units of a REIT or InvIT:

▶ **For the owner of the asset/ Sponsor:**

- ▶ Gains on transfer of assets is taxable in the hands of the entity transferring the asset. Exemption from capital gains available is only with respect to transfer of shares of SPV for units of REIT or InvIT, where the SPV is a company. Fair value of units issued shall be the consideration for the purpose of computing gains
- ▶ Further, such gains shall also be considered while computing the tax liability under MAT provisions of the Act

▶ **For REIT or InvIT:**

- ▶ Whether adverse tax implications would arise where the REIT or InvIT acquires the asset at a value lower than the prescribed FMV is a matter of debate and would need to be carefully considered



## Distributions

(tax implications on dividends or interest from SPV or Holdco to trust and SPV to Holdco)

### Dividend received by REIT or InvIT from SPVs and distributed to unit holders

*Event 1: Distribution of dividend by underlying SPVs to the REIT or InvIT*

Dividend received by a REIT or InvIT from underlying SPV is exempt. Consequently, there is an exemption provided to the SPV from withholding taxes on such dividends when distributed to a REIT or InvIT

*Event 2: Distribution of dividend by the REIT or InvIT to unitholders*

Taxability of dividend in hands of unitholders shall be dependent on if the underlying SPV (from which the REIT or InvIT has received such dividends) has opted for a beneficial tax rate

- ▶ In case the SPV has not opted for the beneficial tax rate, dividend received by the unitholders from the REIT or InvIT is exempt from tax. Further, no withholding tax shall be deducted by the REIT or InvIT in such a case
- ▶ In case the SPV has opted for the beneficial tax rate, then in such a case, dividend is be taxable in hands of the unitholders. For

resident unitholders, such dividend is taxable at rates applicable under the provisions of income-tax and for the non-residents, the dividend is taxable @ 20% or rate as per the relevant tax treaty, whichever is more beneficial

Consequently, the REIT or InvIT is required to withhold taxes @ 10% under section 194LBA of the Act, whether the unitholder is a resident or a non-resident

- ▶ In case of a Hold Co structure, the above is only relevant when such Hold Co distributes dividend to the REIT or InvIT. When SPVs below the Hold Co distribute dividends to the Hold Co, then normal tax provisions continue to apply.

### Interest received by REIT or InvIT from SPVs and distributed to unit holders

*Event 1: Distribution of interest by underlying SPVs to REIT or InvIT*

Interest received by a REIT or InvIT from underlying SPV is exempt. Consequently, the SPV is not required to deduct any withholding tax on such interest payment being made to the REIT or InvIT on loans taken from REIT or InvIT. However, where interest is received on securities, then withholding tax implications may be applicable.

Such interest expense should be deductible in hands of the SPV at the time of computing its

taxable income under the normal provisions of the Act provided of course, that the loan has been utilized for the purposes of the business of the SPV.

*Event 2: Distribution of interest by REIT or InvIT to unitholders*

Interest distributed by REIT or InvIT to the unitholders shall be taxable in hands of the unitholders at applicable rates in hands of resident unit holders and @ 5% in hands of non-resident unitholders. Accordingly, taxes are required to be withheld by REIT or InvIT @ 10% for a resident unitholder and @ 5% for a non-resident unitholder.

### Rental income (in case of REITs)

Income earned by REIT from renting or leasing or letting out any real estate asset directly owned by such REIT is exempt from tax in the hands of the REIT. Consequently, there is an exemption provided to tenants from withholding taxes at the time of making rental payments to the REIT.

Rental income distributed by REIT to unit holders is taxable in the hands of unit holders at the applicable rates. Accordingly, taxes are to be withheld @ 10% where the distributions are made to a resident unitholder and at applicable rates (Act or Treaty) where distributions are made to a non-resident unitholder. In case of non-resident unitholder, there is a controversy on whether the maximum marginal rate of tax @ 40% (plus

surcharge plus cess) would apply in case such income is in the nature of income from immovable property situated in India in which case a treaty benefit may be challenging.

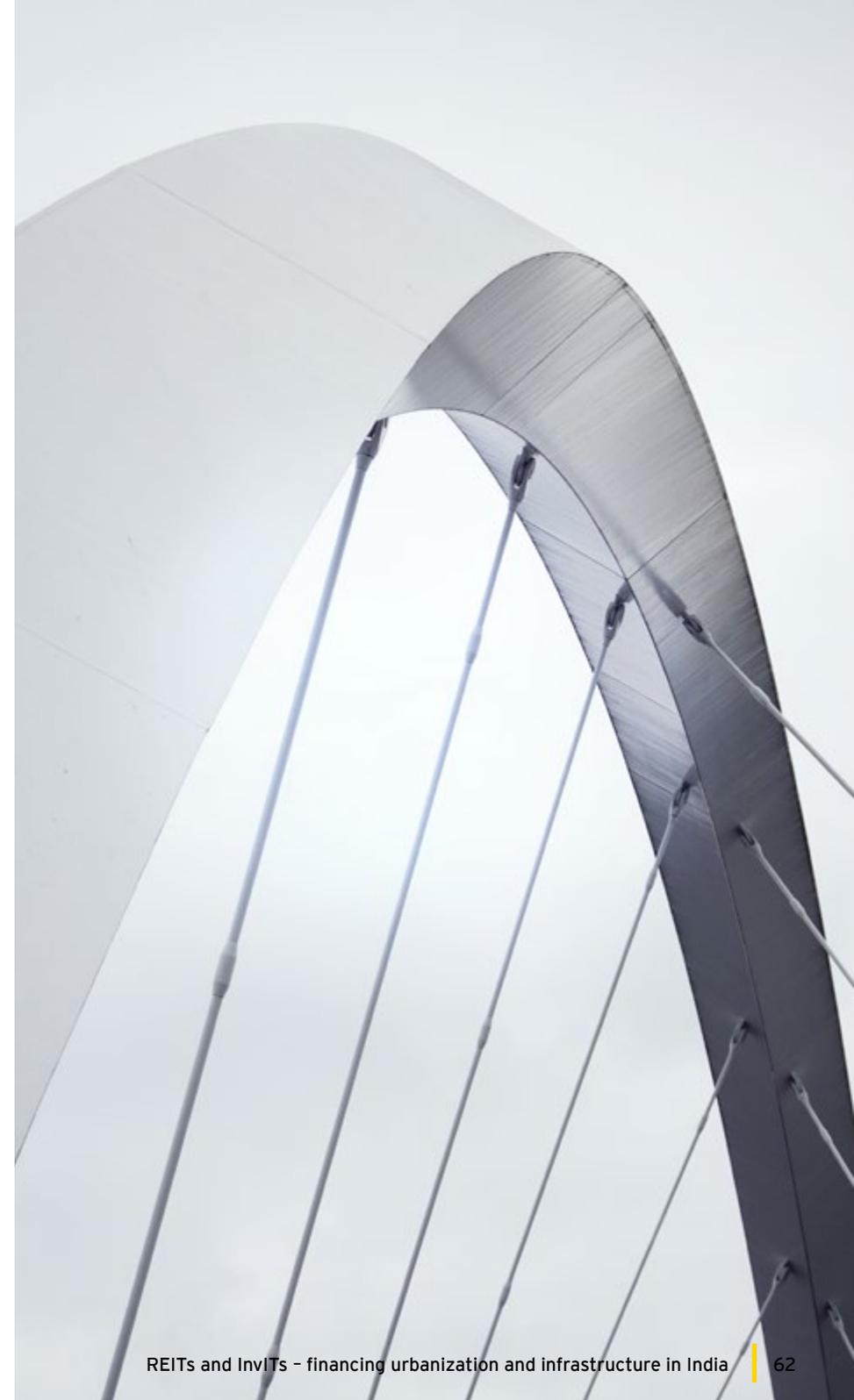
Particulars	Capital gains tax rate
Where shares of SPVs are held for 24 months or less	Maximum marginal rate - could be as high as up to 40% (plus surcharge plus cess)
Where shares of SPVs are held for more than 24 months	20% (plus applicable surcharge and education cess)

### Capital gains on transfer of shares of SPVs or capital reduction by SPVs, etc.

- ▶ Such income is taxable in the hands of REIT or InvIT at the applicable rates which are as follows:  
Such income, taxed in the hands of REIT or InvIT, is not taxable in the hands of unit holders at the time of distribution and accordingly there is no requirement to withhold taxes.

### Treasury Income (such as interest on fixed deposits, mutual funds, etc.)

- ▶ Such income is taxable in the hands of REIT or InvIT at Maximum marginal rate which could be as high as up to 40% (plus surcharge plus cess). Such income, taxed in the hands of REIT or InvIT, is not taxable in the hands of unit holders at the time of distribution and accordingly there is no requirement to withhold taxes.
- ▶ As discussed above, REIT/ InvIT will be receiving distributions of various natures, such as interest, dividend, capital repayment, proceeds on capital reduction of SPVs etc. Further, REIT or InvIT shall also incur expenses in the nature of interest repayment of loan taken, if any, trustee fees, manager fees etc. The computation of nature of distribution to unit holders and allocation of expenses incurred at REIT/ InvIT level to arrive at net distributable income to unit holders and taxes to be withheld on distribution would be required to be undertaken upfront and may also entail analysis of such distributions as against expenses incurred.



## On transfer of units of REIT or InvIT:

- ▶ Transfer of units through a recognized stock exchange

- ▶ Where the units are held for more than 36 months

Where units are held for more than 36 months, such units qualify as long term in nature. Gains on transfer of such units of a REIT or InvIT through a recognized stock exchange, on which STT is paid, is chargeable to tax in the hands of the unitholders at a rate of 10% (plus applicable surcharge and cess) without indexation benefit. (Section 112A of the Act).

- ▶ Where the units are held for 36 months or less

Where units are held for 36 months or less, such units qualify as short term in nature and gains on transfer of such units of REIT/ InvIT is chargeable to tax at the rate of 15% (plus applicable surcharge and cess), provided such transaction is subject to STT and through a recognized stock exchange.

- ▶ Transfer of units off the exchange

- ▶ Where the units are held for more than 36 months

Gain arising on transfer of long-term units off the exchange and without payment of STT, is taxable at 20%, with indexation benefit (plus applicable surcharge and cess).

- ▶ Where the units are held for 36 months or less

Gain arising on transfer of short-term units off the exchange and without payment of STT is taxable at relevant rates of tax applicable to the unitholder depending on status of such unitholder.

Even though a private unlisted InvIT is eligible for special tax regime, however, given that the units are unlisted, the beneficial rate of 10% and 15% for long term capital gains and short-term capital gains respective is not available to the unit holders of private unlisted InvIT.

Needless to mention, in case of non-residents, to the extent the provisions of the relevant tax treaty are more beneficial, the provisions of the treaty would apply.

*Disclaimer - The tax implications outlined above are generic in nature. The same may differ depending on the status of the unit holder.*



## FEMA provisions

Foreign investments in REITs/InvITs is permissible under the following routes:

- ▶ Foreign Direct Investment (FDI) route:
  - ▶ 100% FDI is allowed under the automatic route
  - ▶ There is no cap, lock-in restrictions or end-use restrictions involved
  - ▶ As far as the pricing guidelines are concerned, currently, the regulations are silent on the pricing guidelines in connection with issue/ transfer of units of REITs/InvITs
- ▶ Foreign Portfolio Investors (FPI) route:
  - ▶ SEBI registered FPIs can now make investments in units of REITs/InvITs on repatriation basis
  - ▶ There is no cap, lock-in restrictions or end-use restrictions involved
- ▶ Requests made to SEBI for permissibility under the FVCI route
  - ▶ As per the existing SEBI FVCI Regulations, an FVCI can make investments only in “venture capital undertaking” or “investee company” (as defined under Securities and Exchange Board of India (Alternate Investment Funds) Regulations, 2012 (the “AIF Regulations”)) or a listed company, as defined in the said regulations. Further, investment can be made only in equity shares or equity linked instruments and cannot be made in the units of an InvIT.

Additionally, the SEBI Fvci Regulations do not have an enabling provision for FVCIs to swap their shareholding in SPVs for the units of an InvIT as part of transactions for listing of units of InvITs or in relation to sale of SPVs to a listed InvIT. Accordingly, under the extant SEBI FVCI Regulations, an FVCI may not be able to invest in a SEBI registered InvIT. This would impede the ability of FVCIs to establish an InvIT comprising SPVs in which investments were made by it under the FVCI route.

- ▶ Accordingly, requests have been made with SEBI to bring out amendments, or issue clarifications with respect to the SEBI FVCI Regulations, in relation to investment by an FVCI in the units of InvITs. The rationale for such amendment/ clarification, primarily includes promotion of infrastructure development in India, providing an efficient and optimum structure for financing/ re-financing of infrastructure projects, allowing monetization of infrastructure assets to free up current developer capital for reinvestment into new infrastructure projects, providing much needed relief to the banking sector thereby leading to an overall reduction in NPAs, creating headroom for new funding requirements and attracting further investment (including foreign investment) in the infrastructure assets.



# Glossary

Terms	Description
~	Around
AAI	Airports Authority of India
AIF Regulations	Securities and Exchange Board of India (Alternate Investment Funds) Regulations, 2012
BFSI	Banking, Financial Services and Insurance
Bn	Billion
BPO	Business Process Outsourcing
CAGR	Compound Annual Growth Rate
CapEx	Capital Expenditures
CGU	Cash-Generating Unit
ckm	Circuit kilo meters
COD	Commercial Operation Date
Companies Act	Companies Act, 2013 including its amendments thereof
COVID-19	Coronavirus
CPSE	Central Public Sector Enterprises
DDT	Dividend Distribution Tax
DER	Debt to Equity Ratio
DFC	Dedicated Freight Corridor
DISCOM	Distribution Company
DRHP	Draft Red Herring Prospectus
DTAA	Double Tax Avoidance Agreement
EDFC	Eastern Dedicated Freight Corridor
EV	Enterprise Value
FDI	Foreign Direct Investment

Terms	Description
FEMA	Foreign Exchange Management Act
FMV	Fair Market Value
FPI	Foreign Portfolio Investors
FPM	Final Placement Memorandum
FVCI	Foreign Venture Capital Investor
FY	Fiscal Year
GBP	Great Britain Pound
GDP	Gross Domestic Product
Gol	Government of India
Hold Co.	Holding Company
ICAI	Institute of Chartered Accountants of India
IFRS	International Financial Reporting Standards
IGAAP	Indian GAAP
IM	Investment Manager
IMF	International Monetary Fund
Income-tax Act	Income-tax Act, 1961 including its amendments thereof
Ind AS	Indian Accounting Standards
Infrastructure	Infrastructure includes all infrastructure sub-sectors specified in the Harmonized Master List of Infrastructure Sub-sectors notified by Department of Economic Affairs, Ministry of Finance as amended from time to time
InvIT	Infrastructure Investment Trusts
IPO	Initial Public Offering

Terms	Description
IT	Information Technology
ITeS	Information Technology Enabled Services
JPY	Japanese Yen
km	Kilometer
LLP Act	LLP Act, 2008 including its amendments thereof
LSE	London Stock Exchange
LTCG	Long term capital gains
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MF	Mutual Funds
mn	Million
MMSCMD	Million Metric Standard Cubic Meter Per Day
MNC	Multinational Corporation
MoR	Ministry of Railways
NCR	National Capital Region
NDCF	Net distributable cash flows
NHAI	National Highways Authority of India
NIP	National Infrastructure Pipeline
OD	Offer Document
PM	Placement Memorandum
PPM	Preliminary Placement Memorandum
PPP	Public-Private Partnership
RAP	Recommended Accounting Practice
RE	Real Estate

Terms	Description
Real Estate/ Property	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;
REIT	Real Estate Investment Trust
ROW	Right Of Way
Rs./INR/ INR	Indian Rupee
SEBI	Securities and Exchange Board of India
SGD	Singapore Dollar
SPSE	State Public Sector Enterprises
SPV	Special Purpose Vehicle
sq.ft.	square foot
STCG	Short term capital gains
SWF	Sovereign Wealth Fund
T&D	Transmission and Distribution
TDS	Tax Deducted at Source
tn	Trillion
UK	United Kingdom
US	United States
US GAAP	Generally Accepted Accounting Principles is the accounting standard adopted by the U.S. Securities and Exchange Commission
USD/\$	United States Dollar
WACC	Weighted Average Cost of Capital
WDFC	Western Dedicated Freight Corridor

# Appendix A

## Financial information to be included in Offer document

Financial information for the previous three financial years and the interim period, if any, in either of the following manner depending upon the history:

- ▶ If existence of REIT/InvIT is for the last three completed financial years immediately preceding the date of offer document / placement memorandum, then the historical financial statements (on both standalone as well as consolidated basis) for last three years, and the interim period, if any, shall be disclosed
- ▶ If existence is for a period lesser than the last three completed financial years and the historical financial statements are not available for some portion or the entire portion of the reporting period of three years and interim period, then the combined financial statements need to be disclosed for the periods when such historical financial statements are not available

Content and basis of preparation of financial information:

- ▶ The financial information to be prepared in accordance with Indian Accounting Standards (Ind AS) and can be presented in the form of condensed financial statements

The financial information shall, inter-alia, disclose the following financial statements

- ▶ Balance sheet
- ▶ Statement of Profit and Loss/Income and Expenditure
- ▶ Statement of Changes in Unit holders' Equity
- ▶ Statement of Cash Flows
- ▶ Statement of Net Assets at Fair Value
- ▶ Statement of Total Returns at Fair Value
- ▶ Explanatory notes annexed to, or forming part of, any statements referred above

Additional financial disclosures include

- ▶ Project wise operating cashflow
- ▶ Earnings per unit
- ▶ Commitments
- ▶ Related party transactions
- ▶ Capitalization statement
- ▶ Debt payment history

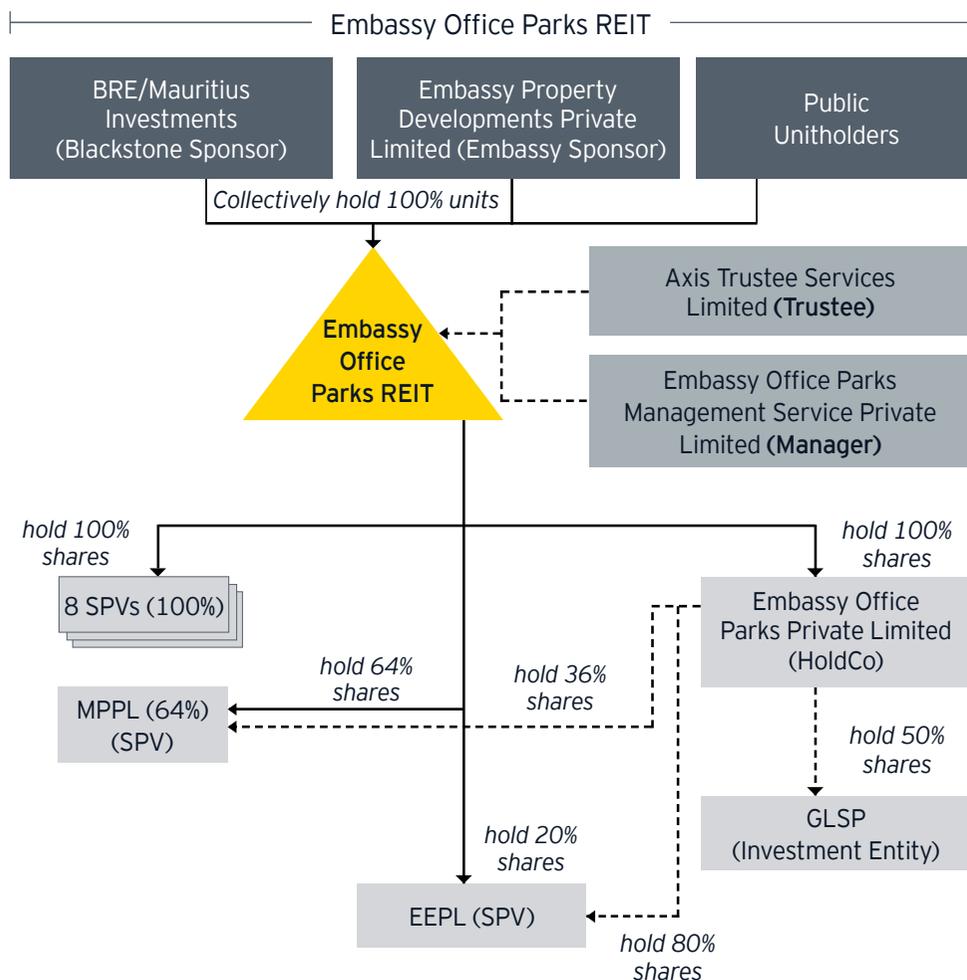
All related party transactions shall be on an arms-length basis in accordance with relevant accounting standards.



# Appendix B

## Key structural highlights of different REITs and InvITs

### A. Real Estate Investment Trusts (REITs)



Please note that the above structure does not include restructuring pursuant to the composite scheme of arrangement among Manyata Promoters Private Limited, Embassy Office Parks Private Limited and Embassy Pune TechZone Private Limited

Source: Annual Report FY 2020

### Public REIT structure

- ▶ Initial proceeds: INR 47,499.96 million
- ▶ Issue price: INR 300 per unit

### Combination structure (single as well as dual layer)

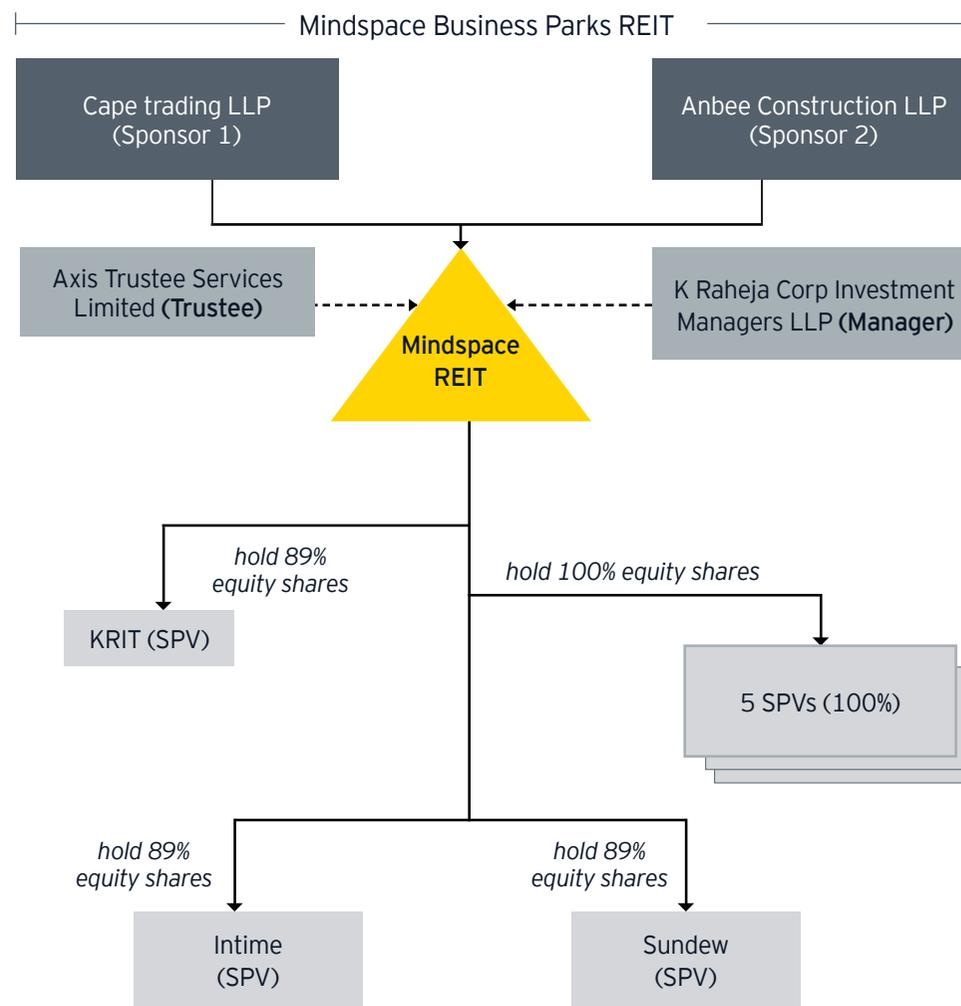
### Key highlights of REIT structure

- ▶ The units of the Embassy REIT were proposed to be listed on the National Stock Exchange of India Limited (the NSE) and BSE Limited (the BSE)
- ▶ The Sponsors of REIT are one of the leading real estate developers in India
- ▶ The portfolio of Infrastructure Assets was held by the Embassy REIT through 10 SPVs, of which 2 SPVs are held partially through the Embassy Office Parks Private Limited (Hold Co.)
- ▶ Along with SPVs, the Hold Co. also acquired 50% shares in an entity, namely Golflinks Software Park Private Limited (GLSP or Investment entity)
- ▶ The structure is a combination Structure:
  - ▶ Portfolio initially held by the Embassy REIT through Asset SPVs
  - ▶ Embassy-Energy Private Limited (EEPL) and Manyata Promoters Private Limited (MPPL) held partially through the Hold Co., and partially directly by the Embassy REIT
  - ▶ The investment entity held through the Holdco
- ▶ Agreements were entered with the Embassy Sponsor Group, wherein units were proposed to be allotted in exchange for transfer of shareholding. The purchase of shares of the Portfolio from entities forming part of the

Embassy Sponsor Group which are shareholders in these Asset SPVs are subject to the completion of certain conditions precedent by the sellers and the Manager (acting on behalf of the Embassy REIT). Similar agreements were also entered with the Blackstone Sponsor Group for transfer of shareholding in the respective SPVs in the group in exchange of units. Moreover, the following agreements were entered with the other party while formulating the structure:

### Public REIT structure

Agreements with other parties		
Settlement agreement	Transfer of shareholding of Reddy Veeranna and Suguna Reddy in MPPL to the Embassy REIT, in exchange for Units	Embassy Manyata
Business transfer agreement	Transfer of embassy one assets to QBPL	Embassy one assets
IENMPL SAA	Transfer of shareholding of Panchschil Techpark private Limited ("PTPL") in IENMPL to the embassy REIT, for cash considerations	Express Towers
ETPL SPA	Transfer of shareholding of Premsagar infra realty private limited in ETPL to the Embassy REIT, in exchange for units	FIFC
EEPL SPA- II	Transfer of shareholding of Rana George in EEPL to the embassy REIT, in exchange for units	Embassy energy
UPPL SPA- II	Transfer of shareholding K.J. Kuruvilla and Suja George in EEPL to the embassy REIT, in exchange for units	Hilton at Embassy Golflinks



- ▶ **Initial proceeds:** INR 45,000 million
- ▶ **Fresh issue:** INR 10,000 million; and
- ▶ **Offer for sale:** INR 35,000 million
- ▶ **Issue price:** INR 275 per unit

## Single layered structure

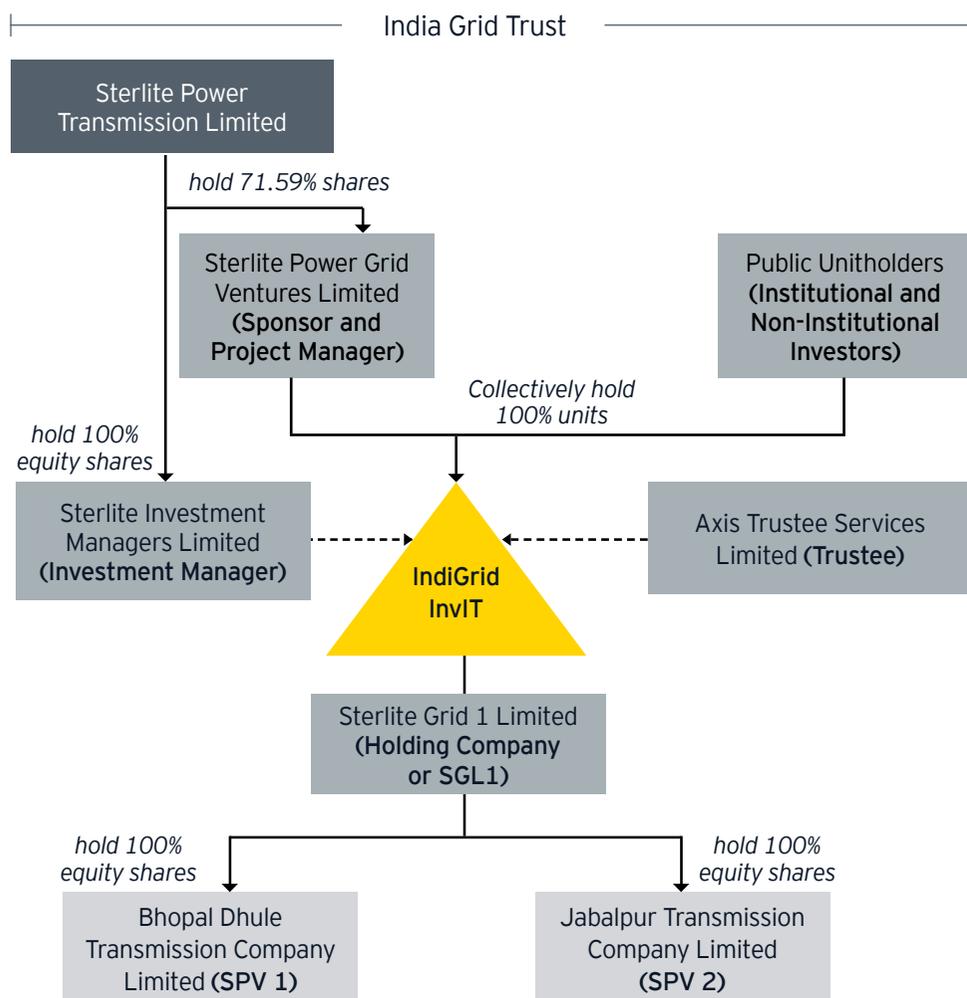
### Key highlights of REIT structure

- ▶ Pursuant to the completion of the Formation Transactions, Mindspace REIT owns 100% of the equity share capital of all assets. However, 11% of outstanding equity shares of following three Asset SPVs is held by Telangana State Industrial Infrastructure Corporation (TSIC)
  - ▶ K Raheja IT Park (Hyderabad) Private Limited (KRIT)
  - ▶ Intime Properties Private Limited (Intime)
  - ▶ Sundew Properties Private Limited (Sundew)
- ▶ Further, pursuant to the Formation Transactions, Mindspace REIT also owns 100% of the preference share capital of Mindspace Business Parks Private Limited (MBPPL)
- ▶ BREP Asia SBS Pearl Holding (NQ) Ltd, BREP VIII SBS Pearl Holding (NQ) Ltd, and BREP Asia SG Pearl Holding (NQ) Pte. Ltd. (collectively referred to as the BREP Entities) have invested in
  - ▶ MBPPL
  - ▶ Horizonview
  - ▶ KRC Infra
  - ▶ KRIT
  - ▶ Intime
  - ▶ Sundew
  - ▶ Gigaplex
  - ▶ Avacado
  - ▶ Newfound (which is not part of the Portfolio)

Accordingly, a framework agreement was executed among the Asset SPVs, certain entities/persons forming part of the KRC group and the BREP entities

- ▶ The transaction inter alia involved:
  - ▶ Subscription by the BREP Entities to the equity shares issued by MBPPL, Newfound, Horizonview and KRC Infra
  - ▶ Subscription by the BREP Entities to the CCPS issued by Gigaplex
  - ▶ Purchase by the BREP Entities from certain persons/entities forming part of the KRC group of the equity shares of Avacado, Gigaplex, Intime, KRIT and Sundew
- ▶ Under the Share Acquisition Agreements, Mindspace REIT have acquired equity shares of the Asset SPVs from the Sponsor Group and the BREP Entities, who have been issued and allotted such number of Units, in the aggregate, as is required to attain a pre-determined percentage unitholding in the pre-Offer unitholding structure of Mindspace REIT
- ▶ The acquisition of shares of the Asset SPVs by Mindspace REIT from the Sponsor Group and the BREP Entities was subject to the completion and satisfaction of certain conditions precedent, including
  - ▶ Approval from Competition Commission of India (CCI)
  - ▶ Conversion of Compulsorily Convertible Preference Shares (CCPS) held by the BREP Entities to equity shares in Gigaplex
  - ▶ Non-occurrence of material adverse effect from the date of execution of the Share Acquisition Agreement till the Closing Date
  - ▶ Execution of the Termination Agreement for terminating the Framework Agreement and the Investment Agreements in relation to the Asset SPVs
  - ▶ All corporate authorizations, waivers, permits and third-party consents required for consummation of the transactions having been obtained

## B. Infrastructure Investment Trusts (InvITs)



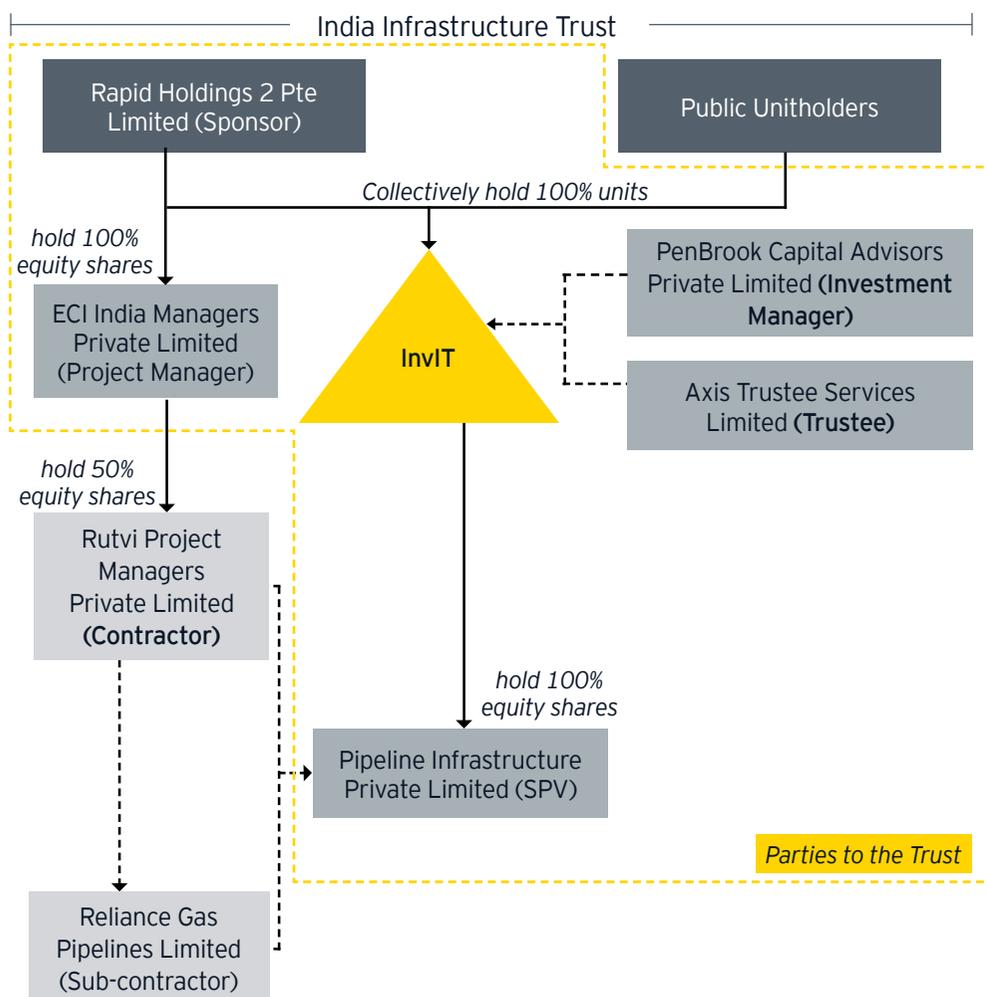
## Public InvIT structure

- ▶ Initial proceeds - INR 22,499.64 million
- ▶ Issue price - INR 100 per unit

## Dual layered structure

## Key highlights of InvIT structure

- ▶ The Sponsor held 100% of the equity shareholding of SGL1 and had subscribed to non-convertible debentures of SGL1. The Sponsor proposed to transfer its equity shareholding in SGL1 and all or a portion of the non-convertible debentures of SGL1 to IndiGrid ("Securities Transfer") pursuant to the Securities Purchase Agreement, in exchange for Units, prior to Allotment of Units in this Issue in accordance with Regulation 14(1) of the InvIT Regulations
- ▶ Sterlite Grid 1 Limited (Hold Co.) has pledged 51% of its equity shares in Bhopal Dhule Transmission Company Limited (BDTCL) and Jabalpur Transmission Company Limited (JCTL) against loan facilities availed from various lenders/ banks



### Private InvIT structure

- ▶ **Initial proceeds:** INR 130,100 million
- ▶ **Fresh issue:** INR 9,520 million
- ▶ **Sponsor subscription:** INR 56,880 million
- ▶ **NCD subscription:** INR 63,700 million
- ▶ **Initial issue Price:** INR 100 per unit

## Single layered structure

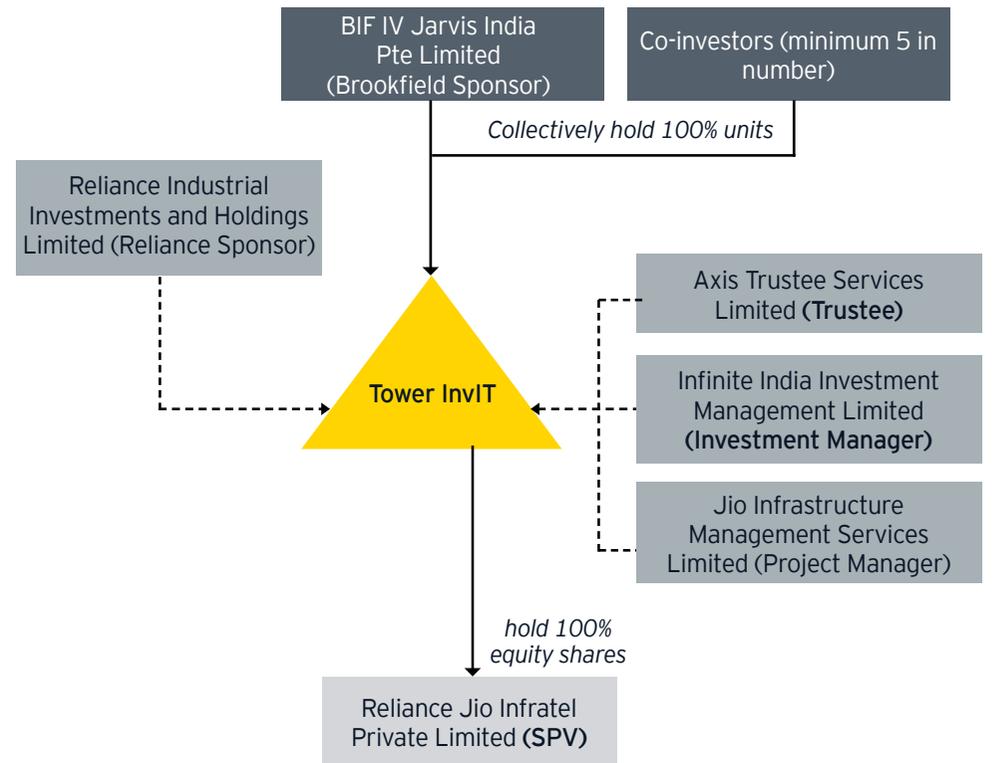
### Key highlights of InvIT structure

- ▶ Initially only a single asset, i.e., cross county pipeline (including spurs) between Kakinada in Andhra Pradesh and Bharuch in Gujarat, held through Pipeline Infrastructure Private Limited (PIPL) pursuant to a scheme of arrangement was transferred to InvIT as an Initial Portfolio Asset
- ▶ The Pipeline Business was initially acquired by the Trust through acquisition of 100% equity share capital of PIPL from Reliance Industries Holding Private Limited (RIHPL - the shareholder of PIPL prior to such acquisition by the Trust). The Pipeline Business was transferred from East West Pipeline Limited (EWPL) to PIPL pursuant to a scheme of arrangement (i.e., the Pipeline business was carved out/ demerged pursuant to a scheme of arrangement from EWPL and transferred to PIPL. Subsequently the same was acquired by the InvIT)
- ▶ The Trust also repaid/prepaid a portion of the unsecured liability of INR 164,000 million owed by EWPL with respect to the Pipeline Business
- ▶ The Trust subscribed to the NCDs of PIPL; PIPL utilized the amount for repayment of unsecured liability which was previously owed by EWPL and demerged pursuant to the Scheme of arrangement
- ▶ PIPL (SPV) and Reliance Industries Limited (RIL) entered into a pipeline usage agreement, which sets out the terms for Reliance to reserve transportation, storage or other capacity in the Pipeline for a period of 20 years. Under the Pipeline Usage Agreement (PUA), PIPL has agreed to reserve a capacity of up to a maximum of 33 mmscmd in the Pipeline for a period of 20 years, pursuant to which Reliance shall pay PIPL Contracted Capacity Payments determined for four blocks of five years each in the manner specified and calculated with reference to the Benchmark Rate, and subject to certain adjustments. The obligation of Reliance to pay the Contracted Capacity Payments is conditional upon and will be adjusted in accordance with capacity charges collected directly by PIPL from Reliance or third-party customers

- ▶ Under the PUA, Reliance has agreed to subscribe to Compulsorily Convertible Preference Shares (CCPS) of PIPL on the date when NCDs are allotted to the Trust
- ▶ Amongst many conditions, the PUA provides for sharing of the upside cash flows received by PIPL based on the formula linked to return on capital employed as specified and determined in the manner set out in the Pipeline Usage Agreement over a period of 20 years (the "Upside Amount"). In respect of Reliance, the Pipeline Usage Agreement provides for its Upside Amount to be subject to adjustment for the PIPL NCD coupon, the Upside Amount payable to PIPL and the specified Trust receipts
- ▶ The PIPL SHA (entered between PIPL, EWPL, Reliance, the Trust and the IM) contains clauses which govern the Trust's right to require Reliance to purchase all the equity shares of PIPL (Put option), and Reliance's right to require the Trust to sell all the equity shares of PIPL (Call Option), after a period of 20 years from the Completion Date or earlier under certain specified circumstances, at a price determined in accordance with the terms set out in PIPL SHA

Tower infrastructure trust

Reliance Jio Infocomm Limited (RJIL) demerged its fiber assets and transferred its tower assets into two separate companies w.e.f. 31 March 2019 (pursuant to a scheme of arrangement) in order to monetize these assets via an InvIT (investment trust) structure. Subsequently, the tower assets are moved into a separate InvIT, namely, Tower Infrastructure Trust



## Private InvIT structure

- ▶ **Initial proceeds:** INR 252,150 million
- ▶ **Initial issue price:** INR 100 per unit

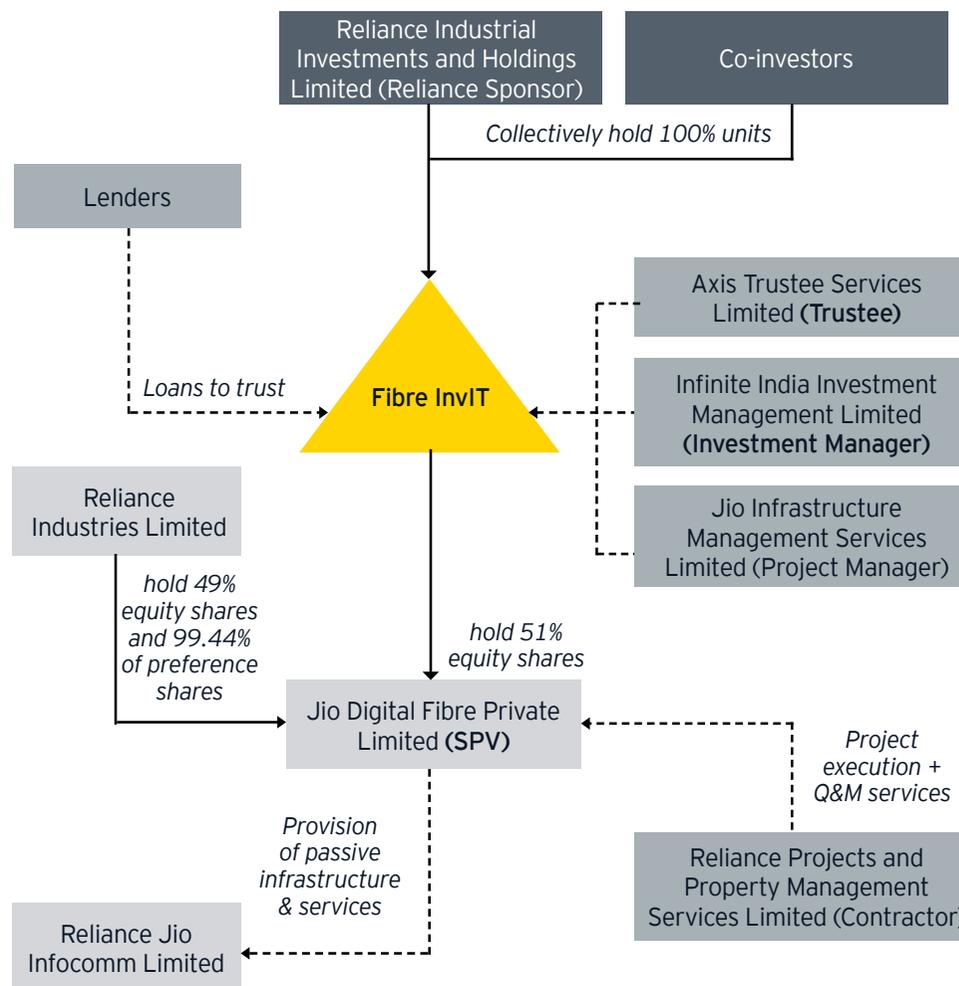
## Single layered structure

### Key highlights of InvIT structure

- ▶ The units of InvIT are proposed to be listed on BSE Limited. In-principle approvals for listing of the Units has been received from BSE on January 13, 2020, April 10, 2020 and July 27, 2020
- ▶ BIF IV Jarvis India Pte Limited (Brookfield Sponsor) along with eligible co-investors held 100% units of Tower Infrastructure Trust (Tower InvIT)
- ▶ Reliance Industrial Investments and Holdings Limited (RIIHL) act in capacity of sponsor and does not hold any units of the Trust
- ▶ Reliance Jio Infratel Private Limited (The Tower Co.) is the only portfolio asset held by the Tower InvIT (acquired in two tranches)
- ▶ Tower InvIT has entered into a share purchase agreement (SPA-I) to acquire 51% of outstanding equity shares of The Tower Co.
- ▶ Subsequently, Tower InvIT acquired remaining 49% of outstanding equity share capital of The Tower Co. out of its initial proceeds vide another share purchase agreement (SPA-II)
- ▶ The Shareholders' and option Agreement, entered into among the Trust (acting through its Trustee), the Investment Manager, RIL, the Reliance Sponsor, the Tower Co. and the Brookfield Sponsor, includes a clause in which provides for the right of RIL to purchase the entire shareholding of the Trust in The Tower Co. and the right of the Trust to transfer its entire shareholding in The Tower Co. to the Reliance Sponsor in accordance with the terms of the agreement (RIL has a call option and Trust has a put option to transfer the shares of The Tower Co. on completion of 30 years)

## Digital fiber infrastructure trust

its tower assets into two separate companies w.e.f. 31 March 2019 (pursuant to a scheme of arrangement) in order to monetize these assets via an InvIT (investment trust) structure. Subsequently, the tower assets are moved into a separate InvIT, namely, Tower Infrastructure Trust



### Private InvIT structure

- ▶ Initial proceeds: INR 147,060 million
- ▶ Initial issue price: INR 100 per unit

### Single layered structure

#### Key highlights of InvIT Structure

- ▶ The Trust's initial portfolio asset comprises Jio Digital Fibre Private Limited, being the Fibre Co. (Single asset structure)
  - ▶ Pursuant to the Scheme of Arrangement, the optic fiber cable undertaking of RJIL, comprising the business of establishing, operating, maintaining and managing optic fiber cables and related assets and providing optic fiber infrastructure services to telecommunications service providers was transferred and vested in Fibre Co.
  - ▶ Pursuant to, and in accordance with the Scheme of Arrangement, the Fibre Co issued and allotted
    - ▶ Equity Shares issued at par to, amongst others, RIL and its joint holders;
    - ▶ Optionally convertible preference shares issued at par to, amongst others, RIL and its joint holders; and
    - ▶ Redeemable preference shares issued at par to the Sponsor
  - ▶ Under this, the Trust has acquired 51% of the issued and paid-up equity share capital of the Fibre Co, pursuant to the Share Purchase Agreement. For the balance shares in the Fibre Co., the Trust (acting through the Trustee), the Trustee, RIL, the Investment Manager, the Sponsor and the Fibre Co have entered into a letter agreement the other Minority Shareholders (pursuant to the requirements of the InvIT Regulations) and have agreed, amongst others, to not exercise any rights, in relation to their holding in Equity Shares or OCPS of the Fibre Co, as the case may be, that prevents the Trust or the Fibre Co from complying with the provisions of applicable law, including the InvIT Regulations (the Trust shall receive full legal and beneficial ownership of the SPA Sale Shares free and clear of all encumbrances (the SPA Transaction)
- ▶ RIIHL is the Sponsor of the Trust. RIIHL is a wholly owned subsidiary of RIL, with interests in petroleum refining and marketing, petrochemicals, textiles, exploration and production of oil and gas, retail, media and entertainment, financial services and telecommunication and digital services. The equity shares of RIL are listed on both BSE and NSE and its global depository receipts are listed on the Luxembourg Stock Exchange
  - ▶ IIIML is the Investment Manager of the Trust. IIIML is a 100 % owned subsidiary of JM Financial Limited
  - ▶ JIMSL, a subsidiary of the Sponsor, is the Project Manager and has entered into the PIMA with Fibre Co., Trustee and IM
  - ▶ Initial offer by the Trust takes place by way of a private placement; issue and distribution under the placement memorandum has only been made to the eligible investors
  - ▶ The Units are not listed/ proposed to be on any stock exchange (unlisted private InvITs)
  - ▶ The Shareholders' and option Agreement, entered into with IM, Sponsor, the Fibre Co. and RIL, includes a clause in which provides for the right of RIL to purchase the entire shareholding of the Trust in the Fibre Co and the right of the Trust to transfer its entire shareholding in the Fibre Co to the Sponsor in accordance with the terms of the agreement (RIL has a call option and DFIT has a put option to transfer the shares of JDFPL on completion of 30 years)

# Contributing to our communities

EY Foundation (EYF) was established in India in 2004.  
EY India contributes 0.5% of its revenues every year  
towards community initiatives



## Entrepreneurship

Economically and socially empowering rural India



Engaged with women Self Help Groups to promote entrepreneurship and income opportunities for **250,000+ women** and families in 3,000+ villages in 10 states

Helping impact entrepreneurs solve their business challenges through volunteering by our people



## Education

Enabling access to quality education



Scholarships for **10,000 students** since 2007 with 60% girl students

The new **EYF Disha 2020 Scholarship** aims to transform the lives of 300+ meritorious underprivileged children through multiple interventions. One-to-One Mentoring by our people under EY Ripples

~ 250,000 students admitted in private schools under Right To Education Act

Toon Masti, our free licensed animated multimedia content for classes 1 to 5 has ~ **500,000 subscribers on YouTube**



## Environment

Achieved carbon neutrality for calendar year 2020



**1 million trees** planted till date; initiative to **disincentivize crop burning** to help reduce air pollution; **rainwater harvesting pilot project** in 21 government schools across 6 cities created a potential of ~**12 million litres of RWH every year**  
~50 million litres of water savings at our offices per year; Solar panels at GVT; procuring solar power at Aerocity and Bangalore Divyasree offices

The Foundation is also committed to providing aid and relief during times of natural calamities and pandemics like COVID-19.

**EYF COVID-19 Response program:**  
5.5 million meals provided, touching lives of 2.5 lakh people

**Other initiatives:** Access to welfare services to 100,000+ construction workers and street vendors by creating awareness and registration

Access to entitlements to 120,000 pregnant mothers through first of its kind Poshan Sehat Helpline in India

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