

RESOLÜT PARTNERS

Research

InvITs:

Gamechanger in the Indian
Infrastructure Story!

28 August, 2023



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Resolüt Partners

We are a team of highly commercial lawyers mainly focused on investment funds, private equity and M&A. Our mission is to be an aspirational brand for complex cross-border transactions. Our service proposition, at the threshold, is built on the primary attribute of 'empathy' – where we completely understand the commercial and strategic objectives of our clients, and take pride in eliminating choices and optimizing results for our clients.

We have been closely associated with the investment funds industry and have advised some of the largest global sponsors and sovereign wealth funds. Our core specialism, therefore, is to advise on every aspect across the lifecycle of a fund – from formation, investments, structured transactions, governance issues (fund and portfolio level), to exits and commercial disputes. We have been involved in prominent public equity, private equity, M&A and private credit transactions across different industry verticals.

In addition to legal expertise, our key standout ability is to understand deal-specific tax and accounting issues and engage with principals in devising deal commercials including mathematical formulations. Underlying our experience and expertise is the team's unflinching commitment towards research and advocacy efforts. Our research-based approach to advising transactions has allowed us to develop innovative structures and anticipate critical roadblocks in high-stakes transactions.

The heart of our practice is a common vision we share – to function as a firm driven by purpose and not merely by profit. We like to be identified by our values and organizational philosophy. We work with a select family of clients where we function with utmost professionalism yet remain emotionally invested with our clients' purpose. Success for us is a measure of happiness, innovation, and professional excellence.

About our InvITs practice

Infrastructure Investment Trusts (“InvITs”) and infrastructure is a core specialism of the firm. Between 2020 and 2023, members of the team have advised some of the world’s largest sovereign wealth funds, pension funds, and leading global financial sponsors, on some of the largest and pioneering transactions in the space with overall deal values exceeding USD 10 billion. With an overwhelming majority of select international clients, we take immense pride in our ability to offer well rounded advice right from fund formation and setting up of investment platforms to making tax optimized downstream investments with an in-depth, on the ground knowledge of the written and sometimes unwritten Indian legal, tax and regulatory landscape.

We take pride in being thought leaders, unafraid of innovation and have been at the forefront of developing creative structures in the infrastructure space. Our Infrastructure and InvITs practice group has been instrumental in development of the InvIT regime in India. From being involved in the drafting of the SEBI (REIT) Regulations that formed the very basis of the InvIT Regulations to advising on setting up of and investing into multiple InvITs (listed and unlisted), we have contributed significantly to policy advocacy measures to ensure that the InvIT regime remains conducive for global investors.

Our value proposition lies in our deep understanding of the cross-border transactional ecosystem and our consistent track record in analysing risk for international institutions as they seek to navigate the regulatory and taxation framework that underpin their investments in India. We find that clients value our holistic capabilities as transactional lawyers with infrastructure and InvITs-specialised knowledge, together with expertise in fund formation.

Our InvITs and infrastructure practice includes services such as:

1. Structuring and Formation

- Setting up tax optimised structures for investments, including advisory on choice of instrument and choice of jurisdiction.
- Setting up InvITs and rollover of assets to the InvIT in a tax optimised manner.
- Setting up of India focused infrastructure offshore funds, including end to end setup of offshore fund vehicles.
- Setting up of managed accounts with large institutional players and sponsors.

2. Due Diligence, Documentation and Approvals

- Comprehensive legal due diligence on the target.
- Drafting the transaction documents for investments, which may include a unit/ securities

subscription agreement, facility agreements / debenture trust deed, security documents (including mortgage deed, pledge agreement, hypothecation agreement and the like), subordinate debt agreements, shareholder arrangements (for the investment manager of the InvIT) , and other agreements as may be required.

- Procuring all the relevant regulatory approvals for investments.

3. Single Point Project Management

- Project management is a subtle yet core specialism of the firm which builds into our foundational strengths of execution capability.
- Our extensive experience in representing global sponsors and institutional investors has manifested the absolute need for a single point contact that can seamlessly coordinate with the offshore counsel, tax and financial advisors, administrators, filing agents, local level consultants, governmental and regulatory authorities, and business and legal divisions of the investors.
- We have time and again played the role of stitching multiple pieces of a deal together in close coordination with all the relevant stakeholders to ensure that the deal is consummated in the most efficacious manner.

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Glossary

Term	Definition
AIF	Alternative Investment Fund, a pooling vehicle registered with SEBI.
CIC	Core Investment Company, as defined by the Core Investment Companies (Reserve Bank) Directions, 2016.
Competition Act	The Competition Act, 2002.
Combination Regulations	Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.
Holdco.	Means the 'holding company' which is majority owned by an InvIT, and which in-turn owns a majority stake in the underlying SPV.
IM	Investment Manager of an InvIT.
Income Tax Act	The Income Tax Act, 1961.
Indigrd	India Grid Trust, a publicly listed InvIT registered with the SEBI under the InvIT Regulations.
INR	Indian Rupee.
InvITs	Infrastructure Investment Trusts.
InvIT Regulations	SEBI (Infrastructure Investment Trusts) Regulations, 2014.
IRB InvIT	IRB InvIT Fund, a publicly listed InvIT registered with the SEBI under the InvIT Regulations.
NBFC	Non-Banking Financial Company as defined under the Reserve Bank of India Act, 1934.
PPP	Public-Private Partnership.
REITs	Real Estate Investment Trusts.
SEBI	Securities Exchange Board of India.
SPV	Means the 'special purpose vehicle' which is majority owned by the InvIT and houses infrastructure projects.
USD	United States Dollar.

Background – Indian Infrastructure

Till recently, the Indian infrastructure story has been one of few successes and many challenges. Infrastructure in India has historically been inadequate, relative to the large population. Pre-liberalization (1990s), infrastructure was not a prominent political agenda item since the headroom for government spending was limited. Following liberalization, India witnessed a sudden rise in its overall economic growth – ranging between 7%-9% from the latter half of 1990s. Foreign investors started considering India as a favourable investment destination (especially in the services sector).

In order to maintain the growth rate momentum, it was imperative to identify feasible ways for rapid large-scale infrastructure development. Naturally, the government could not be the sole financing resource, considering the capital-intensive nature of the industry. Recognizing this, the Indian government enacted a comprehensive regime – PPP (public-private partnership) – to attract capital from the private sector. A robust set of measures followed, involving transparent bidding procedures, standardized bid documents, and government grants/ termination guarantees to facilitate debt raises.

The result – in the near-short term – was excellent. Commercial banks started lending excessively to the infrastructure sector, so much so that the well accepted 'standard' of 70:30 was also breached. Private equity players (including foreign investors) also jumped on the bandwagon and started taking equity exposure. Given the overall upbeat mood, promoters simultaneously started bidding for multiple projects, and often over-played the potential earnings of some of these too.

However, with the global meltdown in 2008, several infrastructure projects were impacted. Promoters' and investors' equity capital could not be monetized, and banks started recording dire asset-liability mismatches. Previous assurance from various stakeholders (including government agencies) – about the viability of these projects – fell flat. Lenders experienced severe stress on their books and as a result, the entire sector was put on red alert by domestic banks. With a lack-lustre bond market and rigid foreign borrowing regime, infrastructure developers were left with very limited funding avenues.

By 2012 – 2013, the government was back to the drawing board, and restarted its efforts to identify the most optimal route and vehicle that can attract long-term high value private capital in the infrastructure sector. After several deliberations between various regulatory authorities, the Securities and Exchange Board of India (SEBI) rolled out the 'InvIT' regime in 2014, which has now witnessed an astounding acceptance.

Evolution, Commercial Narrative and Success

Early Steps. By 2013, the government's focus was razor sharp – devise a mechanism that can attract long term foreign private capital to the infrastructure sector. However, the government also had to overcome issues regarding perception, given the bad experience of private investors between 2005 - 2010. So, at the threshold, 3 important parameters were identified to make the investment proposition lucrative: viz. enable tax-optimal regular distributions, offer a diversified risk portfolio, and provide a well-regulated transparent investment platform. Given the bespoke requirements, SEBI conceptualized a new product that fulfils all the parameters - InvITs. The InvIT model was similar to that of REITs, but with appropriate modifications to cater to the infrastructure industry. A consultation paper was floated in late 2013, and the InvIT regime was officially enacted in 2014 through the SEBI InvIT Regulations.

Developer Perspective. For developers, InvITs addressed various concerns with one stroke. First, InvITs would facilitate monetization of under-construction and yielding assets through a tax optimal rollover structure. Second, InvITs would provide a low-cost equity funding avenue to take out high-cost loans of existing projects. This in turn would create headroom for further borrowings from banks at competitive rates. Third, considering the diversified portfolio of an InvIT, the cost of borrowing at the InvIT level would be significantly lower than the cost of borrowing at the project level. Effectively, this would translate to greater equity returns for both the developers and the investors in the long term. Fourth, InvIT funding would free-up the existing capital of developers, and this could be used to invest in other projects.

Investor Perspective. While some of the underlying structural issues of the sector remain, InvITs present a win on multiple critical counts for investors (especially international investors). To begin with, InvITs offer a regular tax-optimal distribution channel on a mandatory basis. All distributions from project vehicles and the InvIT are accorded an effective pass-through status, and interest distributions (which are most common with InvITs) are taxed as low as 5% in the hands of foreign investors. Mandatory distributions also ensure that investors were not left to the mercy of strong domestic promoters when it came to cash upstreaming. Further, investors perceive InvITs as a well-diversified portfolio of assets vis-à-vis a one-asset exposure, which in-turn reduces the overall risk quotient. Lastly, InvITs also provide for higher returns (absolute and levered) by allowing legitimate tax assets to be built through the initial years at the SPV level, which is otherwise not possible with holding company structures (*explained in detail subsequently*).

From a foreign exchange perspective, investors are permitted to enter and exit at any commercially agreeable price, which is otherwise not permitted for equity investments into companies. This facilitates commercial negotiations around downside protection clauses and penalties. In addition to the above, one of the key elements which appeals to sophisticated investors is the robust governance mechanism of InvITs. In order to inspire investor confidence and ensure the success of InvITs, SEBI took charge of the governance frame-

work of InvITs (both public and private) and prescribed healthy disclosure and transparency standards as part of the InvIT Regulations. Overall, investors view InvITs as a well governed platform for long-term tax-optimal investments.

Launch and Initial Tepid Response. While InvITs were expected to take the market by storm, the initial response was rather tepid. The first two InvITs – IRB InvIT Fund and Indigrd – were both publicly listed. Within a few days of launch, both InvITs started trading at a discount and by 2017, the discount was considerable (**Annexure 1** analyses the price movement of both the InvITs from launch). After various discussions, industry participants realized that the lack of success is primarily due to two factors - valuation mismatch between investors and developers, and incorrect positioning of InvITs as a classic equity product. By 2018/ 19, debt levels of developers had increased significantly, and this led to developers accepting moderated valuations. In addition, intermediaries started to identify the investor base accurately – bulge bracket PE funds, pension funds and sovereign funds that have the wherewithal to remain invested for long periods and expected returns in the range of 8%-11% (in USD terms). With this, it was only a matter of time before InvITs become a resounding success.

Resurgence and Success. With the new playbook in place, by early 2018, multiple developers such as IRB, Sterlite, Reliance and Oriental started negotiating with large investors. In parallel, SEBI and RBI also took note of the fact that the product had to be relaunched – else, they may be facing a complete failure. Therefore, a slew of reforms were introduced over the next 12 months. Amongst other matters, higher leverage levels were permitted (from 49% to 70%, in line with the industry standard), domestic debt financing from banks was allowed, offshore leverage and debt financing from FPIs was conceptually approved and a relaxed unlisted InvIT regime was operationalized to attract institutional investors. As the final clincher, the government enabled a completely tax-free investment structure for sovereign wealth funds and pension funds investing into infrastructure projects (including through InvITs).

The Rise and Fall of Unlisted InvITs. Unlisted InvITs had a clear advantage over their listed counterparts as they had the same tax benefits coupled with greater operational flexibility. For example, unlisted InvITs were not subject to the same restrictions on leverage, could provide greater governance rights to its parties, and faced lesser public scrutiny (due to relaxations on public disclosures). They quickly became the most-preferred vehicle for sophisticated investors to deploy large scale patient capital and we witnessed large unlisted InvITs being set up in a short span of 1-2 years.

However, the high was short-lived. Some developers soon started contemplating structures that involved rollover of their assets to an InvIT mainly for tax benefits, and without any new investor/ investment coming in. These structures potentially involved the developer being the sponsor, manager and investor in the InvIT without any external capital. In many ways, SEBI and the Ministry of Finance saw this as defeating the core purpose of InvITs – i.e. to attract new capital for development of domestic infrastructure.

To address this, at first, SEBI introduced a minimum diversification requirement in the unitholding of an unlisted InvIT, i.e. every unlisted InvIT should have a minimum of 5 distinct unitholders (independent of the sponsor) holding at least 25% units. The industry in general viewed this as an unexpected flip-flop, more so since genuine private unlisted InvITs which were set up as closely held joint ventures (commercially) were now being forced to find at least 5 independent investors thereby compromising party autonomy.

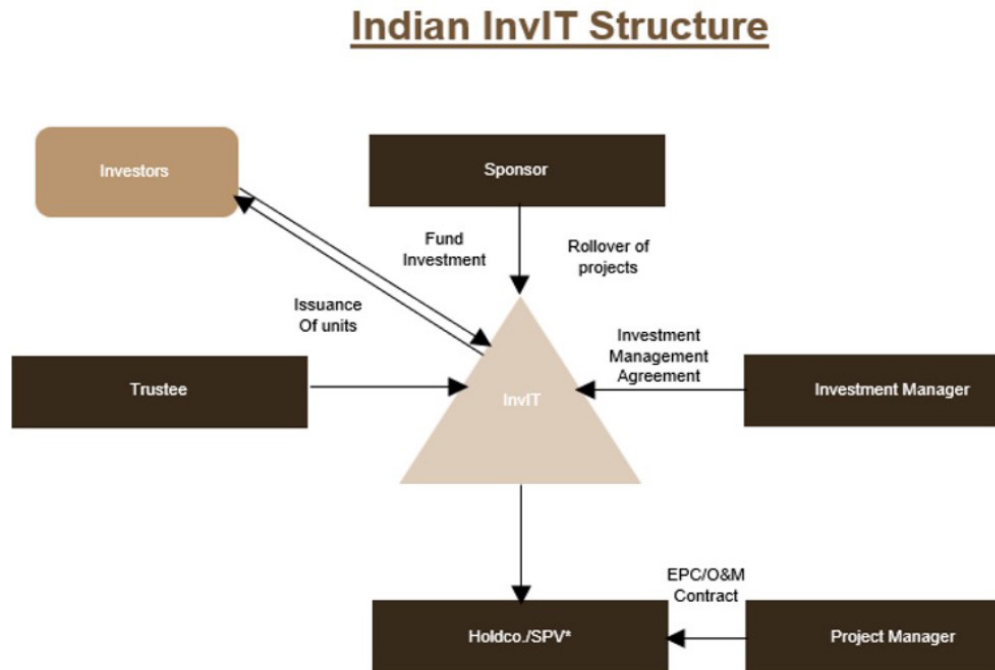
While the industry was grappling with methods to comply with this requirement, SEBI in end-2022 did away with the unlisted regime altogether. SEBI's reasoning was mainly two-fold: (a) unlisted InvITs operated in a rather opaque ecosystem with minimal public disclosures, and this was antithetical to SEBI's purpose to begin with; and (b) over the years, SEBI had liberalized many restrictions in the private listed regime and hence, the unlisted and private listed regime had become near similar.

The Way Forward. Although listing of an InvIT is now mandatory, it does not dilute the key commercial and legal advantages which the product offers for both investors and developers. In fact, over the last 2 years, InvITs have received approx. USD 10 billion of investments, and this number is projected to increase by another USD 5+ billion in the next year. InvITs have changed the very dimension with which the infrastructure sector is viewed by investors, and are surely expected to gain unprecedented prominence over the next 5 years.

Structure and Parties

I. Structure and Set-up Process.

A diagrammatic representation of an InvIT structure in India is indicated below:



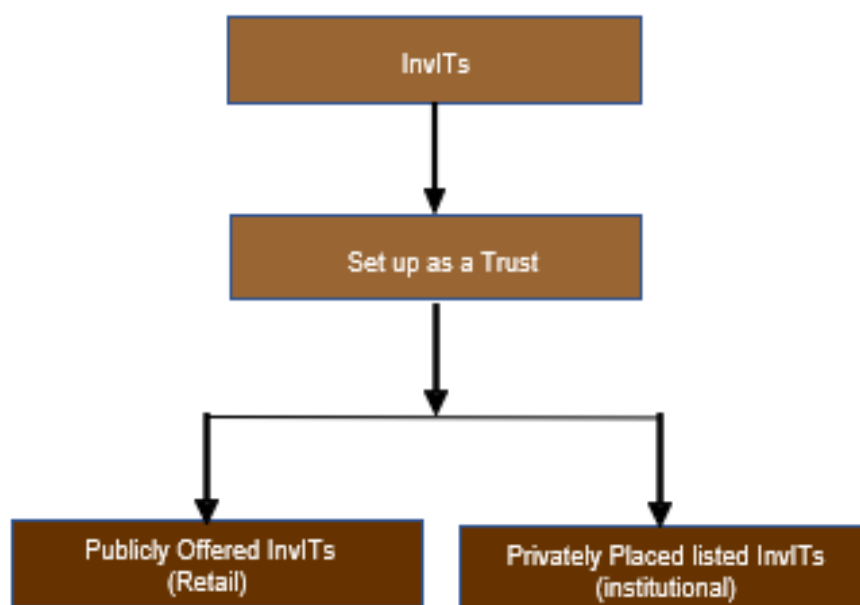
*InvIT can hold the SPV either directly or through a Holdco.

Typically, setting up of an InvIT entails the following steps:

- a. First, the sponsor settles a trust (yet to be registered as an InvIT), and simultaneously appoints an independent trustee. The trustee is responsible for protecting the rights of the unitholders (i.e. beneficiaries).
- b. Second, the trustee appoints an investment manager, to oversee and manage all the activities of the InvIT.
- c. Third, necessary purchase agreements are entered into between the trustee, IM and the sponsor for transfer of the underlying eligible infrastructure projects by the sponsor to the InvIT. In lieu of such transfer, units will be issued to the sponsor. The projects can either be transferred directly to the InvIT, or to a holding company owned by the InvIT as indicated in the diagram above, depending on the tax efficiencies sought to be achieved (discussed in greater detail in [Section F](#) of this paper).

- d. Thereafter, a project manager is appointed by the trustee for the InvIT, in order to undertake all the construction, execution and management activities of the underlying projects. The project manager will also be responsible for ensuring compliance with all the obligations of the concessionaire under the concession agreements.
- e. The sponsor will then apply to the SEBI for registration of the trust settled by the sponsor as an InvIT. Once the registration is obtained, a preliminary placement memorandum (PPM) is to be submitted to the SEBI. SEBI's approval is required for finalizing the PPM.
- f. Lastly, the final placement memorandum is issued by the InvIT to the investors, and funds are raised from these investors through an initial offer of units.

II. Categories of InvITs



Currently, the InvIT Regulations envisage 2 different categories of InvITs: public listed InvITs and private listed InvITs. As a principle, public listed InvITs are more extensively regulated because of retail investor participation, while private listed InvITs, though also regulated, provide benefits in terms of operational ease. **Annexure 2** sets out the key differences between the 2 categories of InvITs in detail.

III. Parties and Eligibility Criteria

A typical InvIT consists of 4 parties – the Sponsor, IM, Project Manager and the Trustee. The InvIT Regulations prescribe detailed eligibility criteria for each of these parties (refer **Annexure 3**). We have discussed below the key criteria that are relevant from a transaction structuring perspective.

- a. **Sponsor.** Any entity which intends to be a sponsor must be a company, limited liability partnership or any other ‘body corporate’. Consequently, any entity set up as a trust (eg: an AIF set up as a trust) cannot rollover its assets into an InvIT and become the sponsor of the InvIT.

InvITs acquiring InvITs

With the early InvITs reaching a mature stage, majority investors of these InvITs are looking for exit opportunities. In this context, most recently, the first M&A with InvITs unfolded – with the Indigrid InvIT acquiring 100% of the Virescent InvIT. Virescent InvIT will be delisted upon completion of the acquisition, and the underlying SPVs will be transferred Indigrid. Various factors have to be optimized for in such transactions – including tax exposure in connection with the transfer of SPVs, and obtaining temporary exemptions from SEBI for the 25% public criterion and for the non-body corporate sponsor delisting.

In addition, a sponsor needs to have a minimum experience of 5 years in infrastructure development or fund management. However, the sponsor can also borrow credentials from its ‘associates’¹ in order to fulfil the experience requirement. It is important to note that the experience of ‘associates’ which are pure EPC/ service companies may not be sufficient, unless the ‘associates’ are actually involved in infrastructure development/ fund management.

Lastly, sponsor(s) are mandatorily required to hold 15% of an InvIT for a period of 3 (three) years from the date of listing, and can gradually decrease it to 1% over 20 years. Further, SEBI in its June 2023 meeting has mandated that sponsors are not permitted to ‘encumber’ these units (i.e., pledge, lien, non-disposal undertaking etc.) in favour of third party lenders (except for any encumbrances already created by sponsors prior to this amendment).

- b. **Investment Manager.** An IM must have a minimum net worth of INR 10 crores. The IM entity must either have a minimum of 5 years’ experience in fund management or advisory or development activities in the infrastructure sector, or, the collective experience of the directors, partners and employees (with each having at least 5 years’ relevant experience) should be a minimum of 30 years in case the IM is a

¹ Regulation 2(1)(b) of the InvIT Regulations defines “associate” of any person as an “associate company” defined under the Companies Act, 2013 or under the applicable accounting standards and shall include: (i) any person controlled, directly or indirectly, by the said person; (ii) any person who controls, directly or indirectly, the said person; (iii) where the said person is a company or a body corporate, any person(s) who is designated as promoter(s) of the company or body corporate and any other company or body corporate with the same promoter(s); and (iv) where the said person is an individual, any relative of the individual.

new entity. In addition, the IM's board must comprise of at least 50% independent directors, and such directors should not be directors of the IM of any other InvIT.

Investment Manager Experience

Originally, the InvIT Regulations prescribed that for an entity to qualify as an IM, the entity must mandatorily have a minimum experience of 5 years in fund management, advisory or development activities in the infrastructure sector. However, this requirement led to practical difficulties for sponsors, since it was obligatory to identify an existing entity as the IM. To address this, multiple representations were made to SEBI and in March 2020, SEBI relaxed this criterion and permitted IMs to be set-up as new entities provided its directors and employees have a cumulative experience of 30 years.

- c. **Project Manager.** The InvIT Regulations prescribe that the 'project manager' of the InvIT has to be the sponsor or associate of the sponsor for a minimum period of 3 years from the date of listing, unless the sponsor(s) agree to hold more than 25% of the InvIT for the said 3 year period. The objective is to ensure that the sponsor remains responsible for overall project management unless the sponsor can demonstrate that it has sufficient skin in the game (through unitholding) for a considerable period of time.
- d. **Trustee.** Trustees of InvITs are expected to function on an arm's length basis vis-à-vis the other parties of the InvIT. Hence, the trustee is required to be an independent third-party entity, and should not be an 'associate' of the sponsor or the IM of the InvIT.

Commercial and Legal Considerations

I. Eligible Infrastructure Projects – Qualifying Assets

Every infrastructure project may not be InvIT ready. To address this, the InvIT Regulations provide the definition of 'Eligible Infrastructure Projects'. In essence, the definition captures the following:

- a. The first step is to identify if the project qualifies as 'infrastructure'. For this purpose, all the sectors indicated in the notification of the Ministry of Finance dated October 07, 2013 (as amended) will qualify as 'infrastructure'. **Annexure 4** lists all the sectors for reference, as per the amended notification of 2022 (which included 'data centres' and 'energy storage systems').

- b. The next step is to classify the infrastructure project as non-PPP or PPP².

PPP vs. Non-PPP Categorization

The categorization of PPP vs. Non-PPP is fairly straightforward in most sectors (eg: roads), and a list of the PPP projects are available on the government's website³. However, the position is slightly complicated for certain projects where coordination with/ involvement of the government is in a limited capacity (eg: as a service recipient). For instance, we have observed some ambiguity around categorization of certain renewable energy projects put on tender by the Solar Energy Corporation of India. In such cases, sponsors have to be careful and build adequate justification before categorizing the project as Non-PPP or otherwise.

- c. If the project is non-PPP, then, an infrastructure project which has received all the 'requisite approvals and certifications for commencing construction' will be considered as an 'Eligible Infrastructure Project'.

Requisite Approvals for Commencing Construction

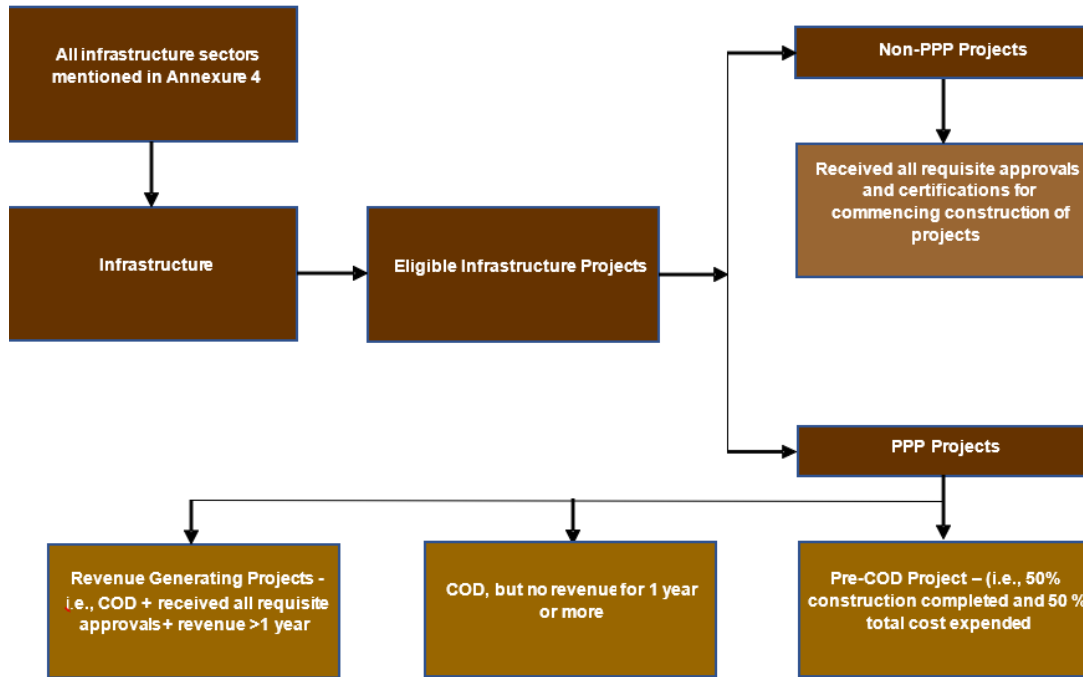
The InvIT Regulations do not define the term 'requisite approvals and certifications'. In order to ascertain this, practically, advisors undertake a study of similar projects and identify all the approvals/ certifications required for construction of such projects. With this study as the eligibility threshold, the projects proposed to be transitioned to an InvIT are examined, and a detailed explanation is provided to SEBI (as part of the application form) regarding the rationale adopted to arrive at the conclusion that all requisite approvals/ certifications have been obtained by the projects in question.

- d. In case of a PPP project, the requirement is slightly stricter (likely since public assets are involved). The infrastructure project must have achieved one of the following 3 milestones to qualify as an 'Eligible Infrastructure Project': (i) the project is completed and is revenue generating for at least 1 year; or (ii) the project has achieved commercial operations date but does not have a revenue track record from operations for at least 1 year; or (iii) the project is a pre-COD project, i.e., the project has not achieved commercial operations date, but has completed at least

² Regulation 2(1) (zm) of the InvIT Regulations defines "PPP project" as an infrastructure project undertaken on a Public-Private Partnership basis between a public concessioning authority and a private SPV concessionaire selected on the basis of open competitive bidding or on the basis of an MoU with the relevant authorities. Further, Regulation 2 (1) (zi) of the InvIT Regulations defines a "Non-PPP Project" as every project that is not a PPP project.

³ <https://www.pppinindia.gov.in/list-of-all-ppp-projects>.

The following diagrammatic representation summarizes the above explanation succinctly:



II. Business Activities of InvIT SPVs

The SPVs held by the InvIT and which house the projects are not permitted to engage in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects. 90% of each SPV’s assets should be the infrastructure projects itself. SPVs are also not permitted to invest in other SPVs; in other words, cross-holdings between the SPVs are not permitted.

JVs as SPVs

One question that often comes up is whether the SPVs below the InvIT should be 100% owned by the InvIT. As per the InvIT Regulations, for an SPV to be rolled over, the InvIT should hold (directly or through a holding company) a minimum of 51% equity capital in the SPV. So, it is possible for joint venture entities of the sponsor to be transferred to an InvIT.

III. Sponsor – Key Liabilities

Unlike the promoter of a public listed company, the sponsor of an InvIT is not per se in ‘control’ of the InvIT post set-up. As per the InvIT Regulations, the sponsor is responsible (on a full recourse basis) for all acts, omissions, representations and covenants provided to the InvIT’s trustee and the unitholders in relation to the formation of the

InvIT and the transfer of assets (i.e. SPVs) to the InvIT. In essence, the primary responsibility of the sponsor under the InvIT Regulations is to ensure that all the projects are transferred to the InvIT appropriately and with adequate disclosures.

However, once the InvIT is set-up, barring a few limited responsibilities prescribed through a code of conduct (eg: avoid conflict of interest, maintain high standards of integrity and so on), the sponsor does not face other significant liabilities pertaining to the functions/ operations of an InvIT. Once operational, the InvIT is completely managed by the IM and the independent trustee, and the sponsor will be akin to any other unitholder. Therefore, unlike a promoter who can be held liable for the day-to-day governance failures of a listed company, the sponsor should not be liable in the ordinary course for the actions/ omissions of the InvIT. The sponsor's obligations and corresponding liabilities mostly arise because of its role as a 'party to the InvIT' or a 'related party' to the InvIT. **Annexure 8** sets out the key obligations of a sponsor under the InvIT Regulations post set-up of the InvIT.

Separately, a sponsor must also be mindful of the lapse of business losses that the SPVs may suffer in the process of setting up an InvIT. Section 5 (InvIT Rollover Structures – Tax and Regulatory Considerations) below discusses this issue in detail.

IV. Governance Arrangements of an InvIT

One of the most contentious issues with InvITs is the mechanism to legislate for transfer restrictions (i.e. pre-emptive rights, tag-along rights, drag along rights and the like) and governance rights (i.e. affirmative voting rights/ veto items). The origin of this issue is a specific provision of the InvIT Regulations which prescribes the following:

“Regulation 4 (h) of the InvIT Regulations - No unitholder of the InvIT shall enjoy superior voting or any other rights over another unit holder.... Notwithstanding the above, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units”.

SEBI, in the past, has interpreted this provision to mean an absolute bar over any kind of inter-se unitholder arrangements which provide a unitholder any additional right (contractually or otherwise), unless such rights are given effect to by issuing a separate class of subordinate units to the sponsors. However, sponsors are generally averse to adopt a dual unit model, because of a potential perception that the InvIT is raising structured leverage instead of equity (since one of the reasons SEBI permitted a separate class of units was to accommodate special distributions). In effect, this meant that large investors were required to infuse billions of dollars by relying solely on the governance protections afforded under the InvIT Regulations. For many offshore funds who were keen to explore private InvITs, this position by SEBI was a major dampener and made InvITs a non-starter.

Based on extensive deliberations with SEBI, the following solution has been accommodated by SEBI (only on a case-to-case basis):

- a. Transfer Restrictions and Economic Rights.** Unitholders of an InvIT are permitted to enter into inter-se arrangements to legislate for transfer restrictions and economic rights such as tag-along rights, drag-along rights, liquidation preference and the like. It is important to note that these arrangements should be between unitholders only, and the InvIT should not be bound by such arrangements.
- b. Governance Rights.** Unlike (a) above, SEBI does not seem to be entirely comfortable permitting inter-se governance agreements between unitholders. According to SEBI, the InvIT Regulations are a self-sufficient code, and mandate the approval of requisite unitholders where required for high threshold matters. Other than the above, the InvIT Regulations permit the IM to take all decisions on behalf of the InvIT, and it is SEBI's intent to give effect to this general permission.

Having said the above, the InvIT Regulations do not restrict the nature of rights exercisable by the shareholders of the IM vis-à-vis the IM. Therefore, large investors can negotiate with the sponsor and acquire a stake in the IM of the InvIT. Since the IM is responsible for and controls the day-to-day operations of the InvIT, investors can take the necessary affirmative rights at the IM level. In effect, this should translate to investors having the ability to exercise negative control over the actions of the InvIT on select matters through its affirmative voting rights at the IM.

Recent changes to InvIT governance (2023)

Through the course of 2023, SEBI introduced a host of governance-focused regulations for InvIT IMs and unitholders. This includes making several listed company regulations directly applicable to IMs, including committee requirements (audit, stakeholder, nomination and remuneration, stakeholders' relationship, and risk management committees), independent director norms, and certain policy requirements.

SEBI has also approved (in-principle) a nominee directorship right on the IM board for unitholders holding not less than 10% of units in the InvIT. Unitholders nominating directors are bound by a stewardship code, which includes an obligation to vote in the best interests of the InvIT.

We have discussed the merits/ demerits of the changes in detail [separately](#) but in short, private InvITs and their investors specifically may find themselves disadvantaged going forward since there is limited room to commercially negotiate board composition.

V. Borrowing Avenues for InvITs

From a commercial perspective, debt funding avenues for InvITs become critical since

most infrastructure projects typically work on a 70:30 or 80:20 basis (debt: equity). InvIT level debt will also be at significantly better lending rates vis-à-vis single asset lending because of the risk-diversified portfolio held by the InvIT, and this will in-turn improve the returns of each unitholder.

Broadly, there are two modes by which InvITs (and not the underlying projects) can avail debt financing:

a. Domestic Financing. Bank funding is the most important source of low-cost borrowing for infrastructure projects in India. However, because of practical considerations (eg: lack of an insolvency regime for InvITs, the unique corporate structure of InvITs etc.), banks were initially not comfortable lending to InvITs. After extensive representations, the RBI in 2019 permitted commercial banks in India to provide credit facilities to InvITs, subject to strict sanctioning and [monitoring conditions](#). However, just as in the real estate sector, banks' appetite to lend to developmental projects is much lower vis-à-vis yielding projects. Hence, private debt investors (offshore and onshore) who expect an IRR of 16% – 20% are exploring this sub-segment of financing keenly.

Further, while bank lending came across as a major relief for InvITs, considering the exposure norms of commercial banks, InvITs continued to look at other deep-pocket sources such as insurance funds and pension funds for low-cost debt capital. In recent years, sectoral regulators have permitted these funds to lend to subscribe to debt securities of InvITs under certain conditions.

b. Offshore Financing. Offshore financing can be availed of by InvITs under 2 routes – viz. external commercial borrowings (ECB) and standard debt investment (i.e. investment into debt securities of InvITs by foreign portfolio investors (FPIs)). To begin with, there is some ambiguity on whether ECB (rupee denominated) is currently permitted for InvITs or not (since only entities which can avail foreign direct investment are permitted to avail ECB, and the term 'foreign direct investment' in the conventional sense does not include investments into InvITs). That said, assuming ECB is in fact permitted, the ECB regime is still not ideal since it is extensively regulated and places restrictions on key commercial parameters such as end-use of funds, overall return rate etc. For instance, unless the ECB is for a very long tenure (say 7 to 10 years), use of the ECB proceeds to refinance existing rupee loans is not permitted. Similarly, the all-in-cost ceiling of ECBs cap out at an aggregate of 6-month benchmark rate and 450 basis points, which is significantly lower than what offshore debt players are willing to consider. Hence, while borrowing under the ECB regime is technically possible, achieving optimal tenures and return rates may be challenging.

As regards FPI debt financing, FPIs are allowed to subscribe to listed debt securities issued by InvITs, although this is yet to see significant traction in the market.

Also important to note that these securities cannot be redeemed before the expiry of 1 year from the date of issuance.

VI. Rollover of AIFs to InvITs

Currently, several funds (offshore and domestic) have explored the AIF route to invest in the infrastructure sector. An important aspect from a structuring perspective is the rollover of existing infra-specific AIFs into InvITs. At the threshold, it is important to recognize that InvITs offer certain advantages vis-à-vis AIFs on matters such as borrowings, investment thresholds, tax-optimal distribution structuring from SPVs to the InvIT etc. However, there are 2 key issues which AIFs may encounter in case of a transition to InvIT: (a) as explained earlier, AIFs set up as trusts are not eligible to become the 'sponsors' of an InvIT. Practically, this is a significant obstacle since most AIFs are set-up as trusts for ease of administration and tax purposes; and (b) as part of the transition process, the AIF will be required to transfer the entire shareholding of all its portfolio companies to the InvIT. In lieu of such transfer, the AIF will be issued units in the InvIT. However, such transfer and consequent allotment of units may breach the diversification norms prescribed for AIFs (i.e. AIF cannot invest more than 25% of its investible funds in one entity). While this issue has not been tested yet, it is possible to argue that the diversification test has to be met at the time of investment (and not on a continuous basis), or that the diversification analysis must be made on a pass-through basis thereby considering all the portfolio companies held by the InvIT as investments by the AIF.

VII. Declassification of Sponsors, Induction of New Sponsors and Sponsor-less InvITs

At the time of enactment, the InvIT Regulations did not envisage a scenario where the existing sponsor of an InvIT may have to be declassified to facilitate the entry of a new sponsor. However, in order to encourage M&A transactions in the InvIT space, it was imperative for SEBI to permit entry of new sponsors. This demand was further accentuated when KKR acquired the Indigrud InvIT, and intended to replace Sterlite as the sponsor.

After several representations and discussions, SEBI in June 2020 amended the InvIT Regulations to provide the following: (a) declassification of an InvIT sponsor is permitted if the sponsor and its associates hold less than 10% units of the InvIT, do not control the IM and obtain the approval of a majority of unitholders for such declassification; and (b) induction of a new sponsor/ change in control of an existing sponsor is permitted with the approval of 75% of the unitholders (excluding the sponsor and other parties related to the transaction). If such unitholder approval is not obtained, then, the new sponsor (or the existing sponsor undergoing a change of control) must provide an exit to all the dissenting unitholders as per the mechanism prescribed by SEBI (as explained in paragraph X below).

In June 2023, SEBI also approved the introduction of a sponsor-less InvIT for InvITs which meet certain qualifying conditions. The final conditions are yet to be notified, but these should include: (a) a minimum 5-year prior listing period; (b) a requirement for the IM or shareholders of the IM to meet minimum unitholding requirements otherwise applicable to sponsors; and (c) a requirement that the sponsor or its associates cannot own or control the IM.

VIII. Distributions by InvITs

Unlike private company structures, InvITs are mandatorily required to annually (private)/ biannually (public) upstream 90% of the 'net distributable cash flows' to the unitholders of the InvITs. An indicative methodology has also been prescribed by SEBI for calculating the NDCF (refer Annexure 5). This is a significant incentive for investors, since there is clear visibility on cash-flow pattern and minimal counterparty risk. It is also important to note that proceeds received by an InvIT pursuant to sale of the underlying assets may be reinvested within 1 year into another infrastructure asset to avoid mandatory distribution.

IX. Unitholder Approval Matters in InvITs

The InvIT Regulations require that prior unitholder approval (50% or 60%, as applicable) be obtained in relation to certain high-threshold matters. In addition, any matter to be transacted by an InvIT can be escalated by 25% unitholders for trustee's consideration and then for a 60% unitholder approval. However, any person who is a related party in respect of a transaction as well the associates of such person shall not be permitted to cast their vote at a unitholder meeting. While this principle should work in the ordinary course, there may be practical concerns in a few unique situations. For instance, if the IM of the InvIT is jointly controlled by the sponsor and one of the investors, then, such sponsor and investor may not be able to vote on a critical matter such as a replacement of the IM (since the sponsor is a related party, and the investor is an associate of the IM thereby becoming a related party). Appropriate voting mechanisms should be built-in to address such situations and protect the rights of the sponsors/ key investors.

X. Takeover of InvITs – Entry / Exit Considerations and Strategies

As InvITs evolve, the next step in their lifecycle would be to provide an exit to investors and sponsors, i.e. a way for unitholders to monetise their investment. Usually, an investor in a listed company can exit through a strategic sale of shares, a take-private, or through transfer of the assets of the company and distribution of proceeds. An investor / sponsor in an InvIT can similarly explore comparable routes of exit, albeit with their own considerations.

a. Takeovers / Sale of Substantial Stake

Acquisition of the InvIT. The simplest exit route is to transfer the units of the InvIT to a willing buyer. However, if the stake is substantially high (i.e. 25% or more), or if the seller is a sponsor of the InvIT, then the transaction may trigger an exit offer at the InvIT level. Two important nuances have to be considered before launching an exit offer: (a) the exit offer price is subject to post announcement price fluctuations, since this price is determined 25–30 days after launching the exit offer on a look-back basis. However, for infrequently traded InvITs (i.e. likely all private listed InvITs), this may not be an issue practically since the exit offer price is determined basis a valuation report; and (b) the buyer has to acquire all the units tendered by the public up to 75% (effectively maintaining 25% public float). However, 75% of all the unitholders by value (excluding the unitholders who are related to the takeover transaction) can waive the mandatory exit offer, effectively allowing the buyer to acquire >25% units without the attendant exit offer.

Acquisition of the IM. In taking over an InvIT, the buyer would also have to acquire a controlling stake (i.e. >50% equity shares) in the IM since all critical powers relating to the InvIT (including day-to-day operations) vests with the IM. Important to note that as a pre-condition to such change in control, the approval of SEBI and of 60% unitholders at the least (on a present and voting basis) should be obtained.

Note: While the law on the point is slightly ambiguous, it is unlikely that SEBI would allow an existing ‘sponsor’ to exit the InvIT without categorizing the incoming majority buyer as a sponsor. Any such change in sponsor will also require the approval of 75% of all the unitholders by value (similar to that under paragraph X (a) above), excluding the selling sponsor. Practically, in any takeover, all unitholder approvals should be obtained as part of one meeting, to ascertain whether the entire transaction can proceed in totality or not. Also, if the incoming buyer is classified as a sponsor, it would need to be mindful of certain compliances at the InvIT level. However, the law does not place any onerous obligations on such new sponsors, as detailed in paragraph III above (Sponsor – Key Liabilities).

b. Transfer of Assets and Distribution of Proceeds

Another way to monetise assets is for the InvIT to sell all its assets to the incoming buyer, and thereafter distribute the proceeds to all unitholders. Post this, the InvIT may either surrender its certificate of registration and wind up or may acquire new assets for operations. This mechanism may be particularly beneficial for strategic buyers who intend to own 100% of the entire asset or for funds with established pooling vehicles in India (eg: an AIF).

To transfer any asset, an InvIT must first appoint a valuer to undertake a full valuation of the asset. In addition, prior approval of a simple majority (>50%) of the voting unitholders would be required (on a present and voting basis) to transfer all

the assets to the buyer. Here, again, unitholders related to the transaction (which may include the sponsor) cannot vote.

The strategy may however be slightly different if the acquirer is also an InvIT. As mentioned above, the industry recently witnessed the first takeover of an InvIT by another InvIT (i.e. Indigrid's acquisition of Virescent). In such a scenario, instead of transferring assets, the acquirer InvIT generally acquires 100% units of the target InvIT since this provides a tax optimal exit for the sellers. The target InvIT is then delisted and wound-up quickly, and the underlying assets are transferred such that there are no tax leakages at this stage either. Necessary unitholder approvals have to be obtained beforehand by both InvITs before completing a transaction of this nature.

Note: Despite the tax and leverage advantages which an InvIT offers, incoming buyers from certain jurisdictions may find an AIF structure (i.e. acquisition of assets from the InvIT through a captive AIF) more beneficial because of 2 key reasons: (a) AIFs do not require a minimum 25% public float to be maintained, unlike an InvIT (both private and public); and (b) the difference in tax between an InvIT and AIF may be marginal (~5% - 10%) in many cases, and such difference may eventually be creditable in their home jurisdiction. Incoming buyers will have to explore the relative merits of an InvIT vs. AIF before proceeding with any majority transaction.

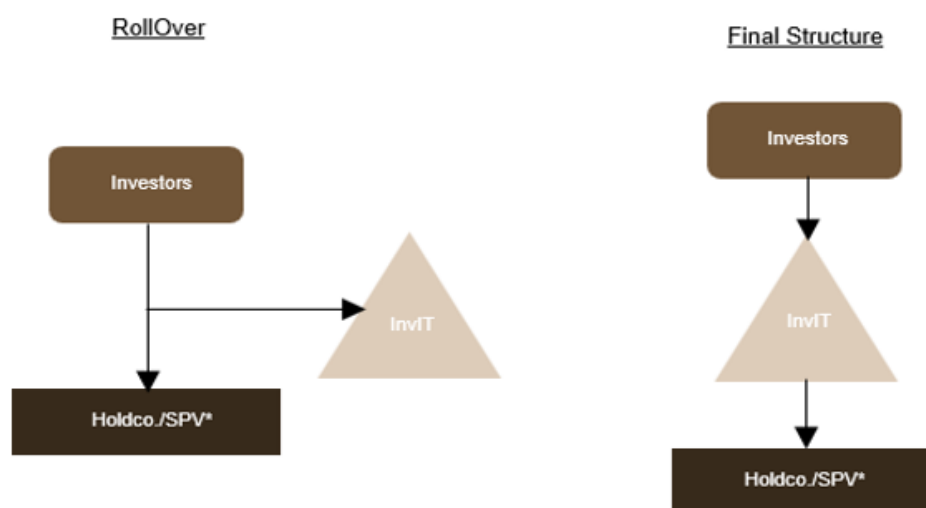
c. Delisting of an InvIT

While the InvIT regulations contemplate delisting / take private of a listed InvIT, given the recent move to do away with unlisted InvITs, any delisting attempt in our view will practically involve the sale of underlying assets and distribution of proceeds to the unitholders. Please refer to the previous paragraph for the key considerations which are relevant for such sale.

Rollover Structures – Tax and Regulatory

One of the important steps in setting up an InvIT is to examine the legal and regulatory implications of transitioning an existing structure to an InvIT.

Rollover Structure



*InvIT can hold the SPV either directly or through a Holdco.

I. Tax Considerations

The following tax aspects are relevant from a rollover perspective

- a. **Capital Gains.** The transfer of shares of the SPVs to the InvIT, by the sponsor and/or other investors, will not result in capital gains in the hands of such sponsor or the investor (as applicable). Further, the following metrics shall be applied while calculating the ultimate capital gains tax payable by the sponsor/ investor upon sale of their InvIT units: (i) the holding period of the SPVs' shares when directly held will be included to determine the overall holding period (to distinguish between short-term and long-term capital gains tax); and (ii) the cost of acquisition of SPVs' shares will be considered as the cost of acquisition of the InvIT units.

Swap of debt instruments

While transfer of 'shares' is exempt from capital gains tax, transfer of debt or hybrid instruments (eg: optionally convertible debentures) to the InvIT has not been provided a similar exemption. Hence, it is important to carefully structure the transfer/ assignment of such instruments such that there is nil tax liability at the rollover stage.

- b. Minimum Alternate Tax.** Under the Income Tax Act, if a company avails exemptions and records nil profit/ gain, such companies are required to pay a minimum alternate tax (MAT) on their 'book profits' and avail credit in the following years. This is an anti-abuse provision, aimed at ensuring that companies which avail several tax exemptions and arrive at nil taxable income are liable to pay tax on their book profits. However, from an InvIT perspective, there will be no MAT on gains arising from exchange of shares of the SPV with the units of an InvIT. Instead, MAT liability will arise (if relevant) only upon actual transfer of such InvIT units.
- c. Carry forward of SPVs losses.** Considering the long gestation period of infrastructure projects, most SPVs would have accumulated losses in its books of accounts in the initial years of a project. As per the Income Tax Act, simply put, if there is a change in the 'beneficial holding' of more than 49% voting shares of any private company or public unlisted company (i.e. a company in which "public is not substantially interested"), then, such company will not be able to carry forward its losses to the next year.

In the context of an InvIT, as explained earlier, all the shares of the SPVs will be transferred to the InvIT by the sponsor, and units of the InvIT will be issued in lieu of such transfer. Effectively, this will result in the shares of the SPVs being held by the trustee of the InvIT (since trustee is the legal owner of all the assets of a trust), and the sponsor will only be a unitholder beneficiary. As a result, it could be argued by the income tax authorities that the 'beneficial holding' of the SPVs have changed and hence, the accumulated losses of the SPVs should lapse. Therefore, it is important for sponsors to fortify the position that 'beneficial holding' of the SPVs remains the same and that it should be possible for the SPVs to carry forward all the accumulated losses.

II. Anti-Trust Approval

The Competition Act and the Combination Regulations require mandatory pre-notification to, and prior approval of, the Competition Commission of India (CCI) for all domestic and international mergers, acquisitions and other types of 'combinations' which exceed the asset or turnover thresholds prescribed under the Competition Act (refer Annexure 6 for these thresholds). These thresholds apply to the acquirer and the target jointly, and to the group to which the target will belong after the combination in question.

The definitions of "enterprise" and "person" under the Competition Act (which regulates, inter alia, acquisitions of shares, assets, voting rights and / or control) are wide enough to draw the acquisition of an InvIT within their ambit. Accordingly, it appears that an acquisition of units of an InvIT could be considered as an acquisition of voting rights. Further, if any form of control is being acquired by the investor (such as by way of acquiring any controlling rights in the IM), this could also trigger a merger control filing with the CCI, provided the jurisdictional thresholds are met and the proposed

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transaction cannot avail of any exemption. On the other hand, the transfer of infrastructure assets to an InvIT can be viewed as an acquisition by the InvIT at the time of setting up of the InvIT (or indeed subsequently) and this could trigger a merger control filing if the jurisdictional thresholds are met.

Exemptions. There are certain standard exemptions provided by the CCI under Schedule I of the Combination Regulations (refer **Annexure 7**) and other notifications. Notably, the Government through a notification has prescribed that any transaction where the target has assets not exceeding INR 350 crore (approx. USD 50 million) in India, or has a turnover not exceeding INR 1000 crore (approx. USD 140 million) in India, is exempt from the mandatory pre-approval merger filing (“Target Exemption”). This is a commonly adopted exemption in case of InvIT transactions; however, there are several nuances to be considered while examining this exemption. For instance, if multiple SPVs are getting transferred to an InvIT as part of single transaction, then the above-mentioned thresholds may have to be applied on a cumulative basis to identify whether a CCI approval is required or not (i.e. the asset and turnover values of all the SPVs in aggregate should remain below the exemption limit). The CCI has also introduced a ‘deal value’ threshold (~USD 250 million). Any acquisition, where the investment value is in excess of this threshold, will require prior notification to the CCI, despite the InvIT meeting the Target Exemption. The threshold has not been formally notified as of date (August 2023) and therefore remains untested on its nuances.

In addition, if the Target Exemption cannot be availed of, investors and sponsors can explore the possibility of availing other exemptions mentioned under Annexure 7. One such exemption is for minority acquisitions below 25% made “solely as an investment” or “in the ordinary course of business”, which do not lead to any acquisition of control. Accordingly, if a potential InvIT unit holder does not get controlling rights in an InvIT or in the IM, then it is likely that the acquisition of less than 25% of units of an InvIT could be considered to be solely as an investment and, therefore, fit under the item 1 exemption from Schedule I of the Combination Regulations mentioned under Annexure 7. However, in the event it becomes possible for a unit holder to negotiate and obtain rights that are not available to an “ordinary” unit holder, or an investor proposes to acquire “control” over the InvIT or the IM, then such an acquisition might trigger a merger filing regardless of the number of units proposed to be acquired.

However, since InvITs are a fairly new product, it must be noted that the notifiability of such acquisitions still needs to be tested and further developed. Accordingly, the transaction has to be viewed holistically and several additional factors have to be examined closely before arriving at a conclusion, including investment into the IM by the investors, the nature of veto rights being obtained by the investors in the IM of the InvIT, the nature of control exercised by the investors/ sponsor in the InvIT and the like.

III. Foreign Exchange Approvals

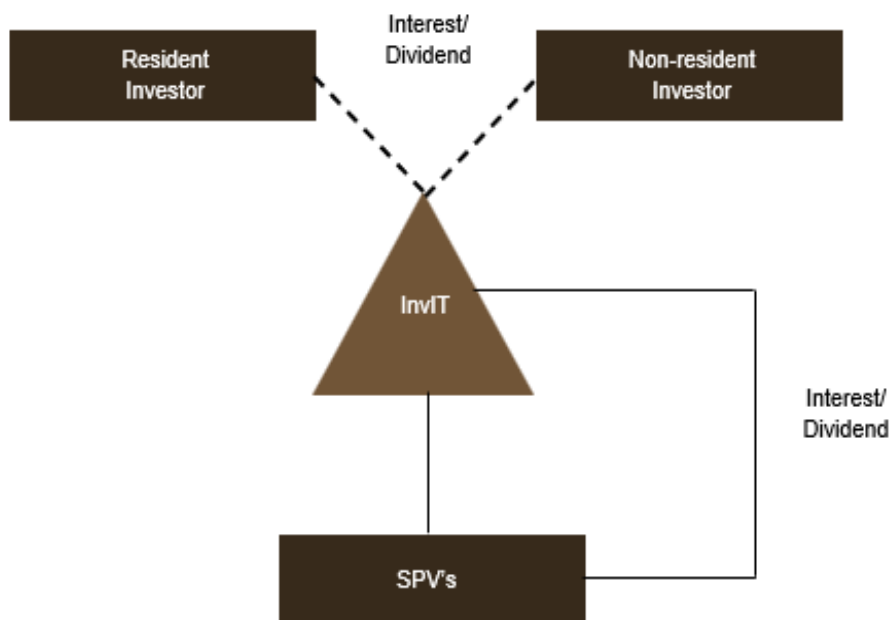
As per the foreign exchange laws of India, any investment made by an InvIT is considered as 'downstream foreign investment' if the sponsor or the IM of the InvIT is majority owned or controlled by a non-resident. While foreign investment is allowed up to 100% in most 'infrastructure' sectors, companies operating in certain sub-sectors (eg: telecom towers) are still regulated and require a prior approval from the relevant sectorial regulators before receiving foreign investment in excess of prescribed thresholds or before being 'controlled'⁴ by foreign investors (i.e. through the IM). Therefore, at the time of InvIT rollover, it is important to find the most optimal structure for the transaction after considering the approval requirements from the perspective of foreign exchange laws.

⁴ Control is defined under the FEMA (Non-Debt Instrument) Rules, 2019 as the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement and for the purpose of an LLP, "control" shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.

Tax Framework

I. Tax on Distributions

Typically, in any InvIT, distributions are made through interest or dividend payment. The tabular column below summarizes the tax treatment in each case:



Nature of Distribution	Tax withholding - Distributions from SPV to InvIT	Tax at InvIT	Tax withholding for distributions from InvIT to residents, and final tax to be paid by residents	Tax withholding for distributions from InvIT to non-residents, and final tax to be paid by non-residents
Interest	Nil	Nil	<u>Withholding</u> 10%. <u>Final Tax</u> Applicable slab rates.	<u>Withholding</u> 5%. <u>Final Tax</u> 5%.
Dividend	10%	Nil InvIT to claim refund of tax withheld by SPV in case of further distributions	<u>Withholding</u> Nil, if the SPV has opted for the old tax regime (i.e. taxed at 30%). If the SPV has opted for the new tax regime, then, the InvIT will have to withhold 10% for further distributions.	<u>Withholding</u> Nil, if the SPV has opted for the old tax regime (i.e. taxed at 30%). If the SPV has opted for the new tax regime, then, the InvIT will have to withhold 10% for further distributions.

			<u>Final Tax.</u> Nil, if the SPV has opted for the old tax regime (i.e. taxed at 30%). If the SPV has opted for the new tax regime, then, the resident unitholder will have to pay tax as per applicable slab rates.	<u>Final Tax.</u> Nil, if the SPV has opted for the old tax regime (i.e. taxed at 30%). If the SPV has opted for the new tax regime, then, the non-resident unitholder will have to pay tax at 20% (or applicable treaty rates).
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Holdco vs. Direct SPV Structure

While an InvIT can also set up SPVs through a Holdco structure (i.e. InvIT owning a holding company which finally owns the SPVs), the taxability of dividends in such a structure is sub-optimal. Further, there could be cash trap issues because of withholding tax on dividends at two levels (i.e. at the SPV level and the Holdco. level). In addition, from a non-tax perspective, the Holdco may also have to navigate the NBFC/ CIC categorization issues. Hence, it is generally ideal to proceed with a direct SPV structure instead of a Holdco. structure.

II. Tax on sale of SPV shares

Any gains arising upon sale of the SPVs' shares by the InvIT will be taxed as capital gains in the hands of the InvIT. Thereafter, further distribution of the post-tax sale proceeds by the InvIT to its unitholders should be tax exempt.

III. Tax on sale of InvIT units

Any gains arising upon sale of the InvIT units will be taxed as capital gains in the hands of the unitholders. Specifically, for non-resident unitholders who invest through treaty jurisdictions (eg: Singapore), capital gains tax can potentially be nil.

IV. Tax on repayment of debt

Effective 01 April 2024, any income distributed by the InvIT to unitholders which is in the nature of a debt (principal) repayment will lead to a deemed reduction in the cost of acquisition of the unit (only for the purposes of tax law). When the unit is later sold, capital gains tax on the sale will be assessed on the basis of the reduced cost of acquisition. Once the issue price is exhausted (i.e., the amounts distributed as principal repayment on any unit have cumulatively exceeded the issue price of the unit), then any further principal repayment distributions are liable to be taxed under the head of 'income from other sources' (i.e., at applicable tax slabs) for that unitholder and for any future holders

of the unit as well.

Prior to this, InvITs and REITs used principal repayments by SPVs to the InvIT (and then to the unitholders) as a mechanism to distribute returns in a tax-free manner, since the distributions technically do not qualify as interest or dividend payments. Our detailed analysis on this aspect can be accessed [here](#).

V. Tax asset creation at the SPV level

InvITs have a special advantage vis-à-vis other holding structures, in that any 'interest' distributed by its SPVs to the InvIT is not liable to any tax (including withholding tax). Tax on such interest is relevant only when the InvIT further distributes the amounts to its unitholders. As a result, during the initial years of most projects, SPVs legitimately accrue interest in respect of the debt infused by the InvIT and create tax assets. These tax assets are set off against future revenues, effectively increasing the absolute returns rate of such projects.

VI. Tax benefits for Sovereign Funds and Pension Funds

In a major move to attract long term capital, the government has provided a blanket tax exemption to notified sovereign funds and pension funds in respect of their investments in the infrastructure sector and InvITs. Income of 'specified persons' in the nature of dividend, interest and long-term capital gains arising from investments in InvITs in India has been specifically exempted from tax, subject to the following: (a) the investment is made on or after April 01, 2020 but on or before 31 March 2024 and is required to be held for at least 3 years; and (b) 'specified persons' means a wholly owned subsidiary of ADIA, notified sovereign funds and notified pension funds.

Annexure 1

Price Fluctuation of Indigrd and IRB InvIT after listing

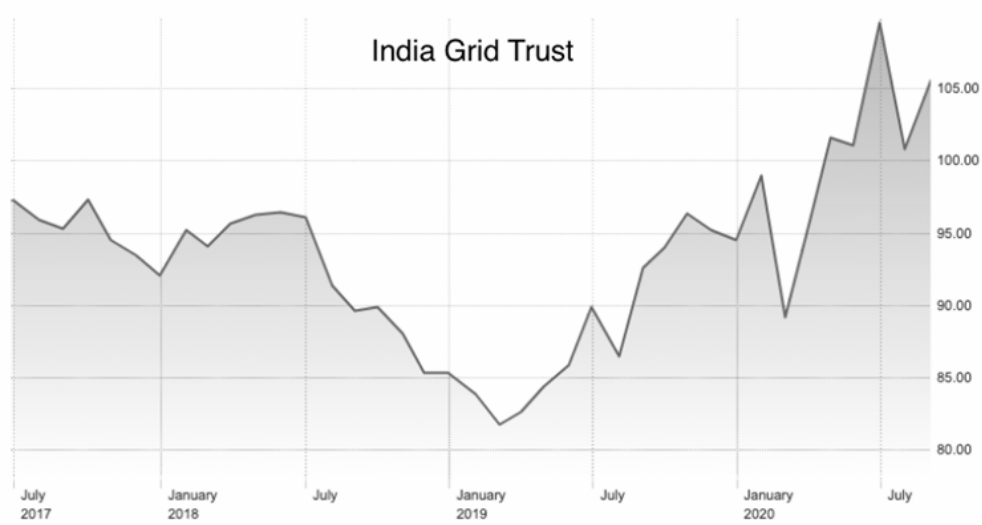


Figure 1: Price Fluctuation of Indigrd



Figure 2: Price Fluctuation of IRB InvIT Fund

Annexure 2

Comparative Analysis - Different Categories of InvITs

Fund Raising Method	Publicly offered listed InvITs	Privately placed listed InvITs
Listing	Mandatory listing	Mandatory listing
Nature of assets	Not less than 80% of InvIT asset value in completed and revenue generating assets	Not less than 80% of InvIT asset value in eligible infrastructure projects ⁵
Asset size	INR 5,000 mn	INR 5,000 mn
Minimum offer / issue size	INR 2,500 mn	INR 2,500 mn
Minimum no. of investors	20 (other than sponsor, its related party & its associates)	5 (other than sponsor, its related party & its associates)
Maximum no. of investors	NA	1000
Minimum subscription	A range of INR 10,000 to INR 15,000 per investor	INR 10 mn per investor (INR 250 mn if $\geq 80\%$ InvIT assets in completed and revenue generating assets)
Trading lot size	1 unit	INR 10 mn (INR 20 mn if $\geq 80\%$ InvIT assets in completed and revenue generating assets)
Timeline for listing	Within 6 working days from closure of issue	
Minimum public floating	Post issue capital calculated at offer price to be held by public: <ol style="list-style-type: none"> Where the post issue capital is less than INR 16,000 mn - 25% of the outstanding InvIT units or INR 2,500 mn, whichever is higher; Where the post issue capital is between INR 16,000 mn to INR 40,000 mn - INR 4,000 mn; Where the post issue capital is INR 40,000 mn or more - minimum 10% of the outstanding InvIT units, which needs to be increased to be 25% within 3 years of listing. 	
Dividend distribution	At least once in every 6 months	At least once in every 12 months

⁵ Ref. Paragraph I of the 'Commercial and Legal Considerations' Section.

Un-invested funds	May be invested in: <ol style="list-style-type: none"> 1. under construction infrastructure projects (\leq 10% of value of InvIT assets) 2. listed or unlisted debt of companies for infra sector 3. equity shares of listed infra companies 4. government securities 5. money market instruments, liquid mutual funds or cash equivalents 	May be invested in points (2) to (5) mentioned under publicly offered InvITs
Leverage	<ol style="list-style-type: none"> 1. Borrowings > 25% to 49% - credit rating & unitholders approval required 2. Above 49% up to 70% - other conditions to be fulfilled. 	
Tax Benefits on Rollover and Distributions	Identical	

Annexure 3

Eligibility Criteria – Parties to InvIT

Regulation 4(2) of the SEBI InvIT Regulations prescribes the mandatory requirements for each of the parties to the InvIT (apart from general requirements), which are as follows:

A. With regard to the Sponsor –

- I. Each sponsor shall be clearly identified in the application of registration to the Board and in the offer document/ placement memorandum, as applicable;
- II. Each sponsor has:
 - a. A net worth of not less than Rs. 100 crore if it is a body corporate or a company; or
 - b. Net tangible assets of value not less than Rs 100 crore in case it is a limited liability partnership;;
- III. Whether the sponsor or its associate has a sound track record in development of infrastructure or fund management in the infrastructure sector.

Explanation - 'sound track record' means experience of at least 5 years and where the sponsor is a developer, at least two projects of the sponsor have been completed;

B. With regard to the investment manager –

- I. The investment manager has a net worth of not less than rupees ten crore if the investment manager is a body corporate or a company or net tangible assets of value not less than ten crore rupees in case the investment manager is a limited liability partnership;
- II. The investment manager has not less than five years of experience in fund management or advisory services or development in the infrastructure sector or the combined experience of the directors/partners/ employees of the investment manager in fund management or advisory services or development in the infrastructure sector is not less than 30 years: provided that for computing the combined experience, only the experience of the directors/partners/employees with more than 5 years of experience in fund management or advisory services or development in the infrastructure sector shall be considered;
- III. The investment manager has not less than two employees who have at least five years experience each, in fund management or advisory services or development in the in-

frastructure sector;

- IV. The investment manager has not less than one employee who has at least five years experience in the relevant sub-sector(s) in which the InvIT has invested or proposes to invest;
 - V. The investment manager has not less than half of its directors in case of a company or members of the governing board in case of an LLP as independent and not directors or members of the governing board of an Investment Manager of another InvIT;
 - VI. The investment manager has an office in India from where the operations pertaining to the InvIT is pro- posed to be conducted;
 - VII. The investment manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the investment manager in accordance with regulation 10;
- C. With regard to the project manager –
- I. The project manager has been identified and shall be appointed in terms of the project implementation /management agreement, provided that the project implementation agreement/ management agreement shall be submitted along with the draft offer document/ or the placement memorandum;
- D. With regard to the trustee –
- I. The trustee is registered with the Board under Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and is not an associate of the sponsor(s) or investment manager; and
 - II. the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the Board and in accordance with circulars or guidelines as may be specified by the Board;
- E. General Requirements –
- I. The applicant is the sponsor on behalf of the trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908;
 - II. Persons have been designated as sponsor(s), investment manager and trustee under these regulations and all such persons are separate entities;
 - III. The InvIT and parties to the InvIT are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Interme-

diaries) Regulations, 2008;

- IV. Whether any previous application for grant of certificate made by the InvIT or the parties to the InvIT or their directors/members of governing board] has been rejected by the Board;
- V. Whether any disciplinary action has been taken by the Board or any other regulatory authority against the InvIT or the parties to the InvIT or their directors/members of governing board under any Act or the regulations or circulars or guidelines made there under.

Annexure 4

Notified Infrastructure Sectors

The infrastructure sub-sectors have been provided in the Harmonised Master List of Infrastructure Sub-sectors, which are as follows:

S. No	Category	Infrastructure Sub-sector
1	Transport and Logistics	<ol style="list-style-type: none"> 1. Roads and bridges 2. Ports⁶ 3. Shipyards⁷ 4. Inland Waterways 5. Airport 6. Railway track including electrical & signalling system, tunnels, viaducts, bridges 7. Railway rolling stock along with workshop and associated maintenance facilities 8. Railway terminal infrastructure including stations and adjoining commercial infrastructure 9. Urban Public Transport (except rolling stock in case of urban road transport) 10. Logistics Infrastructure⁸ 11. Bulk Material Transportation Pipelines⁹
2	Energy	<ol style="list-style-type: none"> 1. Electricity Generation 2. Electricity Transmission 3. Electricity Distribution 4. Oil/Gas/Liquefied Natural Gas (LNG) storage facility¹⁰ 5. Gas pipelines¹¹
3	Water and Sanitation	<ol style="list-style-type: none"> 1. Solid Waste Management 2. Water treatment plants 3. Sewage collection, treatment and disposal system 4. Irrigation (dams, channels, embankments, etc.) 5. Storm Water Drainage System
4	Communication	<ol style="list-style-type: none"> 1. Telecommunication (fixed network)¹² 2. Telecommunication towers 3. Telecommunication & Telecom Services 4. Data Centers¹³

⁶ Includes Capital Dredging

⁷ "Shipyards" is defined as a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways and/or ship lifts, and which is self sufficient for carrying on shipbuilding/repair/breaking activities.

⁸ Logistics Infrastructure" means and includes Multimodal Logistics Park comprising Inland Container Depot (ICD) with minimum investment of Rs. 50 crore and minimum area of 10 acre, Cold Chain Facility with minimum investment of Rs. 15 crore and minimum area of 20,000 sq ft, and/or Warehousing Facility with investment of minimum Rs. 25 crore and minimum area of 1 lakh sq ft.

⁹ Includes Oil, Gas, Slurry, Water supply and Iron Ore Pipelines

¹⁰ Includes strategic storage of crude oil.

¹¹ Includes city gas distribution network.

¹² Includes optic fibre/wire/cable networks which provide broadband / Internet.

¹³ Data Centre housed in a dedicated/centralized building for storage and processing of digital data applications with a minimum capacity of 5 MW of IT load.

5	Social and Commercial Infrastructure	<ol style="list-style-type: none"> 1. Education Institutions (capital stock) 2. Sports Infrastructure¹⁴ 3. Hospitals (capital stock)¹⁵ 4. Tourism infrastructure viz. (i) three-star or higher category classified hotels located outside cities with population of more than 1 million, (ii) ropeways and cable cars 5. Common infrastructure for Industrial Parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets 6. Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage 7. Terminal markets 8. Soil-testing laboratories 9. Cold Chain¹⁶ 10. Affordable Housing¹⁷ 11. Affordable Rental Housing Complex¹⁸ 12. Exhibition-cum-Convention Centre¹⁹
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¹⁴ Includes the provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports related activities.

¹⁵ Includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centers.

¹⁶ Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.

¹⁷ “Affordable Housing” is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area* of not more than 60 square meters. (* “Carpet Area” shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016)

¹⁸ “Affordable Rental Housing Complex” means a project to be used for rental purpose only for urban migrant/poor (EWS/LIG categories) for a minimum period of 25 years with basic civic infrastructure facilities such as water, sanitation, sewerage/septage, road, electricity along with necessary social/commercial infrastructure and the initial rent fixed by Local Authority/ Entities based on local survey of surrounding area wherein the project is situated.

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

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

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

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

¹⁹ “Exhibition-cum-Convention Centre” is defined as Exhibition and Convention Centre Projects with minimum built-up floor area* of 100,000 square metres of exclusively exhibition space or convention space or both combined. * Built up floor area includes primary facilities such as exhibition centres, convention halls, auditoriums, plenary halls, business centres, meeting halls etc.

Annexure 5

NDCF Calculation Methodology

A. Calculation of Net Distributable Cash Flows at the SPV level:

Description	Amount
Profit after tax as per Statement of profit and loss/income and expenditure (standalone) (A)	xx
Add: Depreciation and amortisation as per Statement of profit and loss/income and expenditure	xx
Add/less: Loss/gain on sale of Infrastructure Assets	xx
Add: Proceeds from sale of Infrastructure Assets adjusted for the following: 1. related debts settled or due to be settled from sale proceeds 2. directly attributable transaction costs 3. proceeds reinvested or planned to be reinvested as per para 18 (7) (a) of the InvIT Regulations	xx
Add: Proceeds from sale of Infrastructure Assets not distributed pursuant to an earlier plan to re-invest, if such proceeds are not intended to be invested subsequently	xx
Add/less: Any other item of non-cash expense / non cash income (net of actual cash flows for these items), if deemed necessary by the Investment Manager. For example, any decrease/increase in carrying amount of an asset or of a liability recognised in Statement of profit and loss/income and expenditure on measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight line basis, etc.	xx
Less: Repayment of external debt (principal) / redeemable preference shares / debentures, etc., if deemed necessary by the Investment Manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	xx

B. Calculation of Net Distributable Cash Flows at the Consolidated InvIT level:

Description	Amount
Profit after tax as per Statement of profit and loss/income and expenditure (standalone) (A)	xx
Add: Depreciation and amortisation as per Statement of profit and loss/income and expenditure (consolidated)	xx
Add/less: Loss/gain recognised on sale of Infrastructure Assets or equity shares or interest in SPV	xx
Add: Proceeds from sale of Infrastructure Assets or equity shares or interest in SPV adjusted for the following: 1. related debts settled or due to be settled from sale proceeds 2. directly attributable transaction costs 3. proceeds reinvested or planned to be reinvested as per para 18 (7) (a) of the InvIT Regulations	xx

Add: Proceeds from sale of Infrastructure Assets or equity shares or interest in SPV not distributed pursuant to an earlier plan to re-invest, if such proceeds are not intended to be invested subsequently	xx
Add/less: Any other item of non-cash expense / non cash income (net of actual cash flows for these items), if deemed necessary by the Investment Manager. For example, any decrease/increase in carrying amount of an asset or of a liability recognised in Statement of profit and loss/income and expenditure on measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight line basis, etc.	xx
Less: Repayment of external debt (principal) / redeemable preference shares / debentures, etc., if deemed necessary by the Investment Manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	xx

Annexure 6

Competition Act – CCI Notification Thresholds

INDIA	Assets		Turnover
Either acquirer or target or both have:	INR 20 billion (~ USD 265 million)	Or	INR 60 billion (~USD 800 million)
Group to which the target will belong has:	INR 80 billion (~ USD 1.1 billion)	Or	INR 240 billion (~USD 3.2 billion)
WORLDWIDE	Assets		Turnover
Either acquirer or target or both have:	USD 1 billion with at least INR 10 billion (~ USD 133 million) in India	Or	USD 3 billion with at least INR 30 billion (~USD 400 million) in India
Group to which the target will belong has:	USD 4 billion with at least INR 10 billion (~ USD 133 million) in India	Or	USD 12 billion with at least INR 30 billion (~USD 400 million) in India

Note: The recently proposed amendments to the Competition Act, if enacted, would introduce a new threshold for notification – all transactions with a value of over INR 20 billion.

Annexure 7

Schedule 1 of the Combination Regulations

1. An acquisition of shares or voting rights, referred to in sub-clause (i) or sub clause (ii) of clause (a) of section 5 of the Act, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty five per cent (25%) or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly or in accordance with the execution of any document including a shareholders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired.

Explanation: The acquisition of less than ten per cent of the total shares or voting rights of an enterprise shall be treated as solely as an investment:

Provided that in relation to the said acquisition:

- A. the Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and
 - B. the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.
2. An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, where the acquirer or its group, prior to acquisition, already holds twenty five per cent (25%) or more shares or voting rights of the enterprise, but does not hold fifty per cent (50%) or more of the shares or voting rights of the enterprise, either prior to or after such acquisition:

Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group.

3. An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, where the acquirer, prior to acquisition, has fifty percent (50%) or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control.

4. An acquisition of assets, referred to in sub- clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not..

5. An amended or renewed tender offer where a notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer:

Provided that the compliance with regulation 16 relating to intimation of any change is duly made.

6. An acquisition of stock-in-trade, raw materials, stores and spares, trade receivables and other similar current assets in the ordinary course of business.

7. An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control.

8. Any acquisition of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be.

9. An acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group.

10. A merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group.

Provided that the transaction does not result in transfer from joint control to sole control.

11. Acquisition of shares, control, voting rights or assets by a purchaser approved by the Commission pursuant to and in accordance with its order under section 31 of the Act.

Annexure 8

Sponsor Obligations

The SEBI InvIT Regulations stipulates certain obligations on the Sponsor, which are as follows:

- A. The Sponsor shall, at all times, satisfy the conditions specified in Regulation 4 (Eligibility Criteria for Parties to the InvIT – previously explained in Annexure 3). [Regulation 7(c)]
- B. The Sponsor shall, at all times, comply with the Code of Conduct (Schedule VI of the InvIT Regulations), wherever applicable [Regulation 7(d)]
- C. The Sponsor will be responsible for all acts, omissions and representations/covenants of the InvIT related to formation of InvIT, sale/ transfer of assets/holdco/SPV to the InvIT. [Regulation 12(3)(i)]
- D. The Sponsor shall, on the request of the auditor, have to furnish information and explanation pertaining to activities of the InvIT that the auditor may consider necessary for the performance of his duties. [Regulation 13(2)(d)]
- E. The Sponsor is a related party to the InvIT (Regulation 2(1)(zv)) and will have to be in compliance with the conditions given in Regulation 19 (Related Party Transactions) and other applicable regulations.
- F. The Sponsor shall continue to be liable for all their past acts of omissions and commissions with respect to activities of the InvIT notwithstanding surrender of registration to SEBI. [Regulation 17(7)]
- G. The Sponsor shall have to file reports and furnish information with respect to the activities relating to the InvIT as may be called upon at any time by SEBI. [Regulation 24 and Regulation 25]
- H. The books of accounts, records and documents of the Sponsor may be inspected suo moto by SEBI or upon receipt of information/complaint by the SEBI appointed inspecting officers. [Regulation 27]
- I. The Sponsor shall give to the inspecting officer all such assistance and to extend all such co-operation as may be required in connection with the inspection and to furnish such information as may be sought by the inspecting officer in connection with the inspection. [Regulation 29(2)].

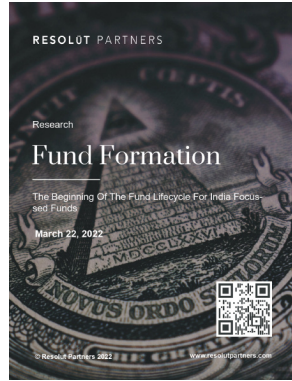
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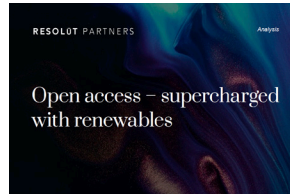
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Smart meters: The basic infrastructure for a green future

Key Takeaways

- Smart meters are essentially a data play – offering unprecedented data that can be used to bring online more green energy, cut electricity losses and reduce costs to consumers
- The sector has immense depth – USD 30 bn over just the next 2-3 years
- Large appetite for smart meter concession from global investors – largely due to robust payment mechanism and revenue protected concession model
- Potential for high IRR – with low cost EPC debt and capital recycling from the substantial revenue generated during the construction phase
- Underlying technology has larger application – including in the emerging water sector
- Not yet qualified as infrastructure; not InvIT eligible



Open access – supercharged with renewables

Key Takeaways

- Provides large consumers (who account for half of all electricity consumption) with choice – spurring innovation and providing access to cheap electricity
- Move toward renewable energy sources for open access presents practical challenges – obtaining access to round the clock power
- Regulations are highly state specific – with factors such as access to viable banking, state level charges and practical aspects of operating
- Industry remains very underpenetrated with the largest consumers only recently exploring green energy – driven by sustainability targets and cost savings
- Higher rated counterparties and the elimination of DISCOM risk makes this very attractive bet for investors



Energy storage systems: The why, where and how of India's Energy Story

Key Takeaways

- India has set itself a hefty target of achieving 600GW of Renewable Energy by the year 2026 which results the energy mix to comprise of 50% from renewable sources
- Given the intermittent nature of Renewable Energy, efficient and dependable energy storage systems is the need of the hour
- This paper sets out the commercial viability, feasibility and the overarching legal framework in setting up operating a business in the energy storage space and the consequent advantages with respect to operating multiple revenue streams and policy-level incentives extended by the Indian Government



SEBI is slowly re-defining InvITs: What's at risk for the product and its institutional audience?

Key Takeaways

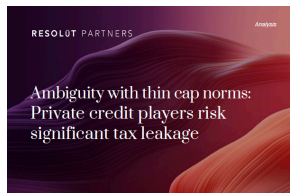
- Strong minority shareholder protections introduced – for both public and private InvITs
- Private InvITs originally designed to attract large institutional capital – light touch regulations allowed flexibility to parties manage their arrangements
- New changes include nominee director rights, stewardship principles and enhanced governance norms
- Changes good for retail investors, but appear misplaced in more sophisticated private entities
- Distinction between public and private InvITs seems to be fast fading – potentially making the confidence of institutional investors in private InvITs



Investing into Infrastructure Holding Companies: What if you become a core investment company?

Key Takeaways

- Infrastructure companies are mandated to execute concessions through EPVs, which often results in qualification of the holding company as a core investment company (CIC)
- CIC risk is often avoided by structuring EPC and O&M revenues through the holding company and sweetening the operational income
- Regulatory approvals and RBI supervision could make investors apprehensive; in general, however, compliance and disclosure obligations remain light touch
- Leverage caps on CICs make them tax sub-optimal, though careful structuring could optimize for tax leakage



Ambiguity with thin cap norms: Private credit players risk significant tax leakage

Key Takeaways

- Accurate reading of thin capitalization norms is highly relevant to maximize IRRs, especially in asset-heavy sectors
- Currently, norms interpreted such that sometimes the entire interest paid to foreign related parties is disallowed for the target (an expense)
- This interpretation seems contrary to legislative intent and to the explanation issued by the Department
- Counter view is to only disallow a portion of interest paid to foreign related parties (in excess of a prescribed limit)
- The counter is logical, has strong legal foundation and is in line with the spirit of law

RESOLÜT PARTNERS

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InvITs: Gamechanger in the Indian Infrastructure Story!