SEBI board approves amendments to REIT and InvIT Regulations

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In Brief

Taking another step towards refining the regulatory framework for real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) in India, the Securities and Exchange Board of India (SEBI) on 18 September 2017, in its board meeting, decided on a few points that could go a long way in creating a successful platform for these vehicles in India. This newsalert provides a snapshot of these decisions.

It is expected that in due course, a notification will be issued amending the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) and Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) to enact the decisions taken by the SEBI board.

In addition to the above, the SEBI board also decided to consult further with stakeholders on the proposal to allow REITs to invest at least 50% of equity share capital, or interest in special purpose vehicles (SPVs), or holding companies of the SPVs (Hold Cos), and similarly, allowing HoldCos to invest at least 50% of the equity share capital, or interest in SPVs (as against the current 51%).

In detail

The REIT Regulations and InvIT Regulations do not allow REITs and InvITs, respectively, to issue debt securities for raising funds. However, it has now been decided to allow REITs and InvITs to raise debt capital by issuing debt securities.

The REIT Regulations prescribe that a REIT shall hold at least two projects and not more than 60% of the value of its assets shall be held in a single project. However, no such stipulation exists under the InvIT Regulations. It has now been decided to allow single asset REITs on similar lines as InvITs.

While the InvIT Regulations were amended to allow InvITs to undertake lending to HoldCos/ SPVs, the REIT Regulations remained unchanged.

It has now been decided to allow REITs also to lend to underlying HoldCos/ SPVs.

The concept of “strategic investor” exists under the prevailing InvIT Regulations. In this context, it is important to note the following:

- Definition of strategic investors, inter-alia, includes scheduled commercial banks, foreign portfolio investors, etc., together holding not less than 5% of the total offer size of the InvIT; and
- InvIT is required to disclose commitments received from strategic investors in the offer documents.

It has now been decided to introduce the concept of strategic investor for REITs on similar lines as InvITs.

It has been decided to amend the definition of “valuer” in both the REIT Regulations and the InvIT Regulations.

Our view

The move to allow REITs and InvITs to raise funds through debt securities is expected to broaden the fund raising market and eventually boost investor returns. Further, the amendment permitting single asset REITs, makes them viable for single-asset owners of large value.

SEBI plans to undertake further consultations to explore the option of REITs investing at least 50 percent of the equity share capital or interest in the Hold Co/ SPV as against the current 51 percent. If the proposal is considered positively, it will help the current 50:50 joint venture structures to qualify for REITs.

The nature of changes approved by SEBI reiterate SEBI's intent to adopt a consultative approach in refining regulations so as to make REITs and InvITs successful platforms in India.

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