

Year in Review: Business Trusts in India

In India, infrastructure investment trusts ("InvITs") and real estate investment trusts ("REITs"), or business trusts, are set up as private trusts with a trustee, an investment manager or manager ("IM"), a sponsor, a sponsor group (i.e., entities categorized based on their relationship with the sponsor) and a project manager (only for InvITs). Registration with the Securities and Exchange Board of India ("SEBI") and listing of units are mandatory for InvITs and REITs.

The regulatory regime for InvITs and REITs has undergone significant changes in 2023. An overview of the key amendments notified by the SEBI to the relevant regulations is discussed below.

- **Corporate governance:** Mandatory governance requirements such as eligibility of independent directors, composition of the board of directors of the IM ("Board"), constitution of committees by the Board, quorum for meetings and submission of periodic information have been introduced for InvITs and REITs. These are similar to the requirements for companies with listed equity shares in India.
- **Unitholder director nomination:** The regulations prohibit unitholders from having superior voting or any other rights over other unitholders (except subordinate units, with inferior rights available to sponsors and their associates). The regulations have now been amended to permit unitholders holding 10% or more of the unitholding of an InvIT/REIT, individually or collectively, to nominate one director for appointment to the Board.
- **Minimum unitholding of sponsor/sponsor group:** Earlier, sponsors/sponsor groups were required to mandatorily hold a specified percentage of units for a period of three years from the listing of the InvIT/REIT and could encumber these units. Sponsors/sponsor groups are now required to mandatorily hold a percentage of the total unit capital of an InvIT/REIT, which percentage reduces over the life of the InvIT/REIT (subject to a maximum value of INR 500 crore after the completion of three years from listing). The lock-up units are not permitted to be encumbered. Certain grandfathering provisions for InvITs/REITs that were listed prior to the amendments are also prescribed.
- **Self-sponsored IMs:** An InvIT/REIT is required to have at least one sponsor at all times. However, if an InvIT/REIT has completed five years from listing, sponsors can disassociate by conversion to a 'self-sponsored' IM. A self-sponsored IM would have dual responsibilities of an IM and a sponsor.



Pratichi Mishra
pmishra@snrlaw.in



Anmol Kanodia
akanodia@snrlaw.in

- **Compliance with minimum public unitholding ("MPU") requirements:** Similar to listed companies, InvITs and REITs are subject to a mandatory 25% MPU requirement. Specific modes to achieve MPU compliance have now been prescribed under the regulations, including offer for sale through stock exchange mechanism.

The SEBI has revised the framework for calculation of distributions, effective from April 1, 2024. Provisions for dealing with unclaimed distributions and online dispute resolution have also been introduced by the SEBI. Further, regulatory clarity under the tax regime has been provided on the taxation of the 'return of capital' component of distributions. Also, at a recent board meeting, the SEBI has approved the introduction of a regulatory framework for small and medium REITs.

The amendments signal a shift in the regulatory approach of the SEBI towards InvITs and REITs, from 'light touch' to increasingly prescriptive, given the evolving nature of these products and diversifying investor base. The tax regime has also been modified to keep pace with the dynamic nature of the business trust structure. Overall, business trusts continue to be popular with institutional investors and have seen increased retail participation.



Practice Area News

New framework for Small and Medium REITs. At a board meeting held on **November 25, 2023**, the **Securities and Exchange Board of India** approved the introduction of a regulatory framework for small and medium REITs, with an asset size of at least INR 50 crore, under the existing REIT regulations. The framework is expected to facilitate consolidation of the real estate sector and lead to increased transparency and investor protection. The regulatory amendments will be notified subsequently.

Overseas listing of Securities of Indian Companies. On **October 30, 2023**, the **Ministry of Corporate Affairs** issued a notification bringing into effect a provision of the **Companies Act, 2013** that permits public companies to issue securities for listing on stock exchanges in permissible foreign jurisdictions, thereby enabling direct overseas listing of Indian companies. The mechanism is yet to be prescribed and operationalized.

Online Resolution of Disputes in the Indian Securities Market. Pursuant to a circular dated **July 31, 2023**, as amended on **August 4, 2023**, and amendments to the relevant regulations, the **Securities and Exchange Board of India** has established a common online dispute resolution portal mechanism, which contemplates online conciliation and arbitration and encourages the use of institutional arbitration in India. Disputes in the securities market among investors, listed companies and SEBI-registered entities can be resolved under this mechanism.

Listing of Debt Securities. Through amendments dated **August 23, 2023** and **September 20, 2023**, the **Securities and Exchange Board of India** amended the **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015** to provide (i) a framework for voluntary delisting of privately placed listed non-convertible debt securities with less than 200 holders (excluding qualified institutional buyers) and (ii) for mandatory listing of debt securities issued January 1, 2024 onwards by entities with existing listed debt.

In the Firm

• S&R Associates is recognized as an Outstanding firm in India for Capital Markets by asialaw in its 2023/24 rankings.

• S&R Associates is ranked as a Tier 1 firm in India by Asian Legal Business in its Asia M&A Rankings 2023.

