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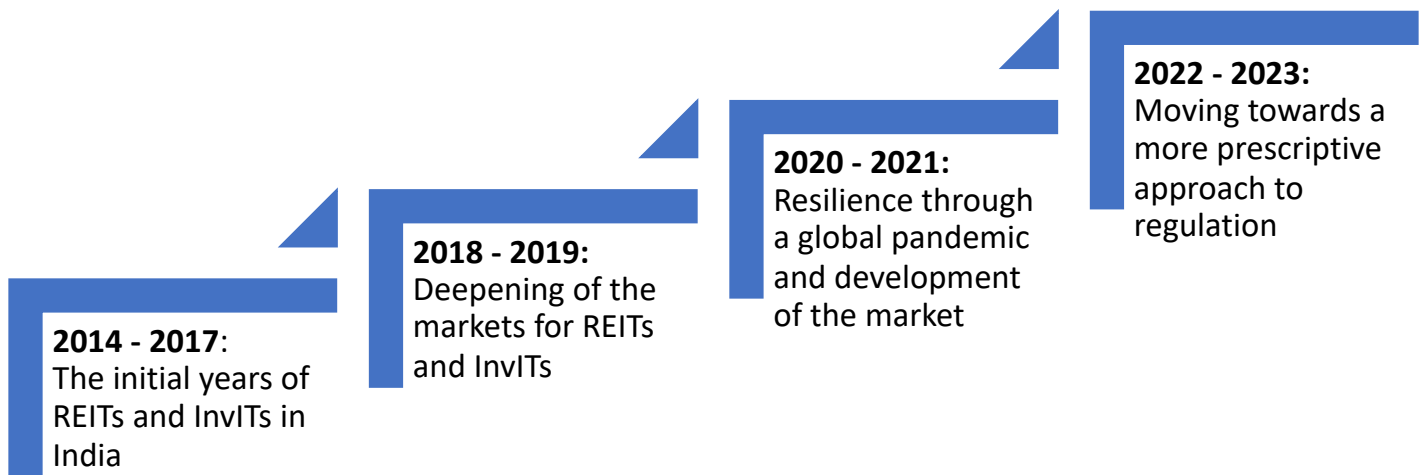
# REITs and InvITs: Evolution of the Regulatory Landscape in India

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Business trusts are used across the globe as an alternative to the traditional mode of conducting business through corporations. Business trusts play a significant role in global capital markets, particularly in Asia. Singapore and Hong Kong were among the first Asian jurisdictions to introduce the concept of business trusts in the early 2000s. India introduced real estate investment trusts (*REITs*) and infrastructure investment trusts (*InvITs*), or business trusts, in 2014.

In India, business trusts are organized as private trusts and registered with the Securities and Exchange Board of India (*SEBI*), the Indian securities regulator. The parties to a business trust comprise a trustee, an investment manager or manager (*IM*), one or more sponsors, sponsor groups (entities identified based on their relationship with the sponsor) and a project manager (only for *InvITs*). Listing of units on the stock exchanges is mandatory. *REITs* and *InvITs* are required to distribute at least 90% of their net distributable cash flows (*NDCA*) to unitholders.

As the regulatory regime for *REITs* and *InvITs* in India approaches the completion of a decade, it is interesting to reflect on the evolution of the regulations.



### Evolution of the Regulatory Landscape for REITs and InvITs in India

#### 2014-2017: The initial years

Under the original regulations, the listing of units of REITs through initial public offerings (*IPOs*) and of InvITs through IPOs or private placement was mandatory. REITs and InvITs were initially envisaged as institutional products, with a minimum investment of INR 1 million in publicly-offered InvITs, INR 10 million in privately-placed InvITs and INR 0.2 million in publicly-offered REITs. A maximum of three sponsors was permitted and sponsors were required to hold a certain minimum percentage of units post-listing to ensure 'skin-in-the-game'.

After the regulations were issued in September 2014, various circulars and amendments were issued to operationalize the framework for IPOs, private placement, listing and post-listing compliance. Restrictions on the maximum number of sponsors were also removed. The tax regime for business trusts was introduced, the exchange control regulations were amended to provide for foreign investment in business trusts and various categories of domestic investors, including mutual funds, insurance companies, pension funds and provident funds, were permitted to invest in InvITs and REITs. Listed REITs and InvITs were permitted to issue listed debt securities.

The first InvIT was registered with the SEBI in 2016 and listed on the stock exchanges through an IPO in 2017. The first REIT was registered with the SEBI in 2017.

#### 2018-2019: Deepening of the markets

In 2018 and 2019, the IPO and private placement processes, investment portfolio requirements, leverage thresholds and certain other operational matters were further streamlined. Participation by strategic investors (*i.e.* investors undertaking a firm commitment to invest even prior to anchor investors) was introduced for REIT and InvIT IPOs. The minimum subscription and trading lot for REITs and publicly-offered InvITs was reduced. Guidelines for follow-on offerings by listed InvITs and REITs were issued. The first REIT listed on the stock exchanges in 2019.

Further, a framework for unlisted InvITs was introduced and the conversion of privately-placed listed InvITs to unlisted InvITs was enabled. Also, commercial banks in India were permitted to provide lending and credit facilities to InvITs.

## 2020-2021: Resilience through a global pandemic

During this period, the minimum investment and trading lot for REITs and publicly-offered InvITs were reduced further and brought at par with listed equity. Mandatory minimum holding requirements for sponsors of REITs post-listing were relaxed slightly and provisions relating to declassification of sponsors of REITs/InvITs were introduced. Rights issues for REITs and InvITs were enabled. Further, certain corporate governance requirements were made applicable to listed InvITs and REITs with outstanding debt securities exceeding a certain threshold.

The SEBI also introduced the concept of a regulatory sandbox for promoting innovation in products, processes, services and business models in the securities market (including REITs and InvITs) in a live testing environment for a specified period.

Given the COVID-19 pandemic, temporary relaxations were provided to REITs and InvITs, including timelines for regulatory filings. A framework for conducting unitholder meetings through electronic means/video conferencing was also introduced.

## 2022-2023: Moving towards a more prescriptive approach to regulation

In 2022, the SEBI took a policy decision to discontinue the framework for unlisted InvITs. At the time, there were three unlisted InvITs, which subsequently listed their units in 2023. Further, the maximum timelines for listing for REITs/InvITs were reduced. A framework for conversion of privately-placed InvITs to publicly-offered InvITs was also notified.

2023 saw significant changes to the regulatory regime. Mandatory governance requirements, including with respect to the composition of the board of directors of the IM (*Board*), constitution of committees and eligibility of independent directors



were introduced (similar to listed companies in India). Unitholders holding 10% or more of the unitholding of a REIT/InvIT were permitted to nominate one director for appointment on the Board.

The mandatory minimum holding requirements for sponsors/sponsor groups were made stricter and the concept of sponsor groups was introduced in the InvIT regulations. Holding of a percentage of the total unit capital of a REIT/InvIT, which reduces over the life of the REIT/InvIT (subject to a maximum value of INR 5,000 million after the completion of three years from listing), was made mandatory for the sponsors/sponsor groups. Such units were not permitted to be encumbered. REITs and InvITs that were listed prior to the amendment could benefit from certain grandfathering provisions.



The concept of 'self-sponsored' IMs was also introduced. Sponsors of REITs or InvITs that were listed for at least five years were permitted to disassociate by conversion to a self-sponsored IM. A self-sponsored IM would have the dual responsibilities of an IM and a sponsor under the regulations, including with respect to mandatory minimum holding of units.

In addition, provisions for dealing with unclaimed distributions, online dispute resolution for investor grievance redressal and specific modes to achieve compliance with the 25% minimum public unitholding requirement applicable to REITs and InvITs were introduced. Further, the mechanism for calculation of NDCF for distributions was overhauled. Regulatory clarity under the tax regime was also provided on the taxation of the 'return of capital' component of distributions.

Recently, the SEBI approved the introduction of a regulatory framework for small and medium REITs. Also, proposals for the introduction of unit-based employee benefit schemes and certain other matters were issued for public consultation.

In conclusion, the regulations for business trusts have kept pace with the evolving nature of the product and a diversifying investor base, particularly increased retail participation. The evolution of regulatory landscape reflects the dynamic nature and growing popularity of REITs and InvITs in India.



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