

SEBI AIMS TO STIMULATE INVITs AND REITs BY ALLOWING UPTO 25% PARTICIPATION BY STRATEGIC INVESTORS THROUGH PUBLIC OFFER FOR THE FIRST TIME

1. INTRODUCTION

The Securities and Exchange Board of India (“SEBI”) released a circular (the “Circular”)¹ on January 18, 2018, outlining the operational modalities for participation by strategic investors in Infrastructure Investment Trusts (“InvITs”) and Real Estate Investment Trusts (“REITs”) under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (the “InvIT Regulations”) and the SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) respectively.

The InvIT Regulations and REIT Regulations (as amended pursuant to a SEBI notification² dated December 15, 2017), both define “strategic investors” on similar lines to include infrastructure finance companies registered with the Reserve Bank of India (the “RBI”) as Non-Banking Financial Companies (“NBFCs”), scheduled commercial banks, international multilateral financial institutions,³ systemically important NBFCs registered with the RBI and foreign portfolio investors.

Strategic investors were recently allowed to subscribe to debt funds issued by REITs and InvITs. However, they were not allowed to subscribe to public offerings. The Circular has now opened up a new form of investment by allowing strategic investors to subscribe to REITs and InvITs units, up to a maximum of 25 per cent (twenty five per cent) (and a minimum of 5 (five) per cent) of the total offer size.

Strategic investors therefore may invest through the additional subscription route, providing further impetus for REITs and InvITs.

Generally, strategic investors are allowed to invest in InvITs and REITs, subject to the terms of Chapter VI of the InvIT Regulations and REIT Regulations respectively.

¹ SEBI Circular No. SEBI/HO/DDHS/CIR/P/2018/10 dated January 18, 2018

² SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2017

³ REIT Regulations include a ‘bilateral development financial institution’

Mandatory disclosures in offer documents for the issue of InvIT and REIT units requires the disclosure of '*commitments received from strategic investors, if any*'.⁴ However, no other specific provisions or conditions governing investments by strategic investors, were provided earlier.

The Circular, however, introduces further conditions, which must be adhered to.

2. EFFECTS OF THE CIRCULAR

The Circular requires InvITs and REITs inviting subscriptions from strategic investors, to mandatorily enter into a binding unit subscription agreement with them. Such subscription agreement and the offer document (draft or final) should mandatorily include details such as the name of each strategic investor, the number of units proposed to be subscribed by it or the investment amount, the proposed subscription price per unit and other details related to the subscription.

In particular, note that the price at which a strategic investor has agreed to buy units should not be less than the issue price determined in the public issue. Further, the entire subscription price must be deposited into a special escrow account, prior to opening of the public issue.

Now, strategic investors may, either jointly or severally, invest up to 25% (twenty-five percent) and a minimum of 5% (five percent) of the total offer size of such InvIT or REIT, as the case may be.

The Circular has also introduced a *lock-in* for the units subscribed by strategic investors, pursuant to the terms of the unit subscription agreement, which is a period of 180 (one hundred and eighty) days from the date of listing in the public issue.

In the event that the issue price to the public is higher, then strategic investors will be required to top up their subscriptions within two days to match the issue price. However, if the price is lower, then there is no obligation to refund the difference to strategic investors.

The Circular also provides that the subscription by the strategic investor cannot be terminated unless the issue fails to collect the minimum subscription.

⁴ Para 4(d) of Schedule III under InvIT Regulations and REIT Regulations

3 **INDUSLAW VIEW**

SEBI had notified InvITs and REITs in 2014. However, there have not been many listings in such trusts.

The Circular aims to stimulate growth in the real estate and infrastructure sector, setting out formalities, which should encourage strategic investors (including NBFCs and multilateral financial institutions) and provide further transparency to public offerings. However, the move could potentially fuel a real estate bubble, if the cashing out by the strategic investor is not systemically checked and governed by suitable regulations.

Allowing the aggregate limit of investment by strategic investments up to 25 per cent of the total issue, should give strategic investors more flexibility in committing funds and the lock-in for 180 days should at least in theory, lead to a degree of price stability following issuance.

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