

**Consultation Paper on Regulatory Framework for REITs and InvITs to issue
Depository Receipts**

Objective

1. The objective of this consultation paper is to seek comments /views/suggestions from market participants on the proposed regulatory framework to allow Depository Receipts ('DRs') being issued as against units of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) established in India.

Background

2. Central Government vide notification dated October 21, 2014, had notified the Depository Receipts Scheme, 2014. The said Scheme *inter alia* states the following:
 - 2.1. 'depository receipt' means a foreign currency denominated instrument, whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of permissible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes 'global depository receipt' as defined in section 2(44) of the Companies Act, 2013;
 - 2.2. 'permissible securities' mean 'securities' as defined under section 2(h) of the Securities Contracts (Regulation) Act, 1956 and include similar instruments issued by private companies which may be acquired by a person resident outside India under the Foreign Exchange Management Act, 1999; and is in dematerialised form.
 - 2.3. 'permissible jurisdiction' means a foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering;

and the regulator of the securities market in that jurisdiction is a member of the International Organisation of Securities Commissions

2.4. The provisions of this Scheme shall be implemented by the respective authorities, namely, the Reserve Bank of India, the Securities and Exchange Board of India, Ministry of Corporate Affairs and Ministry of Finance.

2.5. The following persons are eligible to issue or transfer permissible securities to a foreign depository for the purpose of issue of depository receipts:

- (a) any Indian company, listed or unlisted, private or public;
- (b) any other issuer of permissible securities;
- (c) any person holding permissible securities; which has not been specifically prohibited from accessing the capital market or dealing in securities.

2.6. Depository Receipts are foreign currency denominated instruments issued outside India by a foreign depository on the back of an Indian security deposited with a domestic Indian custodian in India.

3. Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (InvITs) are set up as Business Trusts and hold and operate revenue generating real estate or infrastructure assets, respectively. REITs and InvITs raise funds by issuing units to the public at large. REITs and InvITs help developers (including government entities) monetise their investments in real estate sector and infrastructure projects in order to enable them to raise funds for the development of new projects and raise funds by issuing units to the public at large. The unit holders of REITs and InvITs are beneficial owners and hold a fractional interest in the underlying assets of REITs and InvITs.

4. Section 2(da) of the Securities Contracts (Regulation) Act 1956 reads as follows:

“Pooled investment vehicle means a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund,

collective investment scheme or a business trust as defined in sub-section (13A) of Section 2 of the Income Tax Act, 1961 and registered with the Securities and Exchange Board of India , or any other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as may be made by the Securities and Exchange Board of India in this behalf.”

5. Section 2(h)(ida) of the Securities Contract Regulation Act reads as follows:
“Units or any other instrument issued by any pooled investment vehicle”.
6. As the units of REITs and InvITs are permissible securities, Depository Receipts may be issued against units of REITs and InvITs established in India and listed on a Recognized Stock Exchange, or their holders may transfer units, for the purpose of issue of Depository Receipts, subject to norms mandated from time to time.

Need for Review

7. REITs and InvITs do not have multiple schemes or classes of units. The units are denominated in Indian Rupees and the units are also required to be listed on a recognised stock exchange in India.
8. Permitting issuance of Depository Receipts against units of REITs and InvITs which are listed on a foreign stock exchange gives foreign investors an opportunity to participate in the units of Indian REITs and InvITs. This will be beneficial for foreign investors as Depository Receipts avoids the need to trade directly with the Indian stock exchange.

Accordingly, in this consultation, it is desirous to ask whether there is a need to permit issuance of Depository Receipts against units of REITs and InvITs taking into account the Depository Receipts Scheme, 2014 ('DR Scheme'), notification by Reserve Bank of India ('RBI') and Central Government? If yes, whether the following norms

needs to be mandated for issuance of Depository Receipts against units of REITs and InvITs:

Eligibility Conditions

9. REITs and InvITs shall be eligible to issue permissible securities, for the purpose of issue of Depository Receipts, if:
 - 9.1. REITs and InvITs are in compliance with the requirements prescribed under SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, respectively, and any amendments thereof.
 - 9.2. REIT or InvIT or parties to the REIT/InvIT, its directors and selling unit holders are not debarred from accessing the capital market by SEBI.
 - 9.3. Any of the parties to the REIT/InvIT or its directors is a promoter or director of any other Company or REIT/InvIT which is not debarred from accessing the capital market by SEBI.
 - 9.4. REIT or InvIT or parties to the REIT/InvIT or its directors is not a wilful defaulter.
 - 9.5. Any of the parties to the REIT/InvIT or its directors is not a fugitive economic offender.
10. Existing unit holders shall be eligible to transfer Permissible securities, for the purpose of issue of Depository Receipts, if:
 - a. REITs or InvITs, or parties to the REIT or InvIT or the unit holder transferring Permissible Securities are not debarred from accessing the capital market by SEBI.
 - b. REITs or InvITs or parties to the REIT or InvIT or the holder transferring Permissible Securities is not a wilful defaulter.
 - c. The Holder transferring Permissible Securities or any of REITs or InvITs, or parties to the REIT or InvIT or their directors are not a fugitive economic offender.

Explanation 1: The restrictions at Paragraph 9 and 10 above shall not apply to the persons or entities mentioned therein, who were debarred in the past by SEBI and the period of debarment is already over.

Explanation 2: Depository Receipt means a foreign currency denominated instrument, listed on an international exchange, issued by a foreign depository in a permissible jurisdiction on the back of permissible securities issued or transferred to a domestic custodian and includes global depository receipt as defined in Section 2(44) of the Companies Act, 2013.

Explanation 3: 'Foreign Depository' means a person which:

- (a) is not prohibited from acquiring permissible securities;
- (b) is regulated in any of the Permissible Jurisdiction as defined; and
- (c) has legal capacity to issue Depository Receipts in the Permissible Jurisdiction where issue of Depository Receipts is proposed.

Explanation 4: 'transfer of permissible securities by existing holders' means deposit of existing units of the REITs or InvITs with a Domestic Custodian, for the purpose of issue of Depository Receipts, pursuant to formal agreement(s) among the REITs or InvITs and the Foreign Depository. For this purpose, the REITs or InvITs may also enter into arrangement(s) with, Indian Depository, Domestic Custodian and existing Permissible Securities (unit) holder(s), as may be necessary.

11. For the purpose of an issue and listing of Depository Receipts, pursuant to 'transfer by existing unit holders', the REIT or InvIT shall provide an opportunity to its existing unit holders to tender their units for participation in such listing of Depository Receipts.
12. Subsequent issue and listing of Depository Receipts, pursuant to 'transfer by existing unit holders' may take place subject to the limits approved pursuant to a special resolution in terms of GDR Rules.

13. REIT or InvIT proposing to make a public offer and list on a Recognized Stock Exchange, and also simultaneously proposing to issue units or facilitate transfer of units of existing unit holders, for the purpose of issue of Depository Receipts and listing such Depository Receipts on an International Exchange, may seek in-principle and final approval from Recognized Stock Exchange as well as International Exchange. However, such issue or transfer of units for the purpose of issue of DRs shall be subsequent to, the receipt of trading approval from the Recognized Stock Exchange for the public offer.

Permissible Jurisdictions and International Exchanges

14. REITs and InvITs shall be permitted to issue units or facilitate transfer of units of existing unit holders, for the purpose of issue of DRs, only in Permissible Jurisdictions and said DRs shall be listed on any of the specified International Exchange(s) of the Permissible Jurisdiction.

Explanation 1: For the purpose of this Circular, 'Permissible Jurisdiction' shall mean jurisdictions as may be notified by the Central Government from time to time, pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

Explanation 2: For the purposes of this Circular 'International Exchange(s)' shall mean exchange(s) as may be notified by SEBI from time to time¹.

15. Listing of DRs on specified International Exchange shall meet the highest applicable level/standards for such listing by foreign issuers.

Explanation: Examples of DR listing programs that would qualify for the aforesaid criteria:

Issuer-sponsored Level III ADR programs listed on Nasdaq or the NYSE, DRs listed on the Main Board of the Hong Kong Stock

¹ In this regard, please refer [SEBI circular SEBI/HO/MRD2/DCAP/CIR/P/2019/146 dated November 28, 2019](#)

Exchange, Global Depositary Receipts admitted to the Standard Segment of the Official List of the FCA and to trading on the London Stock Exchange.

Obligations of Listed Entity

16. REITs and InvITs shall ensure compliance with extant laws relating to issuance of DRs, including, requirements prescribed in this Circular, the Companies Act, 2013, the Foreign Exchange Management Act, 1999('FEMA'), Prevention of Money-Laundering Act, 2002, and rules and regulations made thereunder. For this purpose, REITs or InvITs may also enter into necessary arrangements with Custodian, Indian Depository and Foreign Depository.
17. REITs and InvITs shall ensure that DRs are issued only with Units as Permissible Securities the underlying:
Explanation: For the purpose of this Circular, 'Permissible Securities' shall mean units of REITs or InvITs which are in dematerialized form and rank pari passu with the units issued and listed on a Recognized Stock Exchange.
18. REITs and InvITs shall ensure that the aggregate of Units as Permissible Securities which may be issued or transferred for the purpose of issue of DRs, along with Units as Permissible Securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such Permissible Securities under the applicable regulations of FEMA:
Provided that within the above limit, the maximum of aggregate of Units as Permissible Securities which may be issued by the REITs or InvITs or transferred by the existing holders, for the purpose of issue of DRs, shall be such that the REITs and InvITs is able to ensure compliance with the minimum public holding requirement for the units of REIT or InvIT, after excluding the Permissible Securities held by the depository for the purpose of issue of DRs.

19. REITs and InvITs shall ensure that the agreement entered with the Foreign Depository, for the purpose of issue of DRs, provides that the Permissible holder, including its Beneficial Owner(s), shall ensure compliance with holding limits prescribed under Paragraph 26
20. REITs and InvITs shall, through an intermediary, file with SEBI and the Recognized Stock Exchange(s), a copy of the initial document, by whatever name called, for initial issue of DRs issued on the back of Permissible Securities.
- a) SEBI shall endeavor to forward its comments, if any, to the Recognized Stock Exchange(s) within a period of 7 working days from the receipt of the document and in the event of no comments being issued by SEBI within such period, it shall be deemed that SEBI does not have comments to offer
 - b) Recognized Stock Exchange(s) shall take into consideration the comments of SEBI while granting in-principle approval to the REIT or InvIT and decide on the approval within 15 working days of receipt of application and required documents.
- Further, final document for such initial issue shall be filed with Recognized Stock Exchange(s) and SEBI for record purpose.
21. REITs and InvITs shall ensure that any public disclosures made by the REITs and InvITs on International Exchange(s) in compliance with the requirements of the Permissible Jurisdiction where the DRs are listed or of the International Exchange(s), are also filed with the Recognized Stock Exchange as soon as reasonably possible but not later than twenty four hours from the date of filing.

Permissible holder:

22. Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

- a) who is not a person resident in India.
- b) who is not a Non-Resident Indian (NRI)

Explanation 1: 'Beneficial Owner' shall have the same meaning as provided in proviso to sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, as amended by the Central Government vide notification no. G.S.R. 669(E) dated September 18, 2019.

Explanation 2: The Permissible holder, including its Beneficial Owner(s), shall be responsible for ensuring compliance with this requirement.

Voting rights

- 23. A Listed Company shall ensure that the agreement entered between the holder of DRs, the Listed Company and the Depository provides that the voting rights on Permissible Securities, if any, shall be exercised by the DR holder through the Foreign Depository pursuant to voting instruction only from such DR holder.

Pricing

- 24. In case of a simultaneous listing of, Units as Permissible Securities on Recognized Stock Exchange(s) pursuant to a public offer/ preferential allotment / institutional placement under SEBI REIT Regulations or SEBI InvIT Regulations, and DRs on the International Exchange, the price of issue or transfer of Permissible Securities, for the purpose of issue of DRs by Foreign Depository, shall not be less than the price for the public offer / preferential allotment / institutional placement to domestic investors under the applicable laws.
- 25. Where Units as Permissible Securities are issued by a REIT or InvIT or 'transferred by the existing holders', for the purpose of issue of DRs by the Foreign Depository, the same shall be issued at a price, not less than the price applicable to a corresponding mode of issue of such Permissible Securities to domestic investors under the applicable laws.

Obligations of Indian Depository, Foreign Depository and Domestic

Custodian:

26. Indian Depositories, in consultation with each other, shall develop a system to ensure that aggregate holding of DR holders along with their holding, if any, through offshore derivative instruments and holding as a Foreign Portfolio Investor belonging to same investor group shall not exceed the limit on foreign holding under the FEMA and applicable SEBI Regulations. For this purpose, Indian Depositories shall have necessary arrangement with the Domestic Custodian and / or Foreign Depository.

Explanation- For the purposes of Paragraph 26 above, the term 'investor group' shall have the meaning as prescribed to such term in the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 or amendments thereof.

27. Domestic Custodian shall maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of depository receipts, for the purpose of monitoring limits.
28. Indian Depositories shall coordinate among themselves and with Domestic Custodian to disseminate:
- a) the outstanding Units as Permissible Securities against which the DRs are outstanding; and,
 - b) the limit up to which Units as Permissible Securities can be converted to DRs.
29. The Foreign Depository shall not issue or pre-release the DRs unless the Domestic Custodian has confirmed the receipt of underlying Permissible Securities.

Public Comments on this Consultation Paper

30. Considering the implications of the said matter on the market participants, public comments are invited on the proposal. The comments/ suggestions may be provided as per the format given below:

Name of the person/entity proposing comments:				
Name of the organization (if applicable):				
Contact details:				
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academican etc.)				
Sr. No.	Extract from Consultation Paper	Issues (with page/para nos., if applicable)	Proposals/ Suggestions	Rationale

31. Kindly mention the subject of the communication as, ***“Comments on Consultation Paper on Regulatory Framework to allow Depository Receipts against units of REITs and InvITs”***.
32. Comments as per aforesaid format may be sent to the following, latest by February 21, 2023, in any of the following manner:
- Preferably by email to: deenar@sebi.gov.in and; or rohan@sebi.gov.in or
 - By post to:

Deena Sarangadharan,
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