

Approval of SEBI (Real Estate Investment Trusts) Regulations, 2014

SEBI, in its board meeting dated August 10, 2014 has approved the draft regulations called SEBI (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”) first released on 10th October, 2013. These regulations provide a framework for registration and regulation for setting up and listing of Real Estate Investment Trusts (“**REITs**”) in India.

The salient features of the REIT Regulations as approved are as follows:

1. Definition of “Real Estate” or “property”: It means land and any permanently attached improvement to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, carparks, etc. and any other assets incidental to the ownership of real estate and does not include mortgage and Transferable Development Rights.
2. Registration: Registration as a REIT has been made mandatory under the regulations. Application for registration under these regulations will be made in the prescribed Form A specified in Schedule I to the REIT Regulations.
3. Eligibility criteria: Applicants shall have to confirm to the following conditions apart from any other matter SEBI may deem fit, in order to be granted the certificate to undertake activities as a REIT:
 - (i) The applicant must be a trust and the trust deed must be validly registered under the provisions of the Registration Act, 1908.
 - (ii) The trust deed must have as its main objective undertaking of activity of REIT in accordance with the regulations.
 - (iii) Persons designated as sponsors, managers, trustee and principal valuer must be separate entities.
 - (iv) The sponsor must have a net worth of at least Rs. 20 Crores on a consolidated basis and have not less than 5 years experience in the real estate industry on an individual basis.
 - (v) The manager must have a net worth of not less than Rs. 5 Crore and 5 years of experience in fund management/advisory services/property management in the real estate industry. The manager should also have not less than 2 key personnel in its Investment Committee who each have not less than 5 years experience in above mentioned fields.

- (vi) The trustee must be registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993. The trustee must not be an associate of the sponsor/manager/principal valuer and not less than 50% of its directors should be independent and not related parties to the REIT
- 4. The regulations provide in detail the rights and responsibilities of all the trustee, manager, sponsor, valuer, auditor.
- 5. Offer of units to the public: Initial offer of units can be made after registration of REIT with SEBI provided assets of REIT have an aggregate value of Rs. 1000 Crore and the value of units proposed to be offered is not less than 25% of the value. The offer size should not be less than Rs. 250 Crore.
 - (i) Size of one unit of the REIT shall be Rupees one lakh.
 - (ii) REIT shall not accept subscription of an amount less than rupees two lakhs from every applicant.
 - (iii) Units can be issued only in dematerialized form to the applicants.
- 6. Listing of units: It is mandatory for all units of REITs to be listed on a recognized stock exchange after the initial offer upon satisfaction of minimum subscription requirements. These units shall be traded, cleared and settled in accordance with the bye-laws of concerned stock exchanges, Depositories Act and such conditions as may be specified by SEBI.
- 7. Investment Conditions and Dividend policy:
 - (i) Not less than 80% of the value of the REIT assets shall be in completed and revenue generating properties.
 - (ii) Not more than 20% of the value of REIT assets shall be invested in following:
 - (a) developmental properties,
 - (b) mortgage backed securities,
 - (c) listed/ unlisted debt of companies/body corporates in real estate sector,
 - (d) equity shares of companies listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity,
 - (e) government securities,
 - (f) money market instruments or Cash equivalents.
 - (iii) Investments in developmental properties shall be restricted to 10% of the value of the REIT assets.
 - (iv) A REIT shall invest in at least 2 projects with not more than 60% of value of assets invested in one project.
 - (v) REIT shall distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to its investors, atleast on a half yearly basis.

- (vi) REIT, through a valuer, shall undertake full valuation on a yearly basis and updation of the same on a half yearly basis and declare Net Asset Value within 15 days from the date of such valuation/ updation.
 - (vii) The borrowings and deferred payments of the REIT at a consolidated level shall not exceed 49% of the value of the REIT assets. In case such borrowings/ deferred payments exceed 25%, approval from unit holders and credit rating shall be required.
8. Related party transactions: All related party transactions shall be on an arms-length basis. Stringent conditions have been imposed on related party transactions including detailed disclosures, valuation requirements, approval from majority of investors, related party abstaining from voting and restrictions on leasing of assets to related parties.
 9. Detailed provisions for valuation of assets, disclosure requirements, rights of unit holders are also provided in the Regulations.

IndusLaw Quick View:

The introduction of REITs will boost the hopes of the players in the real estate sector who have been unable to procure significant investments over the past few years. The investors shall now have the opportunity of investing their resources into avenues with lesser risk as compared to investments in under construction properties. Additionally, the incomes of a REIT are generally distributed among the sponsors in the form of dividends. It has already been declared in the Union Budget Speech 2014 that the REITs shall have a pass through for the purposes of taxation along with other necessary incentives, but, investors remain wary of investing in REITs until the taxation norms are finalized. The proposed amendments to the Income Tax Act, 1961 include provisions wherein certain incomes of the trust are taxable at the maximum marginal rates and the capital gains are taxable in the hands of the REIT itself. However Investors will wait until the tax regime is notified before making any investments.



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